TAX APPEALS TRIBUNAL

Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

TAT APPLICATION NO. 272 OF 2025

KAMPALA EXECUTIVE AVIATION...APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

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

RULING

I. Introduction

1. This ruling is in respect of an application challenging a withholding tax assessment of Shs. 243,910,756 on insurance premiums paid by the Applicant to foreign insurance companies.

II. Background Facts

2. The Applicant is engaged in aircraft leasing and aviation operations in Uganda. On 27 January 2025, the Respondent issued an additional withholding tax assessment amounting to Shs. 243,910,756 for the period of June 2023 on the grounds that the Applicant had failed to withhold tax from payments made to non-resident entities in respect of income alleged to have been sourced in Uganda.

3. Aggrieved by the assessment, the Applicant lodged an objection on 22 February 2025. The Applicant contended that withholding tax on insurance premiums became applicable only upon the enactment of section 78(qa) of the Income Tax Act by the Income Tax (Amendment) Act, 2024 and that the

provision could not be applied retrospectively to transactions undertaken before its commencement.

4. In considering the objection, the Respondent maintained that the assessment was properly founded on the provisions of the Income Tax Act that were already in force during the relevant period. The Respondent's position was that:
   (i) The Applicant paid insurance premiums to non-resident entities that derived income from Uganda within the meaning of section 78(d) of the Income Tax Act;
   (ii) The recipients of the payments included Calmer Risk Consultants Pty Ltd, GIB Insurance Ltd and Lloyd's of London, which provided aviation insurance services to the Applicant;
   (iii) The payments constituted consideration for aviation insurance services and were therefore subject to tax under sections 84, 78(d) and 137 of the Income Tax Act; and
   (iv) The insurance services related to aviation risks associated with the Applicant's operations in Uganda, thereby giving rise to income sourced in Uganda.

5. The Applicant, however, maintained that the assessment was founded on an erroneous interpretation of the law applicable during the relevant period. It argued that section 78(qa), which specifically addresses insurance premium income, was introduced by the Income Tax (Amendment) Act, 2024 and came into force on 1 July 2024. According to the Applicant, the provision created a new source rule for insurance premiums and could not lawfully be applied to transactions that occurred during the 2022/2023 income year.

6. By an objection decision dated 23 May 2025, the Respondent disallowed the objection and confirmed the assessment on the basis that the payments in question constituted payments for insurance services supplied by non-resident entities and were therefore subject to withholding tax under the Income Tax Act.

III. Issue for determination

7. Whether the Applicant is liable to pay the withholding tax as assessed?

IV. Representation

8. The Applicant was represented by Ms. Dorcus Atim and Mr. Japheth Teya Nyangyenya from JT Peculiar Consult Ug Ltd, while the Respondent was represented by Mr. Edmond Agaba and Mr. Barnabas Nuwaha from the Legal and Board Affairs of the Respondent.

V. The Submissions of the Applicant

9. The Applicant submitted that the assessment imposing withholding tax on insurance premiums paid to non-resident insurers during the 2022/2023 year of income was unlawful. It argued that taxation is a creature of statute and may only be imposed under clear legislative authority. In support of that proposition, the Applicant relied on Article 152(1) of the Constitution of the Republic of Uganda, 1995, which provides that no tax shall be imposed except under the authority of an Act of Parliament.

10. The Applicant further relied on ***Margaret Akilki Rwaheru & 13,945 Others v Uganda Revenue Authority, Civil Appeal No. 13 of 2017***, in which the Court of Appeal reaffirmed the principle that tax liability must be founded on express statutory authority. The Applicant also cited ***Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64*** for the proposition that taxing statutes must be construed strictly and that nothing is to be implied or read into a taxing provision. The Applicant therefore submitted that unless the Respondent could point to a clear charging provision in force during the relevant period, the assessment could not be sustained.

11. The Applicant submitted that section 78(qa) of the Income Tax Act, which provides that income is sourced in Uganda where it is derived from the payment of an insurance premium relating to insurance or reinsurance of a risk in Uganda, was introduced by the Income Tax (Amendment) Act, 2024 and came into force on 1 July 2024. According to the Applicant, the enactment of that provision demonstrates that Parliament had not

previously provided a specific source rule for insurance premiums. The Applicant argued that section 78(qa) introduced a new basis for sourcing insurance premium income and, having been enacted with prospective effect, could not apply to transactions undertaken during the 2022/2023 income year.

12. The Applicant further submitted that the non-resident insurers did not operate through a permanent establishment or branch in Uganda and that all underwriting, placement, risk assessment and performance of the insurance arrangements took place outside Uganda. It argued that the premiums paid to non-resident insurers did not constitute income sourced in Uganda under section 78 of the Income Tax Act and therefore could not be subject to withholding tax.

13. With regard to section 84 of the Income Tax Act, the Applicant submitted that withholding tax under that provision only applies where a non-resident derives income under a Ugandan-source services contract. The Applicant contended that the insurance policies in question were contracts of indemnity and risk transfer rather than contracts whose principal purpose was the performance of services. According to the Applicant, the premiums constituted consideration for risk coverage and indemnification and not payment for services rendered in Uganda. It was therefore argued that the insurance arrangements did not fall within the definition of a Ugandan-source services contract under section 84(4) of the Act.

14. The Applicant also relied on ***UAP Old Mutual Insurance Uganda Limited v Uganda Revenue Authority, Tax Appeals Tribunal Application No. 105 of 2023,*** in support of its argument that tax liability cannot be extended by implication beyond what Parliament has expressly provided. The Applicant submitted that neither section 84 nor any other provision of the Income Tax Act in force during the relevant period expressly imposed withholding tax on insurance premiums paid to non-resident insurers.

15. The Applicant consequently maintained that no withholding tax obligation arose in respect of the impugned payments and that the assessment should be set aside. It prayed that the Tribunal allow the application, vacate the assessment, order a refund of the statutory deposit and any sums paid pursuant to the assessment, together with interest, and award costs.

VI. The Respondent's Submissions

16. The Respondent submitted that the assessment was not based on section 78(qa) of the Income Tax Act as amended in 2024. Rather, it contended that the assessment was founded on sections 78(d), 84, 137 and 142 of the Income Tax Act, all of which were in force during the relevant year of income. According to the Respondent, the Applicant's reliance on section 78(qa) misconceived both the legal basis of the assessment and the structure of the Income Tax Act. The Respondent argued that section 78 is a source provision, section 84 is the charging provision, while section 137 imposes the withholding obligation on the payer.

17. The Respondent submitted that the issue before the Tribunal was whether the insurance premiums paid by the Applicant to non-resident insurers constituted payments under a Ugandan-source services contract within the meaning of section 84 of the Income Tax Act. In that regard, reliance was placed on sections 4(1) and 17(2)(b) of the Income Tax Act, which impose income tax on chargeable income and limit the taxation of non-residents to income derived from sources in Uganda. The Respondent further relied on ***Esri Eastern Africa Limited v Uganda Revenue Authority, Tax Appeals Tribunal Application No. 41 of 2023,*** and ***Rwenzori Commodities Limited v Uganda Revenue Authority, Tax Appeals Tribunal Application No. 36 of 2025***, where the Tribunal held that for section 84 to apply, the non-resident must derive income from Uganda and that income must arise under a Ugandan-source services contract.

18. The Respondent submitted that those requirements were satisfied in the present case. It contended that the Applicant paid insurance premiums to non-resident entities, including Calmer Risk Consultants Pty Ltd, GIB Insurance Ltd and Lloyd's of London, in exchange for aviation insurance cover. The Respondent relied on the premium invoices produced as part of its evidence and argued that the premiums constituted consideration for the insurers' contractual undertaking to assume risk and provide insurance cover. In support of that position, the Respondent referred to section 2 of the Insurance Act, which defines a premium as consideration for entering into an insurance contract, and to ***Prudential Insurance Co v Inland Revenue Commissioners [1904] 2 KB 658***, which recognised a premium as the consideration for the insurer's undertaking of risk.

19. The Respondent further submitted that the insurance arrangements fell within the definition of a Ugandan-source services contract under section 84(4) of the Income Tax Act. It argued that the Applicant procured insurance cover from the non-resident entities and that the contracts in issue were contracts for the provision of aviation insurance services. The Respondent noted that although the Applicant acknowledged the existence of the insurance arrangements, it failed to produce the insurance policies despite requests made during the objection process. According to the Respondent, the existence and nature of the contractual arrangements were nevertheless demonstrated by the premium invoices and the Applicant's own admissions.

20. The Respondent argued that the principal purpose of the contracts was the provision of services. Reliance was placed on ***Apollo Hotel Ltd v Uganda Revenue Authority, Tax Appeals Tribunal Application No. 68 of 2018***, where the Tribunal, drawing from ***Metropolitan Life Limited v Commissioner for the South African Revenue Service A232/2007***, adopted a broad interpretation of the term "services" as including the making available of a facility, advantage or benefit. The Respondent submitted that insurance falls within that understanding because the insurer

undertakes to assess, assume and manage risk, maintain insurance cover and indemnify the insured upon the occurrence of an insured event.

21. The Respondent further submitted that the insurance services related to aircraft and aviation operations conducted in Uganda and that the insured risks were situated in Uganda. It argued that the location of the insured risk was central to the sourcing inquiry because the insurer's assumption of risk and indemnity obligations were connected to the Applicant's Ugandan aviation operations. The Respondent therefore contended that the premium income constituted income derived from services exercised or rendered in Uganda within the meaning of section 78(d) of the Income Tax Act.

22. The Respondent also submitted that the Applicant had failed to discharge its burden of proof. It argued that the Applicant did not provide the insurance policies or other documentation necessary to rebut the assessment and that the assessment was properly raised on the basis of the material available to the Respondent, including the premium invoices and the nature of the Applicant's business operations in Uganda.

23. With regard to the amount assessed, the Respondent relied on section 84(2) of the Income Tax Act and Part V of Schedule 4, which prescribe a withholding tax rate of 15% on payments to non-residents under Ugandan-source services contracts. It further relied on the definitions of "gross" and "payment" and argued that the Applicant was required to withhold tax from the gross amount of the insurance premiums paid to the non-resident insurers.

24. The Respondent submitted that section 137(1) of the Income Tax Act imposed an obligation on the Applicant to withhold tax from payments made under a Ugandan-source services contract and that section 142(1) rendered the Applicant personally liable for any tax that ought to have been withheld but was not. It argued that having made the payments without withholding tax, the Applicant became liable for the assessed amount.

25. The Respondent therefore maintained that the assessment was lawfully raised under sections 78(d), 84, 137 and 142 of the Income Tax Act and that the Applicant's allegation of retrospective application of section 78(qa) was misconceived. It accordingly prayed that the Tribunal dismiss the application, uphold the assessment of UGX 243,910,756 and award costs to the Respondent.

VII. The Applicant's Submissions in Rejoinder

26. In rejoinder, the Applicant reiterated its earlier submissions and maintained that the Respondent's assessment and objection decision were expressly premised on the proposition that withholding tax was payable on insurance premiums paid to non-resident insurers. The Applicant argued that the assessment notice, objection decision and supporting correspondence consistently referred to insurance premiums and that the Respondent could not subsequently reconstruct the legal basis of the assessment by relying on sections 84, 78(d), 137 and 142 of the Income Tax Act. According to the Applicant, tax liability must be determined by reference to the grounds upon which the assessment was issued and maintained.

27. The Applicant submitted that it procured aviation insurance cover from non-resident insurers and intermediaries and paid premiums and fronting charges during the period culminating in June 2023. It argued that the Respondent assessed withholding tax on the basis that insurance premiums paid "in exchange for services" were taxable and that the assessment therefore depended either on section 78(qa), which was not in force during the relevant period, or on an impermissible recharacterisation of insurance premiums as payments under a Ugandan-source services contract.

28. The Applicant reiterated its position that section 78(qa), introduced by the Income Tax (Amendment) Act, 2024 and effective from 1 July 2024, is an insurance-specific sourcing rule. According to the Applicant, the enactment of that provision demonstrates that Parliament had not previously treated insurance premiums relating to risks in Uganda as Uganda-source income.

The Applicant therefore maintained that section 78(qa) cannot be applied retrospectively and cannot be relied upon to characterise premium payments made during the 2022/2023 year of income as Uganda-source income.

29. The Applicant further submitted that section 84 of the Income Tax Act applies only where a non-resident derives income under a Ugandan-source services contract. It argued that the Respondent's evidence, comprising premium schedules, fronting fee invoices and remittance records, did not establish the existence of a contract whose principal purpose was the performance of services within the meaning of section 84(4). The Applicant maintained that the documents relied upon by the Respondent were characteristic of offshore insurance underwriting arrangements and did not demonstrate that the non-resident insurers provided services in Uganda.

30. The Applicant also submitted that sections 137 and 142 of the Income Tax Act are collection and enforcement provisions and do not themselves create a tax liability. It argued that those provisions can only operate where liability has first arisen under a valid charging provision and that they cannot be relied upon to impose withholding tax in the absence of income falling within sections 78 and 84 of the Act.

31. With regard to section 78(d), the Applicant submitted that there was no evidence that the non-resident insurers exercised or rendered services in Uganda. It argued that the underwriting, assumption of risk, risk bearing and other substantive aspects of the insurance arrangements occurred outside Uganda and that the Respondent's own exhibits demonstrated that the counterparties and remittance accounts were located outside Uganda. According to the Applicant, the evidence therefore did not establish that the income arose from services exercised or rendered in Uganda within the meaning of section 78(d).

32. The Applicant further contended that the assessment notice and objection decision referred to insurance premiums and asserted that withholding tax was payable on premiums paid in exchange for services, yet neither

document identified a service rendered in Uganda nor a contract whose principal purpose was the performance of services giving rise to Uganda-source income. The Applicant argued that the invoices issued by Calmer Risk Consultants Pty Ltd, GIB Insurance Ltd and Lloyd's of London reflected premium calls, fronting fees, profit commission adjustments, and cross-border remittances commonly associated with international insurance arrangements and did not demonstrate the existence of a Ugandan-source services contract.

33. The Applicant therefore maintained that the Respondent had failed to establish a valid statutory basis for the assessment and prayed that the Tribunal sets aside the additional withholding tax assessment in full, declares that section 78(qa) does not apply retrospectively to the transactions in issue, finds that the payments do not constitute payments under a Ugandan-source services contract within the meaning of section 84, orders a refund of the statutory deposit and any amounts paid pursuant to the assessment together with interest, and awards costs to the Applicant.

VIII. The Determination

34. We have carefully considered the pleadings, the evidence on record, the submissions of Counsel for both parties, the authorities cited, and the applicable law. The issue for determination is whether the Applicant is liable to pay withholding tax assessed by the Respondent in respect to payments made to non-resident insurers and insurance intermediaries.

35. It is not disputed that the Applicant is a resident person carrying on the business of aircraft leasing and aviation operations in Uganda. It is further undisputed that the Applicant made payments to non-resident entities, including Calmer Risk Consultants Pty Ltd, GIB Insurance Ltd and Lloyd's of London, in relation to aviation insurance arrangements for risks associated with its aviation operations in Uganda.

36. The Applicant's case is that the payments were insurance premiums paid under contracts of indemnity and risk transfer and that no provision of the Income Tax Act in force during the relevant period imposed withholding tax on such payments. The Applicant argues that section 78(qa), which specifically sources insurance premiums relating to risks in Uganda, only came into force on 1 July 2024 and cannot be applied retrospectively to transactions occurring during FY 2022/2023.

37. The Respondent's position is different. The Respondent's case is that the assessment is not founded on section 78(qa). Rather, the Respondent contends that the payments constituted consideration for aviation insurance services supplied by non-resident entities and that the assessment was properly raised under sections 78(d), 84, 137 and 142 of the Income Tax Act, all of which were in force during the relevant period.

38. We agree with both parties on one point. Section 78(qa) was introduced by the Income Tax (Amendment) Act, 2024 and came into force on 1 July 2024. Nothing in the amendment suggests that Parliament intended it to operate retrospectively. Consequently, this dispute must be determined on the basis of the law as it stood during the relevant period and not by applying section 78(qa) retrospectively.

39. The fact that section 78(qa) does not apply retrospectively does not, however, dispose of the matter. The Respondent expressly disclaims reliance on that provision and instead relies on sections 78(d), 84, 137 and 142. The Tribunal must therefore determine whether, under the law in force during the material period, the payments made by the Applicant to the non-resident insurers and insurance intermediaries constituted payments under Ugandan-source services contracts within the meaning of sections 78(d) and 84 of the Income Tax Act, thereby giving rise to a withholding obligation under section 137.

40. Article 152(1) of the Constitution mandates that no tax shall be imposed except under the authority of an Act of Parliament. We therefore fully agree with the Applicant that any tax liability must be grounded in a valid statutory

provision. We also agree with the principle stated in ***Cape Brandy Syndicate v IRC [1921] 1 KB 64*** that tax statutes must be construed according to the language used by Parliament and that nothing is to be implied.

41. Section 84(1) imposed tax on every non-resident person deriving income under a Ugandan-source services contract. Section 84(4) defines a Ugandan-source services contract as:

> *"a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which give rise to income sourced in Uganda."*

42. We adopt the approach in ***Esri Eastern Africa Ltd v URA*** and ***Rwenzori Commodities Ltd v Uganda Revenue Authority,*** where the Tribunal held that two conditions must be satisfied before section 84 applies:
(i) the non-resident must derive income from Uganda; and
(ii) that income must be derived under a Ugandan-source services contract.

43. In the present case, the Applicant argues that the insurance policies were contracts of indemnity and risk transfer and not contracts whose principal purpose was the performance of services. The Respondent argues that insurance involves underwriting, risk assessment, assumption of risk, maintenance of cover and indemnification and therefore constitutes the provision of insurance services.

44. Our task is not to determine whether insurance is capable of being described as a contract of indemnity. It plainly is. The question is whether the statutory phrase "performance of services" is broad enough to encompass the obligations undertaken by an insurer in exchange for a premium. We refer to Section 2 of the Insurance Act, which defines a premium as consideration for entering into an insurance contract. We are also persuaded by the decision in ***Prudential Insurance Co v Inland Revenue Commissioners [1904] 2 KB 658,*** which recognises that the premium is the consideration for the insurer's undertaking of risk.

45. The evidence before the Tribunal shows that the Applicant paid premiums and related insurance charges to non-resident insurance entities in exchange for aviation insurance cover. The insurers undertook obligations in favour of the Applicant, including assuming aviation risks and indemnifying in the event of covered losses. Those obligations were not gratuitous; they were undertaken for consideration.

46. We therefore find persuasive the Respondent's submission that the provision of insurance cover involves the making available of a commercial facility and advantage to the insured. In ***Apollo Hotel Ltd v URA,*** the Tribunal adopted a broad commercial understanding of the term "services". While that case did not concern insurance premiums, it demonstrates that the concept of services is not confined to consultancy, technical advice or professional work.

47. On the evidence before us, we are satisfied that the aviation insurance arrangements involved the provision of insurance services for consideration and therefore fall within the ordinary meaning of services contemplated by section 84.

48. We next consider whether the income arising under those contracts was sourced in Uganda. Section 78(d) provided(s) that income is derived from sources in Uganda to the extent that it is:

> *"employment income or a fee for the provision of services—*
>
> *(i) derived from employment or services exercised or rendered in Uganda; or*
>
> *(ii) paid by a resident person or borne by a permanent establishment in Uganda."*

49. The parties concentrated much of their argument on section 78(d)(i). The Applicant submits that underwriting, risk assessment and performance occurred offshore and that the insurers had no permanent establishment in Uganda. The Respondent argues that the insurance services relate to aircraft and aviation operations in Uganda and that the insured risks were situated there.

50. We do not consider it necessary to determine the full scope of section 78(d)(i) in the circumstances of this case. Section 78(d) contains two alternative limbs joined by the word "or". The second limb sources service income to Uganda, where the fee is paid by a resident person or borne by a permanent establishment in Uganda.

51. It is not disputed that the Applicant is a resident person. It is equally not disputed that the payments in question were made by the Applicant. Consequently, if the payments are properly characterised as fees for the provision of services, section 78(d)(ii) provides an independent statutory basis for treating the resulting income as income sourced in Uganda. We therefore find that the income derived by the non-resident recipients was income sourced in Uganda within the meaning of section 78(d).

52. Having found that the contracts were services contracts and that the resulting income was sourced in Uganda, it follows that the contracts fell within the definition of Ugandan-source services contracts under section 84(4).

53. The Respondent further relied on section 137(1), which provides that:

> *"Any person making a payment of the kind referred to in section 82, 84 or 85 shall withhold from the payment the tax levied under the relevant section."*

54. Once the payments fell within section 84, the Applicant was under a statutory duty to withhold tax from those payments. Section 142(1) provides that a withholding agent who fails to withhold tax in accordance with the Act is personally liable to pay to the Commissioner the amount which ought to have been withheld. The Applicant does not dispute that it did not withhold tax from the payments in question. The case is that no withholding obligation arose in the first place. For the reasons we have given, we do not accept that contention.

55. We are satisfied that the assessment was not based on retrospective application of section 78(qa). We are equally satisfied that sections 78(d),

84, 137 and 142 provided a statutory basis for the assessment during the relevant period. Accordingly, we find that the Applicant was duty-bound to withhold tax from the payments made to the non-resident entities and became personally liable for the amount not withheld. The issue for determination is therefore answered in the affirmative.

56. This application therefore fails, and the applicant's prayers are declined.

Orders

(i) The Application is dismissed.

(ii) The additional withholding tax assessment of Shs. 243,910,756 is upheld.

(iii) Costs are awarded to the Respondent.

It is so ordered.

Dated at Kampala this **26th** day of **June** 2025.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. PROSCOVIA REBECCA NAMBI
MEMBER

HON. STELLA NYAPENDI CHOMBO