



THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 36 OF 2020

KASESE COBALT COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. PROSCOVIA REBECCA NAMBI, HON. WILLIAM NANGOSYAH,
HON. STELLA NYAPENDI CHOMBO**

RULING

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's additional PAYE assessments for the period 2016–2019 amounting to UGX 1,919,169,379 on the grounds that the Applicant's expatriate employees were tax-exempt under the 1992 Kasese Cobalt Project Development Agreement, as preserved by section 166(26)(b) of the Income Tax Act, 1997, and that the 2016 assessment is time-barred.

II. Background facts

2. The Applicant, Kasese Cobalt Company Limited ("KCCL"), is a company incorporated in Uganda and was established for purposes of implementing and operating the Kasese Cobalt Project.
3. On 24 June 1992, the Government of Uganda entered into the Kasese Cobalt Project Development Agreement ("the PDA") with the project sponsors. The PDA governed the development, financing, construction and operation of the cobalt processing project in Kasese District.

4. Clause 20.2(c) of the PDA provides that non-Ugandan employees, consultants, contractors and sub-contractors engaged in the project shall receive “fees, salaries, bonuses or other emoluments without liability to Ugandan tax.” The Applicant has consistently relied on this clause as the basis for its treatment of expatriate employees for tax purposes.
5. At the time the PDA was executed, the governing legislation was the Income Tax Decree, 1974. The Decree conferred upon the Minister of Finance the power to grant exemptions from income tax. On 18 March 1997 (prior to the commencement of the Income Tax Act, 1997) the Minister of Finance issued a letter reconfirming Government’s undertaking in respect of Clause 20.2(c) of the PDA.
6. Following the enactment of the Income Tax Act, 1997, which commenced on 1 July 1997 and repealed the 1974 Decree, transitional provisions were introduced under section 166(26)(b). That provision required ministerial concurrence in writing by 31 December 1997 in order for agreement-based exemptions to continue to have effect under the new Act.
7. On 26 June 2002, the Minister of Finance issued a further letter stating that the incentives under the KCCL Development Agreement relating to income tax on consultancies, professional fees and salaries of non-resident persons would continue under the Income Tax Act.
8. In 2020, the Respondent conducted a review of the Applicant’s PAYE compliance and issued additional PAYE assessments for the years 2016, 2017, 2018 and 2019, amounting in total to UGX 1,919,169,379. The Applicant objected to the assessments on the grounds that its expatriate employees were exempt from PAYE under the PDA and the 18 March 1997 and 26 June 2002 ministerial correspondence, which it contends confirmed and sustained

the tax treatment of expatriate employees under the PDA. The Respondent rejected the Applicant's objection, hence this Application.

9. In Civil Appeal No. 4 of 2020, *Kasese Cobalt Company Limited v URA*, the High Court set aside this Tribunal's decision in TAT Application No. 28 of 2018 which considered similar facts for an earlier period. The High Court held that the Applicant was exempt from PAYE for the years 2009–2015.

III. Representation and evidence

10. Mr. Ian Mutiibwa, Ms. Belinda Nakiganda, Mr. Rolant Kule, and Mr. Joseph Lobalang represented the Applicant while Mr. Tonny Kalungi and Ms. Eseza Victoria Sendege represented the Respondent.
11. The matter proceeded primarily on the basis of documentary evidence and legal submissions, as no witnesses were called to testify since the parties agreed that the matter turned on points of law. The key documents presented in the Joint Trial Bundle include the Kasese Project Development Agreement (1992), specifically Clause 20.2(c) (AEX7), letter from the Minister of Finance dated 18th March 1997 (AEX6), letter from the Minister of Finance dated 26th June 2002 (AEX5). High Court Judgment in *Kasese Cobalt Company Limited v Uganda Revenue Authority, Civil Appeal No. 4 of 2020* (AEX2), the Respondent's Management Letter and Objection Decision (AEX10, AEX8)

IV. Issues for determination

12. The following issues arise for determination:
 - (i) Whether the Applicant is liable to pay the tax assessed by the Respondent?
 - (ii) What remedies are available to the parties?

V. Submissions of the Applicant

The Doctrine of Stare Decisis and Judicial Hierarchy

13. The Applicant's primary legal strategy rests on the principle of *stare decisis*, asserting that the Tax Appeals Tribunal is must adhere to the precedents established by higher courts, specifically the High Court's prior ruling on the Applicant's tax status. Citing *Black's Law Dictionary (10th ed. 2014)*, the Applicant submits that this doctrine requires a court to follow earlier judicial decisions when the same points arise again in litigation. The Applicant argues that the Ugandan legal system operates under a "disciplined hierarchical order". To support this, they cite several key authorities:
14. ***Fuelex (U) Ltd v Uganda Revenue Authority (Constitutional Petition No. 3 of 2009)*** where Court of Appeal observed that this hierarchy "ensures that a decision by a higher Court of record binds all Courts below that Court" to prevent the unsettling of established legal matters. The Applicant also cited ***Uganda Revenue Authority v Kasai Plascon (TAT 146 of 2020)*** to emphasizes that this specific Tribunal has previously acknowledged that "High Court decisions in tax appeals are binding" when the Tribunal is exercising its jurisdiction.
15. The Applicant cited ***Attorney General v Uganda Law Society (Constitutional Appeal No. 1 of 2006)*** where the Supreme Court ruled that a court is "bound to adhere to its previous decision or those of superior Courts" except in rare instances where a decision is distinguishable, overruled, or arrived at *per incuriam*. The Applicant submitted that none of these exceptions applies to the present case and that the High Court decision has not been appealed or overturned. The Applicant argued that the Respondent's allegation that the High Court judgment was per incuriam is unfounded, because only a Court of coordinate or superior jurisdiction may declare a decision per incuriam, not a statutory tribunal.

16. The Applicant further cited *UBA Plc v Trident Consulting Ltd (SC.CV/405/2013)* for the proposition that a court is bound by the *ratio decidendi* of a higher court if the “issues of fact and the legislation the Court considers subsequently are same or similar”. The Applicant contends that the specific question of their expatriate employees' tax exemption has already been settled by the High Court in *Kasese Cobalt Company Limited v Uganda Revenue Authority (HCCA 4 of 2020)*.
17. The Applicant submits that the current application (TAT 36 of 2020) involves the “same question, between the same parties and in respect of the same subject matter” as the High Court case. Because the High Court ruled in *HCCA 4 of 2020* that the Applicant’s expatriate employees are not subject to tax under Ugandan law, the Applicant argues that this Tribunal “can hardly ignore the position of the High Court regarding the exemption”.
18. Consequently, the Applicant contended that since the facts are “on all fours” with the High Court precedent, the Tribunal must follow the High Court decision and uphold the exemption.

Existence of a Valid Exemption.

19. A critical part of the Applicant's argument involves how its 1992 exemption survived the change in Uganda's tax and constitutional regimes. The Applicant submits that its expatriate employees are expressly exempt from PAYE by virtue of Clause 20.2(c) of the Kasese Project Development Agreement (1992), which provides that “*non-Ugandan employees, consultants, contractors or sub-contractors shall receive payment of any fees, salaries, bonuses or other emoluments without liability to Ugandan tax.*” The Applicant argued that this clause created a binding obligation on the Government of Uganda and formed part of the contractual expectations upon which the project was established.

20. The Applicant argues that following the adoption of the 1995 Constitution, existing law was saved by Article 274(1), which brought the existing laws into conformity with the new constitutional order. In support of this constitutional transition, the Applicant cites ***Uganda National Roads Authority v Irumba Asumani and Peter Magela (Constitutional Appeal No. 02 of 2014)***. They submit that when the ITA was enacted to consolidate tax laws, it included a specific transition provision in Section 153(22) (formerly Section 166) which required that existing tax exemptions in agreements be confirmed in writing by the Minister of Finance by 31 December 1997.
21. The Applicant highlights the High Court's observation in ***Kasese Cobalt Company Limited v Uganda Revenue Authority (HCCA 4 of 2020)*** regarding the spirit of this provision:
- "The purpose of a transition provision is to save existing provisions of the repealed legislation, so as to give effect to the continuous applicability of those provisions".*
22. The Applicant contends it fully complied with this requirement. It points to a letter from the Minister of Finance dated 18 March 1997 to the Minister of Natural Resources "reconfirming" the application of Clause 20.2(c) of the Agreement. The Applicant argues that because this letter was written before the December 1997 deadline, it perfectly aligns with the statutory requirements. The Applicant further notes that the Ministry of Finance reaffirmed this on 26 June 2002, specifically stating that tax incentives for non-resident persons' salaries would continue as agreed in accordance with the Income Tax Act.
23. The Applicant further submitted that at the time the Agreement was executed, the governing tax law was the Income Tax Decree, 1974, under which section 12(2) empowered the Minister of Finance to grant exemptions. The Applicant emphasized that section 12(2) used the word "may" regarding publication of

exemptions in the Gazette or listing under Schedule 1, and therefore, gazetting was permissive, not mandatory. The Applicant relied on established principles of statutory interpretation, including the literal rule, as discussed in ***Cape Brandy Syndicate v IRC [1921] 1 KB 64***, where it was held that tax legislation must be construed strictly and according to its wording.

24. To demonstrate that the exemption was validly confirmed under the 1974 Decree, the Applicant relied on two letters from the Minister of Finance dated 18 March 1997 and 26 June 2002, attached to its submissions. These letters reconfirmed the Government's undertaking to exempt the Applicant's expatriate employees under Article 20.2(c). The 1997 letter explicitly stated that the Minister had *"issued my letter reconfirming with no reservations relating to Article 20.2(c)"*, while the 2002 letter reiterated that *"incentives given under the KCCL Development Agreement... will continue in accordance with section 168 [sic] of the Income Tax Act, 1997."*
25. The Applicant argued that these letters constitute valid ministerial concurrence within the meaning of section 166(26)(b) of the Income Tax Act, 1997, a transitional provision which provides that:
"...a provision in any agreement... shall have no effect under this Act unless the Minister has concurred in writing by 31st December 1997 with the exemption..."
26. The Applicant submitted that concurrence was given within the statutory deadline by the 18 March 1997 letter, and that the 2002 letter merely reaffirmed what had already been lawfully confirmed.
27. The Applicant relies heavily on the High Court's analysis of these letters in ***Civil Appeal 4 of 2020 (Kasese Cobalt Company Limited v URA)***. In that case, the Court observed that the 2002 letter confirmed (in addition to the 1997

letter) that tax incentives for non-resident salaries would continue as agreed.

The Court then determined that:

- i. the exemption under the Agreement was valid,
- ii. the Minister had concurred in writing within the meaning of section 166(26)(b), and
- iii. the exemption remained operative for the years 2009–2015.

28. The Applicant concluded that by obtaining these confirmations before the statutory deadline and having them verified by the High Court, their exemption was "not obliterated by the enactment of the ITA but rather saved". The Applicant submitted that the reasoning of the High Court in the above case applies equally to the PAYE assessments for 2016–2019, since the exemption remains in effect until expressly withdrawn or invalidated, which has never occurred. They invite the Tribunal to adopt the High Court's findings, asserting that their exemption is firmly founded in law.

The Principle of Strictissimi Juris

29. The Applicant acknowledges that tax exemptions are a privilege and are not granted lightly by the law. To support this, they cite the Supreme Court in ***Uganda Revenue Authority vs Siraje Hassan Kajura***, S.C.C.A No. 9 of 2015, which in turn relied on the decision in ***Crane Bank vs Uganda Revenue Authority***, C.A.C.A No. 96 of 2012.
30. The Applicant submits that, according to these precedents, "*laws that permit tax exemptions must be construed strictissimi juris against the entity claiming the same*". They further elaborate that the law does not favor tax exemptions; therefore, any party seeking such a privilege must justify it with language that is "too plain to be mistaken and so categorical to be misinterpreted".
31. Regarding the responsibility of the taxpayer to prove their eligibility, the Applicant cites the High Court's guidance in ***Commissioner General Uganda***

Revenue Authority v Edulink Holdings Limited, Stanbic Bank (U) Limited and Diamond Trust Bank, Civil Appeal No. 178 of 2021. In this case, the court held that “a person invoking an exception or an exemption provision to relieve him or her of the tax liability must establish clearly that he is covered by the said provision”. The Applicant accepts that the legal burden rests on them to demonstrate that they fall within the specific parameters of the exemption they are claiming.

32. The Applicant contends that they have successfully met this high standard and satisfied the burden of proof through two primary means. They point to Clause 20.2(c) of the 1992 Kasese Project Development Agreement, which explicitly states that non-Ugandan employees shall receive emoluments “without liability to Ugandan tax”. The Applicant maintains that this language is sufficiently “plain” and “categorical” to meet the *strictissimi juris* test. The Applicant asserts that they followed all statutory requirements by obtaining written Ministerial confirmation of this exemption on 18th March 1997 and 26th June 2002. They argue that these official reconfirmations, coupled with the clear terms of the original Agreement, leave no room for misinterpretation regarding their exempt status. Finally, the Applicant notes that their compliance with these legal standards was already scrutinized and affirmed by the High Court in ***Kasese Cobalt Company Limited v Uganda Revenue Authority (HCCA 4 of 2020)***, where it was determined that the exemption was validly saved and continues to apply.
33. Accordingly, the Applicant contended that the PAYE assessments lack a lawful basis.

The 2016 assessment is time-barred

34. Without prejudice to the claim for exemption, the Applicant contended that the assessments for the year 2016 are time barred. The Applicant relied on Section 25(2) of the Tax Procedures Code Act (TPCA), which generally limits an additional assessment to three years from the date of service of the notice

of the original assessment or three years from the date of the additional assessment.

35. The Applicant submitted that the 2016 portion of the PAYE assessment is invalid because the Respondent failed to demonstrate “new information” as required under section 25(2)(a) of the Tax Procedures Code Act, which permits the Commissioner to issue an additional assessment “at any time” only where fraud, gross or wilful neglect, or discovery of new information are shown.
36. The Applicant argued that there was no fraud, gross neglect, or new information, and that the Respondent bears the burden to prove these exceptions to justify expanding the three-year limitation period. The Applicant relied on the *High Court reasoning in Civil Appeal No. 4 of 2020, Kasese Cobalt Company Limited v URA*, where the Court held that it is the Respondent who bears the burden to prove that new information existed to justify issuing an additional assessment outside the statutory period.
37. The Applicant further cited principles from *Scorer (Inspector of Taxes) v Olin Energy Systems Ltd [1985] 2 All ER 375*, where it was held that tax authorities cannot reopen closed years without demonstrating specific new facts or information that could not reasonably have been known earlier.
38. The Applicant submitted that URA had full knowledge of the Project Development Agreement, the Minister’s letters, and the exemption claim as far back as its earlier audits, and therefore these documents cannot constitute “new information”. Accordingly, the Applicant argued that the 2016 assessment falls outside the statutory limitation period and should be vacated in full.

Remedies

39. The Applicant prays that the Tribunal grant the following remedies:
 - a. The current assessment should be set aside;
 - b. The amount of 30% of the tax assessed, deposited with the Respondent as a condition for filing the Application, should be refunded;
 - c. Any amount of tax paid to the Respondent should be refunded; and
 - d. The costs of the Application should be awarded to the Applicant

VI. Submissions of the Respondent

Issue 1: Whether the Applicant is liable to pay the tax assessed by the Respondent

40. The Respondent submits that at the time the Kasese Project Development Agreement (PDA) was concluded in 1992, the operative income tax legislation in Uganda was the Income Tax Decree of 1974. Any exemption from income tax had to comply strictly with the provisions of this Decree.
41. They submitted that Section 12 of the Decree vested the power to grant exemptions solely in the Minister of Finance, and only through a notice published in the Gazette or inclusion of the exempt income in Part I of Schedule 1.
42. The Respondent contends that the exemption letters relied upon by the Applicant were issued by the Minister of Water, Energy and Environmental Protection, a Minister who had no statutory authority to grant income tax exemptions under the 1974 Decree. Consequently, such letters could not create a legally valid tax exemption.
43. Furthermore, the Respondent submits that Schedule 1 of the Decree, which itemized specific categories of exempt income, did not list cobalt production as an exempt activity. Therefore, even if the correct Minister had issued such a

letter, the exemption could not have been sustained under the law then in force.

44. The Respondent submitted on the mandatory requirement of ministerial concurrence. They argued that with the enactment of the Income Tax Act, 1997, Parliament introduced a new statutory requirement under Section 166(26)(b) that any tax exemption contained in an agreement “*shall have no effect unless the Minister of Finance has concurred in writing by 31 December 1997.*”
45. The Respondent submitted that this provision applied retrospectively to all pre-existing agreements, including the 1992 Project Development Agreement and that compliance with the concurrence requirement was mandatory, not optional. The Respondent also argues that the statutory deadline set out in the Act was strict and mandatory.
46. The Respondent submitted that the Applicant obtained no concurrence from the Minister of Finance before the statutory deadline of 31 December 1997. They argued that the exemption relied upon by the Applicant only received “concurrence” on 26 June 2002—four and a half years after the mandatory deadline. The Respondent asserted that such belated concurrence cannot revive an exemption that had already lapsed by operation of law.
47. Furthermore, the Respondent submitted that tax exemption provisions must be interpreted strictly. The Respondent relied on established canons of interpretation in *Cape Brandy Syndicate v IRC (1921) KB 64* which established that tax laws must be strictly construed and no room exists for intendment or equity. They also relied on *KCCA v Kabandize & 20 Ors SCCA No. 13 of 2014*, which states that the use of “shall” denotes mandatory compliance. The Respondent therefore argues that the Tribunal cannot

validate a tax exemption where Parliament imposed strict statutory preconditions that were not met.

Stare Decisis

48. The Respondent submits that the High Court decision in *HCCA 4 of 2020, Kasese Cobalt Ltd v URA*, was reached per incuriam because the High Court failed to consider the 1974 Decree and the limits it imposed on the ministerial powers to grant exemptions. The Court similarly failed to consider Section 166(26)(b) of the 1997 Act, which imposed the concurrence deadline. According to the Respondent, the High Court therefore applied an incorrect legal framework.
49. The Respondent relied on the Supreme Court's pronouncement in *Attorney General v Uganda Law Society, Constitutional Appeal No. 1 of 2006*, where the Court held that a lower court or tribunal may depart from a decision of a higher court where that decision was given per incuriam or without regard to a relevant statutory provision.
50. Consequently, the Respondent invited the Tribunal to depart from that decision in HCCA 4 of 2020. The Respondent asked that the Tribunal find that the Applicant did not hold a valid tax exemption at any material time, and was therefore liable to PAYE on the remuneration of its expatriate employees.

Issue 2: Whether the 2016 additional assessment was time-barred

51. The Respondent submitted that under Section 25(2) of the TPCA, the Commissioner is empowered to issue an additional assessment at any time, where new information has been discovered relating to the tax payable for a given period.
52. The Respondent argued that the existence of new information is not limited to factual discoveries unknown to the predecessor officer, but covers legal

ignorance and oversight, extending to situations where an officer “got the law wrong and did not assess income where it ought to have been assessed.” The Respondent relied on the interpretation set out in *Uganda Electricity Transmission Co Ltd v URA, HCCS 423 of 2010* where Justice Madrama held that “new information” includes not only new facts unknown to the predecessor officer but situations where the officer previously handling the matter misconstrued the law. The Respondent also cited *Newspaper Society v CIR (1979) 1 T.R. 956* where the Court held that new information includes situations where income was not assessed because a predecessor “got the law wrong.”

53. The Respondent submitted that the earlier URA officers operated under an incorrect understanding of the legal status of the Applicant’s alleged exemption and that the correct interpretation of the law only emerged upon subsequent review. According to the Respondent, this constituted “new information” within the meaning of Section 25(2) and thus the 2016 PAYE assessment was lawfully issued and cannot be considered time-barred.
54. The Respondent prayed that the Tribunal find that new information existed in this matter, the 2016 assessment was therefore valid, lawful, and not time-barred.

Issue 3: What remedies are available to the parties

55. The Respondent submitted that the Applicant has failed to discharge the burden of proof required under the TPCA to show that the assessments were incorrect or excessive. The Respondent accordingly prays that the Application be dismissed with costs, and that the additional PAYE assessments of Shs. 1,919,169,379 be upheld in full, and costs be awarded to the Respondent.

VII. Submissions of the Applicant in rejoinder

56. In rejoinder, the Applicant submitted that the Respondent's argument that the Tribunal may depart from the High Court decision in HCCA No. 4 of 2020, *Kasese Cobalt v URA* is fundamentally flawed. The Applicant argued that stare decisis is binding upon lower tribunals except in exceptional circumstances, and yet the Respondent has not demonstrated any valid grounds, such as a higher court having overruled the decision or the decision having been declared per incuriam. The Applicant cited *URA v Kansai Plascon, TAT No. 146 of 2020*, to buttress its argument that administrative tribunals remain bound by superior court decisions unless exceptional factors exist.
57. The Applicant emphasized that the High Court specifically evaluated Clause 20.2(c) of the Project Development Agreement, the 1974 Income Tax Decree, and Section 166(26)(b) of the 1997 Income Tax Act. The Applicant submitted that the High Court's treatment of the statutory provisions was complete and deliberate, hence not per incuriam.
58. The Applicant argued that the Respondent's reliance *on AG v ULS Constitutional Appeal No.1 of 2006 to justify the Tribunal's departure from the High Court decision* is misplaced. This is because the case governs circumstances in which the earlier decision is either overruled or decided per incuriam. None of these conditions exists in respect of *HCCA No. 4 of 2020*. Therefore, the Tribunal must follow the High Court ruling. The Applicant concluded that the Respondent's arguments "rehash" positions already rejected by the High Court.
59. The Applicant challenges the Respondent's insistence on strict literal compliance with the 1974 Decree. They argue that Item 33 of Schedule 1 exempts income where the Government is a party to the agreement, such as the Kasese Cobalt PDA, signed by a Government minister. Section 12(2) of

the Decree uses the permissive term “may”, meaning gazettement was not mandatory. *Kasese Cobalt v URA TAT No. 28 of 2018* already confirmed that such agreements fall under Item 33 and do not require gazettement. Thus, the Respondent’s argument that cobalt production is “not listed” is artificial and unsustainable.

VIII. The determination

60. Having carefully read the evidence and submissions of the parties, we now consider each issue in turn.

Issue 1: Whether the Applicant is liable to pay the tax assessed by the Respondent.

61. It is common ground that the Kasese Cobalt Project Development Agreement (“the PDA”) was executed on 24 June 1992 and that Clause 20.2(c) thereof provides that non-Ugandan employees, consultants, contractors and sub-contractors shall receive “fees, salaries, bonuses or other emoluments without liability to Ugandan tax.” The issue before the Tribunal is whether, having regard to the subsequent statutory tax framework and the High Court decision in *Kasese Cobalt Company Limited*, Civil Appeal No. 4 of 2020, this clause continued to confer a valid PAYE exemption for the years 2016–2019.

Effect of Clause 20.2(c) of the Agreement

62. Our starting point is the High Court’s decision in Civil Appeal No. 4 of 2020. The Court expressly adopted the Tribunal’s analysis that the PDA, standing alone, does not create a tax exemption in law. The Court stated:

“The Project Development Agreement did not create a tax exemption under the tax law... It merely provided that the Government of Uganda undertook to ensure that the payments to non-resident staff are exempt. It created contractual but not statutory obligations. For income to be exempt, it has to be provided for by law.” (pp. 6–7)

63. We respectfully adopt that finding. Clause 20.2(c) constitutes a contractual undertaking by Government to procure exemption, but it does not, of itself, operate as a statutory exemption under the Income Tax Decree, 1997. Accordingly, Clause 20.2(c) cannot independently exempt the Applicant's expatriate employees from PAYE for the years 2016–2019.
64. Under section 12 of the Income Tax Decree, 1974, the power to grant exemptions was vested in the Minister of Finance, to be exercised by notice in the Gazette or by inclusion in Part I of the First Schedule. The High Court correctly observed that the Decree defined "Minister" to mean the Minister of Finance. For an exemption to acquire legal force under the Decree, two conditions therefore had to be satisfied:
- i. the exemption had to be granted by the Minister of Finance; and
 - ii. it had to be expressed through one of the prescribed statutory instruments.
65. No Gazette notice or Schedule 1 entry exempting the Applicant's expatriate employees has been produced. The PDA itself was executed by the Minister responsible for Water, Energy and Environment, not the Minister of Finance. There is no evidence that the Minister of Finance exercised the section 12 power to grant a statutory exemption covering those employees. At most, therefore, the PDA and subsequent correspondence gave rise to policy assurances or legitimate expectations, but not to a continuing statutory exemption.

Transitional effect of section 166(26)(b) of the Income Tax Act, 1997

66. When the Income Tax Act, 1997 came into force on 1 July 1997, Parliament enacted a transitional provision governing agreement-based exemptions. Section 153 (22)(b) (previously 166(26)(b)) ITA provides that where income is exempt from tax under a provision in any agreement, that provision "shall have

no effect under this Act unless the Minister has concurred in writing by 31st December 1997 with the exemption provided for in the notice or provision”

67. The use of the word "shall" is generally interpreted as mandatory where a consequence for non-compliance is provided, as held in ***Kampala Capital City Authority v Kabandize & 20 Ors, SCCA No. 13 of 2014***. In the present case, the consequence is explicit: the provision (granting exemption in any such agreement) "shall have no effect."
68. The High Court in ***Kasese Cobalt*** analysed this provision (Section 153 (22)(b)) and held that it was intended to save only those exemptions that were expressly validated within the stipulated period. The Court held that the deadline of 31st December 1997 was a firm cut-off date and stated that "all the exemptions existing in the previous Income Tax Decree were supposed to be validated by the Minister of Finance by 31st December 1997. In the event the Minister did not concur by the said date, the exemption ceased to have effect." (p. 7, emphasis added).
69. The Court further emphasized that statutory timelines in tax law are matters of substantive law which must be strictly complied with, citing ***URA v Uganda Consolidated Properties Ltd, CACA No. 31 of 2000***. It further observed that tax exemptions are ordinarily time-bound incentives and not perpetual entitlements.
70. The Court also reaffirmed the presumption against retrospective operation of statutes, relying on ***URA v Edulink Holdings Ltd, CACA No. 178 of 2021***, and cautioned against interpreting new legislation in a manner that retrospectively impairs existing tax rights or alters substantive tax obligations absent clear legislative intent.

The 18 March 1997 and 26 June 2002 Letters

71. The Applicant relies on two letters from the Minister of Finance - one dated 18 March 1997 and the other dated 26 June 2002. Both were before the High Court and the Honourable Judge accepted that the 18 March 1997 letter reconfirmed Government's undertaking under Clause 20.2 (c) but noted that it preceded the commencement of the Income Tax Act.
72. While the 18th March 1997 letter exists, the Respondent correctly points out that the ITA only commenced on 1st July 1997; thus, a letter written prior to the Act's existence cannot legally constitute concurrence under a section that had not yet been enacted. To hold otherwise would be to give the section retrospective operation to transform a pre-Act administrative letter into a saving act under the new Act, which is precisely what *Edulink* cautions against.
73. Therefore, we find that while the 18 March 1997 letter may be relevant background, it cannot, standing alone, satisfy the statutory requirement that the Minister "has concurred in writing by 31 December 1997 under section 166(26)(b).
74. The 26 June 2002 letter poses a different problem. This letter was issued long after the statutory cut-off date. The High Court agreed with the Tribunal that the gap between 31 December 1997 and 26 June 2002 was "inordinately too long". It concluded that "the actions of the Minister of 2002 have no legal effect" for purposes of section 166(26)(b). On a strict reading of the statute, therefore, any exemption that depended upon that concurrence would not be saved by the Act.
75. Nevertheless, the High Court went on to consider the broader factual context, including the project implementation period and the series of correspondences, and at the conclusion of its judgment, it made the following specific order: "*The Appellant was exempt from PAYE for the years 2009–2015.*"

76. Equally important is what the Court did not say. It did not hold that KCCL's expatriates were exempt from PAYE for all future years or indefinitely. On the contrary, at page 8, the Court emphasised that:

“Tax exemptions are usually granted for a certain period of time... an exemption on a specific tax cannot be made in perpetuity.” (p. 8, emphasis added).

77. The High Court also cited the principle that tax exemption provisions must be construed strictissimi juris against the taxpayer. Referring to ***Crane Bank v URA and URA v Siraje Hassan Kajura, SCCA No. 9 of 2015***, it held that:

“Laws that permit tax exemptions must be construed strictissimi juris against the entity claiming the same... he who seeks to be so privileged must justify it by words too plain to be mistaken.”

78. Thus, whatever interpretative leeway the High Court applied to the letters in HCCA No. 4 of 2020, it expressly limited the operative period of exemption which it was prepared to recognise to 2009–2015. This Tribunal must require clear statutory language before accepting that any exemption exists or continues.

79. We find that the 2002 letter was already too late for Section 166 (26)(b), and it cannot, even in principle, validate years beyond those the Court addressed. Even if treated as evidencing Cabinet policy, it cannot override a statutory cut-off date, as administrative correspondence cannot revive a statutory exemption after the deadline.

Application to the present period (2016–2019)

80. The doctrine of stare decisis requires this Tribunal to follow the binding ratio decidendi of the High Court in HCCA No. 4 of 2020. That ratio may be summarised as:
- a. the PDA does not itself create a statutory exemption;

- b. any agreement-based exemption had to be validated by concurrence under section 166(26)(b) by 31 December 1997;
 - c. tax exemption and statutory timelines in tax law must be strictly construed; and
 - d. on the evidence before it, the Court recognised an exemption only for the years 2009–2015.
81. We note that the High Court did not hold that the Applicant was exempt for all future years. Its deliberate limitation of relief to the years 2009–2015, coupled with its express rejection of perpetual exemptions, must be taken as intentional.
82. The present Application concerns the years 2016–2019. The Applicant has not produced any new statute, statutory instrument or ministerial concurrence issued after 2002 capable of extending or reviving the exemption beyond 2015. Its case rests entirely on the PDA and the same two letters considered in the High Court case. The Applicant urges to find that the High Court’s decision should be read as confirming that the exemption continues unless expressly revoked.
83. Applying the strict construction mandated by *Crane Bank* and *Kajura*, any ambiguity must be resolved against the existence of a further exemption. There is no clear statutory footing for extending the exemption into the period 2016–2019. To do so would require treating the PDA and the ministerial letters as conferring a rolling, indefinite exemption—an approach expressly rejected by the High Court and inconsistent with the cut-off imposed by section 153(22)(b). It would also undermine the Court’s own emphasis that time-bound transitional provisions must be strictly observed. That would not be a faithful application of stare decisis; it would be a misapplication.
84. Our conclusion therefore flows not from disagreement with the High Court, but from faithful application of its reasoning to a different temporal period. The High

Court determined the position for 2009–2015. It neither decided nor implied that the exemption survived thereafter.

85. This approach is consistent with the High Court’s decision in *Kampala Nissan Uganda v URA, HCCA No. 7 of 2009*, that no tax may be exempted except under clear authority of an Act of Parliament, and that administrative assurances cannot override statute.
86. For these reasons, we find that while the High Court recognised a PAYE exemption for the period 2009–2015, the Applicant has failed to demonstrate any valid statutory basis for a PAYE exemption for the years 2016–2019. Accordingly, the Applicant’s expatriate employees did not enjoy a valid PAYE exemption during the period now in issue.

Whether the PAYE assessment for 2016 is time-barred

87. Section 25(2) TPCA provides that an additional assessment must ordinarily be made within three years from the date of service of the original assessment, but allows the Commissioner to issue an additional assessment at any time only if the Commissioner is satisfied that the taxpayer committed fraud, engaged in gross or wilful neglect, or where new information has been discovered.
88. We noted that the impugned PAYE assessment was issued in 2020 and covers the period 2016–2019. In relation to 2016, the Applicant contends that the three-year limitation had expired, that no fraud or gross neglect has been alleged, and that URA has not demonstrated the existence of new information. The Respondent’s position is that new information includes a revised appreciation of the legal position because the Respondent’s officers initially “got the law wrong.”
89. We are guided by the High Court decision in *Kasese Cobalt Company Limited v URA* which addressed a similar issue. Court held that the burden

lies on the Commissioner to demonstrate that a case falls within the statutory exceptions. The Court emphasised that time limits in tax legislation are matters of substantive law and that any exception to the three-year rule must be narrowly construed and supported by clear evidence.

90. In the present case, the Respondent has not identified any specific factual material relating to year 2016 that was previously unknown or undiscoverable. The Project Development Agreement, the ministerial correspondence, and the claimed exemption were within URA's knowledge for several years and were the subject of prior audits and litigation. A mere change in legal interpretation cannot constitute "new information" within the meaning of section 25(2). To hold otherwise would permit the reopening of closed years whenever the Commissioner revises a legal view, thereby undermining the certainty that limitation provisions are designed to secure.
91. We therefore find that the Respondent has not discharged the burden of proving fraud, gross or wilful neglect, or the discovery of new information to justify issuing an additional assessment for 2016 outside the three year limitation period. The additional assessment for 2016 was issued outside the statutory period and is accordingly time-barred. The assessments for 2017–2019, having been issued within the ordinary limitation period, are not affected by this finding.
92. Our conclusion on issue 1, we find that the Applicant is not liable to pay the tax assessed for the period 2016 as the assessment was time barred. We however find that the Applicant is liable to pay the tax assessed for the period 2017 - 2019.

Issue 2: Remedies

93. The Tribunal has found that no valid tax exemption applied for the years 2016–2019, but that the assessment for 2016 is time-barred. The Application therefore succeeds only in part. The Applicant is not liable to pay the tax

assessed for the year 2016 on limitation grounds. It remains liable to pay the assessed tax for the years 2017–2019.

94. Accordingly, the Tribunal orders as follows:

- (i) The PAYE assessment for the year 2016 is set aside as time-barred.
- (ii) The additional PAYE assessments for the years 2017, 2018 and 2019 are upheld.
- (iii) Each party shall bear its own costs of this application.

It is so ordered.

Dated at Kampala this 11th day of December 2025.



HON. PROSCOVIA REBECCA NAMBI
CHAIRPERSON



HON. WILLIAM NANGOSYAH
MEMBER



HON. STELLA NYAPENDI CHOMBO
MEMBER