TAX APPEALS TRIBUNAL
Justice In Taxation

# THE REPUBLIC OF UGANDA

## IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

## TAT APPLICATION NO. 51 & 72 OF 2023

**MEDISELL UGANDA LIMITED..............................................................APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY......................................................RESPONDENT**

**HON. CRYSTAL KABAJWARA, HON. CHRISTINE KATWE,**
**HON. KENNETH A. BAGAMUHUNDA**

## I. Introduction

1. This dispute is in respect of a consolidated tax assessment of **Shs. 1,059,996,841** for the period 1 January 2017 to 31 December 2020. The assessments cover Corporate Income Tax ("CIT"), Value Added Tax ("VAT"), Pay as You Earn ("PAYE") and Withholding Tax ("WHT"). Following partial allowance of the Applicant's objections, the remaining amounts in dispute are: CIT of Shs. 996,746,527, VAT of Shs. 11,095,488; and PAYE of Shs. 52,154,826, which the Respondent contends is Shs. 59,313,269.

## II. Background Facts

2. The Applicant distributes drugs, medical laboratory reagents, and medical equipment. The Respondent carried out a comprehensive audit covering the period 2017 to 2020 upon which various assessments, totaling Shs. 2,499,783,086 were raised.

3. The Applicant objected to the assessments and the Respondent partially allowed the objections and maintained the following assessments:

   a) CIT of Shs. 996,746,527 arising from variances in cost of sales derived from analysis and reconciliation of imported goods, opening and closing stock and adjustments for ASYCUDA imports;

   b) VAT of Shs. 11,095,488 arising from the same cost of sales variances which was marked up to derive additional taxable supplies; and

   c) PAYE of Shs. 52,154,826 on director bonus payments, purported motor vehicle benefits, and reconciliation items, while the Respondent contends the same was adjusted to Shs. 59,313,269.

4. Following the Respondent's objection decision, the Applicant filed this application.

## III. Issues for determination

5. The issues for determination are as follows:

   (i) Whether the Applicant is liable to pay the assessed taxes?

   (ii) What remedies are available to the parties?

## IV. Representation and Evidence

6. Mr. Bruce Musinguzi and Mr. Thomas Katto from Kampala Associated Advocates represented the Applicant while Mr. Simon Peter Orishaba, Ms. Christine Mpumwire and Ms. Charlotte Katuutu from the Respondent's Legal and Board Affairs Department, represented the Respondent. The parties presented their evidence by way of affidavits.

7. The Applicant submitted an affidavit that was deponed by **Mr. Andreas Papaloizou, their Managing Director** and sworn on 14 April 2025. The summary of his evidence is as follows:

   **(a) Corporate Income Tax ("CIT") - Shs. 996,746,527**

   Variance in cost of sales

   (i) The Respondent alleged that the Applicant overstated their cost of sales for the period 2017 -2020 and applied the CIT rate of 30% on the variance in cost of sales. However, the Respondent failed to take into account documentation showing changes in the presentation of costs of sales in the financial statements, imported fixed assets and forex differences.

(ii) The Respondent incorrectly derived "costs of sales variance using the total imports made by the Applicant for each financial year, which included the imported assets that were not part of the costs of sales. These included imported assets amounting to Shs. 14,648,620 for 2017, Shs. 1,435,732,614 for 2018, Shs. 3,050,496,506 for 2020.

Audit Adjustment relating to old spare parts in the stock module (Debit: stock account and credit (CR) costs of sales account).

(iii) This adjustment was passed to recognise spare parts in the inventory with the amount equivalent to the spare parts previously derecognised from stock in the prior period, and were still in stock as at 31 December 2018, added back to the stock. The adjustment did not constitute additional income.

Stock adjustment in FY 2017

(iv) The Respondent used the figure "Equipment and Reagents sold" as declared costs of sales, which overstated the costs of sales by 1,485,653,604. However, the Applicant maintained an account called stock adjustments, which they erroneously recognised under equipment and reagents sold as opposed to cost of Sales. Accordingly, the Applicant made an adjustment to these accounts, which did not result in any taxable income tax purposes as there was no income earned as a result.

(v) The Respondent did not take into account the foreign exchange differences arising from the translation of the cost of imported goods denominated in foreign currency and translated to local currency for purposes of financial reporting. The amounts in question are Shs. 123,588,402 for 2017, Shs. 71,052,715 for

2018, Shs. 131,120,496 for 2019 and Shs. 502,673,770 for 2020.

**(b) PAYE Shs. 52,154,826**

(i) The Respondent assessed additional PAYE on bonus payments, motor vehicle benefits being charged on a pool of company cars, and the reconciliation items not considered by the URA (i.e., variances between chargeable income as per PAYE versus chargeable income as per the CIT return for 2018 and 2019).

<u>Additional PAYE on bonus payments</u>

(ii) The Respondent treated the Applicant's Director as a non-resident person and taxed his bonuses under Schedule 4 of the PAYE Return as opposed to Schedule 1 (normal pay). While the Applicant agrees with the classification, they dispute the Respondent's computation, which did not correctly account for the taxes already paid under Schedule 1 and the excess PAYE that was remitted for 2017 and 2018.

<u>Motor Vehicle Benefits</u>

(iii) The Respondent treated three motor vehicles as undeclared taxable benefits for PAYE purposes. The Respondent alleged that the vehicles were used by directors and management and not available to other staff. However, the Respondent's computation did not take into account the number of days the Director spent in Uganda for the audit period, which included 86, 85, 56, and 299 days for the years of income 2017, 2018, 2019, and 2020, respectively. In 2020, the Director was observing the lockdown restrictions for a period of 229 days. In addition the purchase price of the vehicle was far less than what its depreciated value was as calculated by the Respondent.

(iv) In addition, the motor vehicles are utilized as pool vehicles by company engineers, administrative staff and management for transportation purposes upon request by the staff. Further, the Applicant stated that one vehicle, a Mitsubishi, which was acquired as a passenger vehicle but modified to transport goods was later sold to an employee after it had not been in operation for 3 years. Another vehicle, a Subaru Forester was purchased on behalf of an employee, who has been paying back the cost in instalments. A third vehicle, a Toyota Fortuner is used solely for the transportation of the Applicant's guests.

Reconciliation of chargeable income as per PAYE returns versus chargeable income as per financial statements

(v) The deponent stated that the variance of Shs. 67,437,730 for the year of income 2017 relates to a bonus paid to the director in 2017 that was not recognised in the 2017 financial statements. This was, however, booked as part of the salaries amount in the financial year 2018.

(vi) Further, the variance of Shs. 2,912,226 for the year of income 2019 relates to foreign exchange differences arising from the translation of salaries paid in foreign currency to local currency for reporting purposes.

**(c) VAT - Shs. 11,095,488**

(i) The Respondent marked up the purported overstated cost of sale variance for each year, which gave rise to additional taxable supplies against which the Respondent applied VAT at 18%. The Respondent partially allowed the Applicant's objections and adjusted the VAT from Shs. 26,824,234 to Shs.11, 095,488 for FY 2017 to 2020.

(ii) The Respondent computed VAT of Shs. 1,465,020 on the sale of furniture amounting to Shs. 8,139,000 that the Applicant disposed of to its related party in Rwanda. The Applicant contends that the Respondent verified that the amount should have been vacated following the objection review.

8. The Respondent filed an affidavit in reply deponed by **Mr. Kevin Nabisere Mawanda**, an Officer in the Domestic Taxes Department of the Respondent, and sworn on 11 June 2026. The deponent stated as follows:

**(a) Corporate Income Tax**

(i) The Respondent disallowed the Applicant's request to adjust the 2018 cost of sales because the Applicant did not provide the requisite information and explanations to warrant the adjustments.

(ii) In addition, the Applicant did not provide the Respondent with sufficient explanation for the stock adjustments that the Applicant claimed they erroneously recognised as reagent rental consumables in the Audited Financial Statements.

<u>Audit Adjustment relating to old spare parts in stock module</u>

(iii) Regarding audit adjustments relating to old spare parts which were added back to closing stock and the corresponding adjustments of spare parts from stock of recognized in previous years, the Applicant did not demonstrate to the Respondent how it declared the said spare parts in the previous years.

(iv) With regard to the alleged imported assets which the Applicant claims should not form part of cost of sales, the Respondent stated that the Applicant did not submit the customs entry numbers for the allegedly imported assets hence the Respondent did not consider them.

(v) On the foreign Exchange differences, the Applicant did not provide invoices to demonstrate the occurrence of foreign exchange gains and losses.

**(b) Value Added Tax**

(i) Regarding the cost of sales variances that the Respondent subjected to VAT, the Respondent stated that the Applicant raised the same grounds of objection as raised against the Income Tax assessment for sales variances that do not comprise taxable supplies for VAT purposes for the periods of December 2017, December 2018, December 2019, and December 2020. The Respondent partially allowed the objection based on the adjustments allowed to income tax.

(ii) With regard to disposals to Medisell Rwanda, the Respondent stated that the Applicant did not provide the requisite export documents to support the export of furniture and equipment.

**(c) PAYE**

(i) The Respondent established at the objection stage that the Director's bonus had properly been reclassified under Schedule 4, which relates to non-residents. The Respondent established that the Applicant had paid PAYE wrongly for the Directors under Schedule 1 amounting to Shs 41 million and Shs 168 million for December 2017 and December 2018 respectively. This resulted in additional tax of Shs 2,956,800 and Shs 552,500 for December 2017 and December 2018 respectively. Given that the Applicant's Director was a non-resident person and there was no overpayment of tax, the Respondent resolved to disallow the ground of objection.

(ii) Regarding the undeclared Motor vehicle benefits, the Respondent rejected the Applicant's objection because the Applicant did not provide a policy for pooled transportation, showing the procedure for requesting vehicles from the pool.

## V. Submissions of the Applicant

### (a) Corporate Income Tax (CIT) – Shs. 996,746,527

FY 2017

9. The Applicant submitted that a change in accounting presentation or a reclassification of cost items within the financial statements does not constitute taxable income under the ITA. Therefore, the Respondent's treatment of a reclassification of expenses as chargeable income has no legal basis.

10. Specifically, the Respondent's reconciliation for FY2017, which purported an overstatement of cost of sales of Shs. 4,313,779,668, arose from using the "Equipment and Reagents sold" line as the declared cost of sales figure, which included stock adjustments of Shs. 1,485,653,604 which were erroneously classified under that line in FY2017, that resulted in a double counting of the stock adjustment account. This classification error on cost of sales was identified, and an adjustment was made in subsequent financial statements and fully explained to the Respondent.

11. Additionally, the FY 2017 financial statements included items such as depreciation expense on rental equipment, motor vehicle costs and freight and forwarding charges under cost of sales, which were not included in the equivalent "Equipment and Reagents sold" figure used by the Respondent for FY2018-2020 as the declared cost of sales. This inconsistency in the Respondent's own comparison methodology further inflated the purported variance for FY2017.

FY2018 to FY2020 – fixed assets included in cost of sales

12. The Applicant submitted that fixed assets are not stock in trade. The imported items include laboratory equipment used in servicing its rental equipment contracts, spare parts and other capital items which are capitalized and depreciated in its books hence are not allowable under cost of sales. The Respondent however used the total value of imports as costs of sales that included the imported assets of Shs14,648,620 (2027), Shs

1,435,732,614 (2018), Shs. 2,155,100,859 (2019) and Shs 3,050,496,506 (2020). This created artificial variances that do not reflect any under-declared income of the Applicant. The Applicant raised this matter and provided clarification during the four reconciliation meetings.

<u>Shs. 1,586,578,479 audit adjustment relating to old spare parts in the stock module</u>

13. The Applicant submitted that in the prior years, the Applicant treated spare parts as consumables and not part of the stock. The spare parts were derecognised in the prior period and still in stock. This adjustment did not constitute additional income or an overstatement of cost of sales.

<u>Foreign exchange differences</u>

14. The Applicant submitted that the Respondent did not take into account the foreign exchange differences arising from the said translation of the cost of imported goods denominated in foreign currency and converted to local currency. The Applicant contended that they provided a comprehensive reconciliation schedule **(Appendix D to the objection letter)** and the Respondent partially accepted some of these reconciling items in its objection decision, thereby acknowledging that its original assessment was incorrect. However, the remaining assessment of Shs. 996,746,527 continues to disregard items that are fully documented and explained.

15. The Applicant submitted that the Respondent has treated the derived cost of sales variance as under declared taxable income and applied income tax thereon without identifying any specific transaction, invoice, receipt or income that the Applicant earned but failed to declare. The cost of sales variance is a computed figure arrived at by the Respondent's reconciliation methodology, which to the Applicant is prone to error and does not give rise to a taxable event.

16. The Applicant contended that it provided audited financial statements, ASYCUDA reconciliations, ledgers, bank statements and other supporting documents and explanations to justify the variances as not arising from any

additional undeclared income. The Applicant cited ***Tinasah Investments Ltd v URA (TAT No. 170 of 2023),*** where the Tribunal stated that where the Respondent resorts to estimates, it must demonstrate the basis of its estimates and cannot reject taxpayer records without objective reasons.

17. The Respondent did not provide any objective reasons for rejecting the Applicant's documented reconciling items beyond those partially accepted at the objection stage. The Applicant prayed that the additional CIT Assessment of Shs. 996,746,527 arising from unreconciled costs of sales variances be set aside.

**(b) Value Added Tax (VAT) - Shs. 11,095,488**

18. The Applicant submitted that the VAT assessment in issue arose out of the cost of sales reconciliations and disposal of furniture, equipment and fittings to Medisell Rwanda in 2018 amounting to Shs. 8,139,000.

19. The Respondent marked up the purported overstated cost of sales variance for each year, which gave rise to purported additional taxable supplies on which the Respondent applied VAT, yet no taxable supply had been made within the meaning of sections 4 and 18 of the VAT Act. The Applicant argued that for VAT to be chargeable, there must be an actual taxable supply, that is, a supply of goods or services by the Applicant for consideration. No actual supply was identified by the Respondent as there were no undeclared invoices, no identified customers and no evidence of cash receipts outside the Applicant's books. Therefore, the Respondent taxed a notional surplus derived from an imperfect reconciliation, which is not a taxable supply within the meaning of the VAT Act.

20. The assessment was reduced from Shs. 26,824,234 to Shs. 11,095,488, which also includes VAT of Shs. 1,465,020, computed in June 2018, in respect of furniture sales to Medisell Rwanda. The Applicant argued that the sale, being an export of goods, should have been treated as zero rated for VAT purposes.

**(c) Pay As You Earn (PAYE) - Shs. 52,154,826**

21. The Applicant submitted that they do not dispute that the bonus payments ought to have been declared under Schedule 4 of the PAYE return. However, the net effect of moving the bonus from Schedule 1 to Schedule 4 is not additional tax but rather a reduction in the PAYE liability. As demonstrated in the analysis provided to the Respondent in an email dated 11 December 2023.

**<u>Motor Vehicle Benefits</u>**

22. The Applicant contended that these motor vehicles are utilised as pool vehicles used by company engineers, administrative staff and management for transportation purposes and thus do not constitute taxable employment benefits to the directors or management.

23. The Applicant submitted that the Third Schedule of the Income Tax Act specifies how employment benefits are valued and, critically, only attributes a taxable benefit to an employee where a motor vehicle is provided for the private use of that employee. The operative phrase is "private use." Where a vehicle is a pool vehicle restricted to business use and not provided to any individual employee for their personal use, no taxable benefit arises because no individual employee enjoys exclusive private use of the vehicle.

24. The Applicant further argued that Section 19(1)(c) of the ITA extends employment income to include "the value of any benefit or advantage." However, this provision must be read together with the Third Schedule valuation rules. A benefit is only taxable under this provision if it accrues to the employee in their personal capacity. A general business resource such as a pool vehicle used in the ordinary course of employment duties does not constitute a personal benefit within the meaning of Section 19(1) (c).

25. Furthermore, where no individual employee is the exclusive beneficiary, as is the case with a pool vehicle such as the vehicles in question, there is no identifiable recipient of the benefit and accordingly no quantifiable personal benefit capable of being taxed.

26. The Respondent did not identify any specific employee or management staff who exclusively enjoyed the private use of the three vehicles in dispute. The three vehicles were available to all company engineers, administrative staff and management for transportation purposes upon request. The Applicant provided its company vehicle policy to the Respondent. Paragraph 1 of the Applicant's car policy marked AEX J, which was provided to the Respondent at the time of audit, stated that:

> *"The purpose of the document was to establish clear policy, procedure and guidelines that will govern the use, maintenance, control and repair of the Company vehicles. This procedure is applicable to all Medisell UG Ltd employees in possession of company vehicles, including those who drive one as part of their daily job duties".*

27. The Applicant submitted that Paragraph 4 of the Policy provides for personal use and states:

<u>Personal use</u>

> *"Medisell Ug Ltd does not allow personal use of company vehicles. Personal use includes using the vehicles for personal errands or using the vehicles outside of business hours".*

28. The Applicant submitted that the car policy therefore, established that the vehicles are all available to all Medisell employees, not exclusively to the director or management, and that personal use is prohibited expressly by the Company policy. The Respondent adduced no evidence to contradict this position or challenge the car policy.

29. The Applicant submitted that the Respondent's in computing any purported benefit attributable to the non-resident director, it was required to apportion the benefit to the periods which the director was physically present and resident in Uganda being 86 days in 2017, 85 days in 2018, 56 days in 2019 including a lockdown period of 229 days in 2020.

30. The Applicant further submitted that the Respondent's computation of the purported benefit did not take into account the actual purchase price and

depreciated value of the vehicles as opposed to the higher values used by the Respondent. The third schedule to the ITA computes the annual motor vehicle benefit as a prescribed percentage of the cost or book value of the vehicle. The actual purchase prices and depreciation schedules should be applied to avoid an inflated vehicle value which would result in a higher taxable benefit.

31. Regarding the reconciliation of chargeable income as per PAYE returns vs. chargeable income as per financial statements, the Applicant reiterated the facts as stated in their affidavit.

32. The Applicant prayed for the following:
   (i) CIT assessment of Shs. 996,746,527 for the period FY2017 to FY2020 arising from purported cost of sales variances be set aside.
   (ii) VAT assessment of Shs. 11,095,488 for the periods FY2017 to FY2020 be set aside.
   (iii) PAYE assessment of Shs. 52,154,826 on director bonus payments and purported motor vehicle benefits be set aside
   (iv) That the Respondent refund the 30% taxes paid together with interest at 2% per month from the date of collection until refund in full; and
   (v) The costs of the applications be awarded to the Applicant.

## VI. The Submissions of the Respondent

33. The Respondent maintained the reasons set out in their affidavit in reply for disallowing the Applicant's claim. Specifically, the Respondent stated that the Applicant did not provide documentation or explanation for the stock adjustments, customs entry numbers for the imported assets, nor invoices for the forex differences.

34. The Respondent cited the case of ***Explorer Limited v Uganda Revenue Authority TAT Application No. 87/2023***, in which the Tribunal found that while the initial burden lies with the taxpayer, it shifts to the Respondent once prima facie evidence is adduced. It was further noted that a board

resolution is not mandatory if other evidence suffices to prove the loan on a balance of probabilities.

35. The Respondent contended that the Applicant did not provide any documentation to prove the disallowed items; therefore, the Respondent was justified in disallowing the same and treating it as undeclared income and taxing it.

Bonus payment to the Applicant's director

36. The Respondent submitted that it was justified in raising additional tax of Shs.2,956,800 and Shs. 552,500 for December 2017 and December 2018 respectively on the basis that the bonus payment made to the Applicant's director ought to have been declared under Schedule 4 of the PAYE return and the same is taxable in accordance with Section 19 of the Income Tax Act.

Undeclared motor vehicle benefit

37. The Respondent maintained that the Applicant did not provide a policy on how the vehicles were requested from the pool. The Respondent cited ***Commissioner of Income Tax V Kiranbhai H. Shelat & Ors, [1999] 2351TR635 (GUJ)***, where the court stated:

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

38. The Respondent submitted that the objection decision was justified pursuant to Section 49 (4) of the Tax Procedure Code Act, Cap. 343 which provides that; *"Where a taxpayer fails to provide the information requested under this section, the taxpayer shall not be allowed to provide that information at objection to a tax decision or during alternative dispute resolution procedure proceedings."*

**Value Added Tax**

39. The Respondent maintained that the Applicant did not provide export documents to prove that they exported furniture to Medisell Rwanda.

40. The Respondent cited ***Uganda Revenue Authority v Balondemu David (Civil Appeal No. 0002 of 2023)***, where the court held that the tax authority may resort to estimating when a taxpayer fails to keep full and accurate records.

**Remedies**

41. The Respondent prayed that the application be dismissed with costs to them.

## VII. The Determination

42. Having reviewed the parties' pleadings, evidence and submissions, this is the decision of the Tribunal.

43. We have observed that the questions for determination relate primarily to computational reconciliations and methodology rather than questions of law or mixed law and fact. It is always advisable that such matters are resolved through the Respondent's administrative dispute resolution mechanism.

44. The nature of this matter in all identified areas of dispute revolve on computation of tax payable or paid under the different tax heads. The contention emanates from the methodology used by the Respondent in deriving the additional tax liability of the Applicant on one hand and the subsequent purported inability by the Applicant to provide the requisite information and explanation in respect some of the audit findings.

45. From the pleadings, the Respondent allowed some of the objections submitted by the Applicant based on the information and explanation provided, while others were disallowed as the Applicant did not submit the documents and explanations thereof. Consequently, the assessment was adjusted downwards form the original figure.

46. On the contrary, the Applicant averred that all the information and explanations were provided. However, some were not considered by the Respondent. In addition, the Applicant maintained that the objection decision was rushed, yet the information and explanations provided had yet to be considered.

47. Having stated the above, we now turn to the substantive dispute. It is important to highlight that the burden of proof in tax matters lies with the taxpayer. The burden is discharged when the Applicant presents evidence, which, in the balance of probabilities, shows that the assessment is incorrect or should not have been made in the first place. Once the Applicant discharges the burden, the evidential burden shifts to the Respondent to demonstrate why the assessment should be maintained. In view of the above, we shall determine whether the Applicant's evidence is sufficient to discharge the burden of proof.

**(a) CIT of Shs. 996,746,527**

48. The above amount arose from alleged variances in cost of sales derived from the Respondent's reconciliation of imported goods, opening stock, closing stock and adjustments relating to imports recorded in the ASYCUDA system.

49. The Tribunal considered the arguments of both parties in respect of the variances of cost of sales. The Respondent contended that the cost of sales had been recomputed using import data for the period under review where they discovered variances in costs of sale against which the additional assessments were raised. The respondent further averred that the Applicant did not provide the requisite information and explanations to warrant the adjustment.

50. On the other hand, the Applicant contended that adjustments were made within the ambit of the law and did not result in any additional tax liability. The Applicant further submitted that the Respondent did not consider the following components that gave rise to the variations.

a) Stock adjustments of Shs 1,485,653,604 erroneously recognized under the line of "Equipment and Reagents sold" in 2017 that resulted in overstated the cost of sales. This classification error was subsequently corrected and reclassified in subsequent financial statement.

b) The derived cost of sales by the Respondent included imported fixed assets which do not form cost of sales.

c) The Audit adjustment of old spare parts in the stock model which had in previous period been treated as consumables and not as stock and had been derecognized and still in stock

d) Foreign exchange differentials at importation under ASYCUDA and the recording of the same in the accounts.

Items disclosed under equipment and reagents sold

51. The reclassification by the Applicant to correct the error under the "equipment and reagents sold" line in FY 2017 was considered as variance in cost of sales of Shs. 4,313,779,668 during the audit by the Respondent. The Respondent disallowed the objection regarding the adjustment on the basis that the Applicant did not avail the Respondent with the requisite information and explanation.

52. The Tribunal noted that the Applicant provided explanation in its correspondences with the Respondent through letters and email communication. In addition, the audited Financial statements and extracts of cost of Sales were provided to the Respondent and are contained in the Trial bundle.

53. For FY 2017, the Tribunal finds that the Applicant explained that the FY2017 variance arose largely from accounting presentation. The audited financial statements and explanatory schedules demonstrate that stock adjustment entries were reflected in the "Equipment and Reagents Sold" line, and that subsequent financial statements presented the same items differently. The extracts availed on pages 19 and 20 of the Applicant's trial bundle volume

1 gives an explanation of the reclassification or presentation adjustment within financial statements which does not generate taxable income.

54. The Tribunal established that adjustments of financial statement to correct identified errors such as omitted income, duplicated expenses or mathematical mistakes are acceptable in tax matters. A corresponding amendment of the tax return is necessary where such adjustment affect the tax liability. Where the tax liability is not affected by the adjustment then the return may remain as is.

55. The Respondents submitted that the adjustments were disallowed due to failure to provide requisite information. However, the evidence contained in the trial bundle indicates the contrary to this assertion. The objection letter by PwC on behalf of the Applicant dated 27 January 2023 explains in detail the objections of the Applicant. It also indicated in the same letter that during the reconciliation meetings on 3rd, 10th and 22 November 2022, the Applicant provided a reconciliation to the variances raised by the Respondent, explanations reconciling items and supporting documents for the Respondents review.

56. The email correspondences affirm that documents that were requested by the Respondent and provided by the Applicant. Where additional information was required, the Applicant accordingly responded as requested. The objection decision by the Respondent only states that the information was not provided without clarifying the specific information gaps thereof.

57. To rebut this the Respondents relied on Section 49 (4) of the Tax Procedure Code Act, Cap. 343 which provides that;

*"Where a taxpayer fails to provide the information requested under this section, the taxpayer shall not be allowed to provide that information at objection to a tax decision or during alternative dispute resolution procedure proceedings."*

58. This provision can only be invoked in this matter when read together with the rest of the subsections of Section 49 of the TPCA. It presupposes under subsection 1 (a) to have furnished within the specified time in the notice, any information that may be stated in the notice. Two issues are therefore noted in this regard:

a) There is no request for information within in specified time from the Respondent to the Applicant; and

b) The request for information through emails and meetings went on through out the course of objection process hence no evidence is adduced that the Applicant failed to provide the requested information.

59. The Tribunal is convinced that the application of this provision is therefore untenable.

60. The Respondent treated the derived cost of sales and applied income tax thereon without identifying supporting evidence including any specific transaction, invoice, receipt or income that the Applicant earned but failed to declare.

61. The treatment of the adjustments as evidence of undeclared income solely because it created a variance in cost sales within the Respondent's reconciliation exercise is not supported. The Respondent needed to have considered the explanations and information provided by the Applicant as was done for the FY 2017 where they allowed and vacated the tax liability arising out of a similar variance.

<u>Imported assets</u>

62. The Tribunal considered the submission of the Applicant that the Respondent in carrying out the audit included in the cost of sales imported capital assets used in servicing the rental equipment contracts, spare parts and other capital items. Capital assets are excluded from cost of sales as they are treated separately under the capital allowance and depreciation under the ITA. Including them in the cost of sales is erroneous as it inflates cost of sales and creates artificial variances.

63. Section 22 (3) (b) of the ITA provides that subject to subsection (1), no deduction is allowed for any expenditure or loss of a capital nature, or any amount included in the cost base of an asset.

64. The argument for disallowing the Applicant's objection by the Respondent is that the Applicant is not on the treatment of capital assets as a deduction for income tax provided in the law but is on the contention that the Applicant did not provide customs entry numbers for the imported assets. The Tribunal proceeded to examine the matter within the context of provision of customs entries.

65. The Respondent acknowledged seeking clarification from the Applicant regarding imported assets and whether such assets formed part of stock. This is evident in annexure AEX U1 on pages 547 and 548 of the Applicant's trial bundle Vol 2, and emails between Nicholas Kabonge, Manager Customs & International Tax, PwC, and Mr. Kevin M Nabisere which clarify that the imported assets are not part of the cost of sales in Medissell's books of accounts.

66. Mr. Kabonge further stated that in coming up with the additional assessments, the URA Audit team incorrectly derived "a cost of sales in a variance" arising from a reconciliation of cost of sales conducted by the them, which involved an analysis of the company's imported goods, opening stock, purchases and closing stock. The explanation was in response to the enquiry by Mr. Nabisera that acknowledged that the Respondent had assumed that the assets were not stock in trade and do not form part of the company's stock. The Applicant's explanation throughout the audit and objection process was that imported assets had been included in the ASYCUDA import totals but did not constitute inventory available for sale to derive profit.

67. The Tribunal further scrutinized the evidence in the Trial bundle and noted that the Applicant provided the ASYCUDA extracts that reflected the entry

customs numbers. In addition, the Applicant submitted samples of customs entries covering imported assets.

68. For purposes of determining chargeable income under section 4 of the Income Tax Act, only items of a revenue expenditure are considered; items of a capital expenditure do not form part of the determination of chargeable income. This is as per sections 4, 15.17 and 22 of the Income Tax Act, which, when read together, exclude items of a capital nature in determining a person's chargeable income.

69. The Respondent has not produced contrary evidence demonstrating that the disputed imports were sold as trading stock or that they generated undeclared income. Given the evidence provided to support the Applicant's submission, the Tribunal finds that the Respondent did not establish that imported capital assets should have formed part of cost of sales. The tax liability arising from the assessment cannot therefore hold.

<u>Foreign exchange differences</u>

70. The Tribunal examined the contention pertaining to the foreign exchange translation differences for which the Respondent disallowed the explanation and information provided by the Applicant. It was noted that foreign currency differences are common phenomenon in international related transactions where more than one currency is involved.

71. The Applicant explained that the differences in foreign exchange transaction are due to the applicable rates at importation and the ones used at recording the transactions in the Applicant's accounts. In such circumstances, there are both realized gains and unrealized losses. The correspondences in the Trial bundle in AEX U1-U8 indicate that the Applicant was requested to provide the relevant ledgers detailing the transactions.

72. On the Respondent's assertion that the Applicant did not provide invoices, the Tribunal finds it to be unsubstantiated given that the request as

indicated on Pg 218 Volume 1 of the Trial bundle was for foreign exchange ledgers which were provided hence the Applicant duly fulfilled the request. In any case, not all foreign exchange conversions may be backed up by invoices as some transactions are basically book-entry related. It is further noted that the Respondent allowed the foreign exchange differences in computation of the Directors bonus payment based on similar explanations and information.

73. The Respondent did not demonstrate that the foreign exchange differences represented concealed sales or omitted revenue to justify the tax liability arising out of the transactions. This Tribunal therefore finds itself constrained to uphold the assessment based on a disallowed foreign exchange differentials.

<u>Audit adjustment relating to old spare parts</u>

74. Similarly, regarding the audit adjustment relating to old spare parts in the stock module, the Applicant explained that the adjustment was intended to recognise inventory previously treated as consumables and not part of the stock. This adjustment did not constitute additional income or an overstatement of costs of sales and therefore not chargeable to additional income tax. The Respondent rejected the explanation on the basis that the Applicant had not demonstrated how the spare parts had been treated in prior years.

75. While the Tribunal agrees that the Applicant could have provided more comprehensive documentation regarding this item, the Respondent equally failed to demonstrate how the adjustment translated into additional income. The adjustment appears to have been an inventory recognition exercise rather than a revenue-generating transaction.

76. In light of the above therefore, a direct comparison between the ASYCUDA import declarations and the costs of sales in the financial statements would not show variances unless a reconciliation is done. In the circumstances,

the Tribunal sets aside the CIT assessment of Shs. 996,746,527 is set aside.

**VAT of Shs. 11,095,488**

77. This sum comprises two distinct components, which must be addressed separately:
    (i) Shs. 1,465,020 assessed on the disposal of furniture, equipment and fittings to Medisell Rwanda; and
    (ii) Shs. 9,630,468 arising from the cost-of-sales variance marked up by the Respondent to derive purported additional taxable supplies.

<u>Shs. 1,465,020 from the disposal of furniture to Medisell Rwanda</u>

78. To discharge its burden of proving that the disposal of furniture, equipment and fittings to Medisell Rwanda qualifies as a zero-rated export under Section 28 and the Third Schedule of the VAT Act, the Applicant ought to have availed, in addition to the EFRIS invoice already on record, the following:

    (i) the customs export entries,
    (ii) confirmation of customs at the border that goods exited Uganda and were received in Rwanda
    (iii) a release of the export bond guarantee
    (iv) a delivery note or acknowledgement of receipt from Medisell Rwanda confirming the goods were received into Rwanda.

79. The Respondent maintained that the EFRIS invoice produced by the Applicant is insufficient on its own to establish this export as the invoice is generated at the point a transaction and is recorded in the Applicant's own system.

80. The Respondent specifically requested the Applicant to produce export documentation in support of the zero-rating claim during the audit and objection process, and none was furnished. In the absence of any one of

the documents identified above, the Respondent was justified to charge the VAT above.

81. In the circumstances, VAT of Shs. 1,465,020 assessed on the Medisell Rwanda disposal is upheld.

**Shs. 9,630,468 arising from cost of sales adjustments**

82. The Respondent's VAT assessment was derived from the same cost of sales variances that formed the basis of the Corporate Income Tax assessment. The Respondent marked up the alleged variances and treated the resultant figures as undeclared sales upon which VAT was charged.

83. Section 4 of the VAT Act provides that VAT shall be charged on every taxable supply in Uganda made by a taxable person. Furthermore, Section 14 of the VAT Act provides that a supply is deemed to occur on the earliest of: delivery or completion; payment; or issuance of a tax invoice. Section 21 of the VAT Act further provides that the taxable value of a taxable supply is the total consideration paid in money or in kind by all persons for that supply.

84. It is therefore a fundamental requirement that before VAT can be imposed, there must be evidence of a taxable supply. The existence of accounting discrepancies or reconciliation variances does not automatically give rise to VAT liability unless such discrepancies can reasonably be linked to actual supplies of goods or services made for consideration.

85. The Tribunal has already determined the corresponding Corporate Income Tax assessment from which these variances arose. In its findings on that issue, the Tribunal found that the Respondent failed to establish that the FY2017 variance and the FY2018–FY2020 variances represented actual undeclared income. The Tribunal further found that the variances arose principally from accounting classifications, imported capital assets, inventory adjustments and foreign exchange translation differences. Further the Tribunal noted that the Applicant through various

correspondences and documentation explained the basis for the adjustments which similarly applies in this aspect as well.

86. While the Respondent was entitled to analyse the Applicant's records and make adjustments where appropriate, the Tribunal is not satisfied that the reconciliation methodology employed established the existence of taxable supplies as required under Sections 4 and 18 of the VAT Act.

87. Having found that the underlying variances did not constitute undeclared income, the Tribunal further finds that those same variances cannot, without additional evidence, be treated as undisclosed taxable supplies. Under these circumstances, this assessment of Shs. 9,630,468 is set aside.

**PAYE Shs. 59,313,269**

88. The Applicant stated that the Respondent's computation of the PAYE was based on the variances between the employment costs against the salary payments in the PAYE returns for the FY2017, FY2018, FY2019 and FY 2020 resulting into a tax liability of Shs. 84,026,767 which was later reduced to Shs.59,313,269 after consideration of the Applicants objections and explanations. The Respondent fully vacated the variance computed for FY 2017 but maintained others in FY 2018.

89. The Applicant explained that the reconciliation of the variances in PAYE was occasioned by the inclusion of nontaxable benefits such as contribution to provident fund, NSSF costs and erroneous payment declaration of bonus paid to the Director.

90. The Tribunal noted the extracts provided by the Applicant detailing the PAYE payment in AEX F of the Trial bundle Volume 1 on pages 154 and 155 plus the financial statements in AEX M1-M4. The Tribunal established that the Financial statements reflected the explanation provided in the extracts.

91. The 2017 variance of Shs. 67,437,730 relates to a director's bonus paid in 2017 but not reflected in that year's financial statements, and later recognised in the 2018 financial statements under salaries and wages amounting to Shs. 1,447.920,000 at note 8 on page 356. Of the Applicant's trial bundle volume 2.

92. The Applicant further submits that the 2019 variance of Shs. 2,912,226 arose from foreign exchange differences in translating foreign-currency salary payments into the local currency.

93. The Tribunal has established that:

a) The Applicant produced a reconciliation table to show that the variance Shs. 67,437,730 between the 2018 PAYE returns and the 2018 financial statements is not hidden income.

b) The reconciliation works in two parts: first, a month-by-month comparison of salaries declared in the PAYE returns against salaries in the financial statements; and second, a build-up of all employment costs to arrive at the financial statement total of Shs. 1,447,920,000.

c) On the monthly salary comparison, the Applicant laid out figures for each month of 2018 under both the financial statements and the PAYE returns. For most months, the figures are identical. February through August show exactly Shs. 71,900,000 under both columns. September, November and December also match exactly. The only months with a difference are January and October. The monthly totals come to Shs. 874,919,654 under the financial statements and Shs. 867,778,154 under the PAYE returns according to the table demonstrated by the Applicant.

d) The fact that most monthly figures match exactly is important. It shows that the Applicant was consistently declaring regular monthly salaries.

e) The second part of the reconciliation adds the remaining employment cost components to the monthly salary total of Shs. 874,919,654 to build up to the financial statement figure. These components are: the Director's Bonus of Shs. 432,912,318; the amount of Shs. 67,711,537 carried forward from 2017, which is the most important item in this dispute; Wages of Shs. 4,838,761; and the AP Bonus of Shs. 67,537,256. Adding all these together gives a sub-total of Shs. 1,447,919,526.

f) This sub-total of Shs. 1,447,919,526 differs from the financial statement figure of Shs. 1,447,920,000 by only Shs. 474. The Tribunal finds this difference completely immaterial. On a total employment cost base of over Shs. 1.4 billion, a difference of Shs. 474 is nothing more than a rounding figure. The reconciliation therefore fully accounts for the financial statement total.

g) The item that resolves the entire dispute is the amount of Shs. 67,711,537 carried forward from 2017. This is the director's bonus that was actually paid in 2017, as shown by the 2017 bank statements, but was not recorded in the 2017 financial statements at the time. It was therefore recorded in the 2018 financial statements instead. This created an automatic variance: the PAYE on this bonus was accounted for in 2017, but was recognised in the 2018 financial statements. This is simply a timing difference between when the cash was paid and when it was recorded in the accounts. It is not hidden income.

94. The Respondent assumed that any difference between the PAYE returns and the financial statements was undeclared income. The director's bonus was already subject to PAYE when it was paid in 2017. Treating it again as undeclared income in 2018 simply because it appears in the 2018 financial statements would mean taxing the same payment twice. Consequently, the additional PAYE is hereby set aside.

95. The Applicant does not dispute the Respondent's treatment of the bonus as falling under Schedule 4 of the return under the ITA, which deals with bonus payments. However, the Applicant's contention is that the net effect should have been a reduction in the PAYE liability. The Applicant presented an email dated 11 December 2023 to the Respondent which provided the following calculation:

96. For December 2017, the PAYE liability under Schedule 4 would be reduced to Shs. 30,517,421. Furthermore, since the actual bonus payment to the director was Shs. 67 million (as per the 2017 bank statement), as opposed to the Shs. 105 million declared in the PAYE return, the PAYE liability under Schedule 4 using the correct bonus amount would be Shs. 19,085,176.88, resulting in excess PAYE remitted to the Respondent (AEX U5 at page 559 to 560 of the Joint Trial Bundle and the bank statements at Appendix F of the objection letter).

97. For December 2018, the PAYE liability under Schedule 4 would be reduced to Shs. 156,992,400. The Applicant contended that the Respondent was provided with this analysis and did not provide any counter-position or rebuttal.

98. The Tribunal notes that the parties are in agreement that the director's bonus payments for December 2017 and December 2018 ought to have been declared under Schedule 4 (bonus payments) of the PAYE return and not under Schedule 1 (normal employment income). The dispute is therefore not whether the bonus was taxable, but whether the reclassification resulted in additional PAYE liability.

99. The Applicant provided detailed computations and supporting bank statements showing that reclassifying the bonus payments to Schedule 4 would reduce, rather than increase, the PAYE liability. In particular, the Applicant demonstrated that the actual bonus paid in December 2017 was Shs. 67 million rather than the Shs. 105 million declared in the PAYE return, resulting in excess PAYE having been remitted. The Applicant further

showed that the PAYE liability for December 2018 would similarly be reduced upon correct classification.

100. Although the Applicant availed this analysis to the Respondent, the Respondent did not provide any computation or evidence to rebut the Applicant's figures or demonstrate that additional PAYE remained payable after the reclassification. In the absence of such evidence, the Tribunal finds that the Respondent has not established that the Applicant underpaid PAYE on the director's bonus payments.

101. Accordingly, the assessment of PAYE arising from the director's bonus payments for December 2017 and December 2018 is hereby set aside.

**Motor Vehicle Benefits**

102. The dispute revolves around the use of certain vehicles, which the Applicant claims form part of a pool that is available to staff and as a result, do not confer a private benefit on any single employee. The Respondent contends that the vehicles were a benefit to certain employees.

103. Section 19 of the Income Tax Act deals with the taxation of employment income. Subsection (1) (a) provides that employment income includes the value of any benefit granted to an employee in respect of past, present or future employment.

104. A motor vehicle benefit is taxable if the vehicle was available for private use or actually used for private purposes. Subsection 3 of section 19 of the ITA, provides for the determination of the value of any benefit in accordance with the 6th schedule to this Act. Schedule 6 , paragraph 3 of the Income Tax Act, which provides:

*"Where a benefit provided by an employer to an employee consists of the use, or availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, the value of the benefit is calculated according to the following formula -*

*(20% x A x B/C) -*

*where-*

*A is the market value of the motor vehicle at the time when it was first provided for the private use of the employee, depreciated on a reducing balance basis at a rate of 35% per annum for the subsequent years;*

*B is the number of days in the year of income during which the motor vehicle was used or available for use for private purposes by the employee for all or a part of the day:*

*C is the number of days in the year of income; and*

*D is any payment made by the employee for the benefit."*

105. In this case, the Applicant must demonstrate that the vehicle was used exclusively for official purposes, that private use was expressly prohibited, and that such restriction was actively enforced in practice. The taxpayer must produce contemporaneous, documented evidence such as logbooks, written policies, custody records, location control logs, and tracking data.

106. In ***Uganda Communications Commission & Haruna Musinguzi v URA, CA No. 71 Of 2020,*** the High Court stated that:

*"In the absence of any evidence on the fleet management policy, this Court finds that the Appellants' estimates of the 100 days, being the deduction of the weekends, and public holidays, was sufficient to prove on a balance of probabilities that those were the days for which the allocated vehicles were used or made available for private use, and as a result of such private use, the vehicles were subject to taxation."*

107. Considering the above, it is established that the provision of a motor vehicle by an employer constitutes a taxable employment benefit if the vehicle is used or available for private use. The vehicles are evaluated below:

Motor Vehicle Benefits – Shs. 42,645,526

108. In order to determine whether a benefit was conferred on any single individual, we must evaluate the evidence concerning each respective vehicle.

Vehicle UAX 507J (Mitsubishi Shogun Sport)

109. The Applicant argued that vehicle UAX 507J was a modified two-seater used for transporting goods, was non-operational from 2021 to 2023, and was later disposed of to a staff member. It therefore could not have provided a taxable benefit to the director or any employee, and the Respondent erred in assessing a motor vehicle benefit for the entire period without accounting for its non-use.

110. No evidence was adduced to substantiate the Applicant's claims. There was no documentation confirming the vehicle was modified for goods transport, no maintenance, workshop or usage records showing it was non-operational between 2021 and 2023, no movement records demonstrating exclusive official use or restriction from private access and no transfer proving it was later allocated to a staff member.

111. The Applicant having failed to produce any material to support its assertions, the Respondent's position remains unchallenged and the disputed portion of the PAYE assessment is confirmed as due and payable. In the circumstances, the assessment in respect of vehicle UAX 507J is upheld.

Vehicle UBE 021M (Subaru Forester)

112. Regarding the Subaru vehicle, this vehicle was acquired by the Applicant specifically on behalf of a staff member, Mr. Moses Olinga, under a structured financing arrangement. This was not a vehicle allocated to the general pool, nor was it assigned to the Director or management as part of their remuneration package.

113. On page 289 of Volume 1 of the Applicant's Trial Bundle, there is a Statement of Account detailing a salary-deducted loan facility extended by Medisell Uganda Limited to Mr Olinga covering the period May 2019 to July 2023.

114. Regular monthly repayments were deducted directly from the employee's salary, showing the employee fully bore the cost. The logbook records at page 295 of Volume 1 of the Applicant's Trial Bundle, name Mr. Olinga Moses as owner, confirming it was his personal asset, not part of the company fleet.

115. While the company's Car Policy prohibits personal use, it does not apply here as the vehicle was never a company asset. No employee was shown to have access or private use of it. This was a financing arrangement to facilitate personal ownership, not an employment benefit. The assessment for this vehicle is set aside.

Vehicle UAZ 060R (Toyota Fortuner)

116. According to the Applicant, vehicle UAZ 060R was used exclusively for transporting guests and suppliers, and is a shared pool vehicle where personal use is expressly prohibited under Company Policy AEX J. No individual has exclusive private use, and the Respondent has not identified any such user.

117. According to entry and exit records at page 438 of the Applicant's trial bundle marked AEX N, the non-resident director was present in Uganda for only 86 days (2017), 85 days (2018), 56 days (2019), and 299 days (2020). The Respondent failed to apportion the benefit accordingly or apply the correct valuation basis, rendering the full-year assessment factually and arithmetically incorrect. The assessment for this vehicle is set aside.

118. In the circumstances and in view of the parties' evidence, the Tribunal makes the following orders:

(i) CIT liability of Shs. 996,746,527 is set aside

(ii) VAT of Shs. 9,630,468 is set aside.

(iii) VAT of Shs. 1,465,020 relating to the disposal of furniture is upheld.

(iv) The PAYE relating to director's bonus payments and the reconciliation variance is set aside.

(v) PAYE relating to UAX 507J, Mitsubishi Shogun Sport is upheld.

(vi) PAYE relating to UBE 021M, Subaru Forester and UAZ 060R Toyota Fortuner are set aside.

(vii) The balance of the 30% deposit after offsetting the liabilities in (iii) and (v) be refunded.

(viii) 80% of the costs of this application are hereby awarded to the Applicant

Dated at Kampala this **4th** day of **August** 2026.

**HON. CRYSTAL KABAJWARA**
**CHAIRPERSON**

**HON. CHRISTINE KATWE**
**MEMBER**

**HON. KENNETH A. BAGAMUHUNDA**
**MEMBER**