TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

TAT APPLICATION NO. 330 OF 2025

MINI BAKERIES UGANDA LIMITED ....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

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

RULING

I. Introduction

1. This ruling is in respect of an application challenging an additional income tax assessment of Shs. 2,002,240,302 arising from a transfer pricing audit covering the period July 2015 to June 2023. It arises from two separate adjustments made by the Respondent, namely:

   (i) The disallowance of royalty payments totaling Shs. 3,787,713,559 made to Northgate Holdings Limited ("NGHL") for the use of the "SUPA LOAF" trademark, on the ground that NGHL did not contribute to the commercial success of the brand in Uganda; and

   (ii) An upward adjustment of interest rates on intra-group loans advanced to related entities in Kenya and Tanzania, which increased the Applicant's taxable interest income by Shs 2,886,420,174, on the basis that the rates did not reflect the arm's length principle.

II. Background Facts

2. The Applicant manufactures and sells bakery products under the Supa Loaf brand. The Applicant is also a member of the Mini Group of companies operating across East Africa. Since 2015, the Applicant has held a licence to use the registered trademark "SUPA LOAF" owned by North Gate Holdings Limited, Mauritius (NGHL) for the manufacture, branding, and sale of bakery products in Uganda. In consideration for the use of the brand, the Applicant pays a royalty of 2% of net sales exclusive of taxes. The Applicant accounted for and remitted withholding tax and Value Added Tax on the royalty payments during the period under review.

3. Further, between 2018 and 2022, the Applicant issued loans to related entities in Tanzania and Kenya to support their business operations and charged interest on the facilities advanced.

4. The Respondent conducted a transfer pricing audit for the period July 2015 to June 2023 and disallowed the royalty payments made by the Applicant to NGHL. The Respondent also made an upward adjustment to the interest income earned by the Applicant from loans advanced to its related parties. This resulted in additional interest income of Shs. 2,886,420,174 and disallowance of royalty expenses of Shs. 3,787,713,559, upon which the Respondent issued an additional Income Tax Assessment of Shs. 2,002,240,302.

5. The Applicant objected to the assessments on the grounds that the adjusted pricing for the royalty did not consider the functions performed by NGHL and the interest rates applied to the intercompany loans were at arm's length as they are within the range provided by the recipient's central bank and entities within the group that have received loans from non-related entities. The Applicant also challenged the Respondent's refusal to reverse the withholding tax and VAT taxes that the Applicant had previously been accounted for on the disallowed amounts.

6. The Respondent issued an objection decision disallowing the Applicant's objection and maintained the assessed tax of Shs. 2,002,240,302.

III. Issues for determination

7. The issues for determination are as follows:

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

   (ii) Whether, following the disallowance of the royalty expense, the Respondent is entitled in law to retain the WHT and VAT remitted in respect of the said payments?

   (iii) What remedies are available to the Applicant?

IV. Representation and Evidence

8. The Applicant was represented by Ms. Jackie Aturinda, Ms. Linda Mugisha, Ms. Tracy Ainebyona and Mr. Cephas Birungyi of M/S Birungyi Barata & Associates while the Respondent was represented by Ms. Shantal Nalweyiso from the Respondent's Legal and Board Affairs Department.

9. The Tribunal invited the parties to tender affidavit evidence in support of their positions. The Applicant filed an affidavit, deponed by **Mr. Kennedy Ndonye, the Country Manager of the Applicant**. The Respondent filed an affidavit in reply deponed by **Ms. Nampomba Aminah, an Officer in the Large Taxpayers' Office, International Tax Unit,** and sworn on 23 June 2026.

10. A summary of the Applicant's evidence is as follows:

Intra-Group loan transactions

(i) Mr. Kenneth Ndonye stated that the Applicant entered into intra-group loan arrangements with related entities within the Mint Group and advanced loans in accordance with the agreed commercial terms. The loans were unsecured and the interest rates were determined by reference to indicative market rates, specifically prevailing commercial bank lending rates in Uganda at the time of lending.

(ii) The table below shows the intra-group loan arrangements for the audited period.

Year	**Country**	**Recipient**	**Interest Rate**
2018	Tanzania	Pangani Plantation Ltd	4.6% p.a
2018	Kenya	Supaflo Flour Mills Limited	7% p.a
2019	Kenya	Art (2005) Ltd	7% p.a
2019	Kenya	Perfect Fruits & Nuts Ltd	7% p.a
2020	Kenya	Perfect Fruits & Nuts Ltd	10% per quarter
2021	Tanzania	ZK Venture Co Ltd	10% p.a
2022	Tanzania	ZK Venture Co Ltd	10% p.a

(iii) The interest rates were consistent with rates observed in comparable uncontrolled transactions, aligned with prevailing lending rates in similar jurisdictions, and benchmarked against publicly available data, including central bank lending rates and financial market indicators.

(iv) The Applicant relied on the following benchmarks, including actual market lending rates and the lender's opportunity cost of funding as reflected by the central bank deposit rates.

Year	BOU Deposit rate	Mini Bakeries Kenya	Mini Bakeries Tanzania	URA Adjusted rate
2018	2.77%	4.6%	7%	13.11%
2019	2.99%	7%		12.99%
2020	2.80%	10%		10.42%
2021	3.53%		10%	13.52%
2022	3.99%		10%	12.86%
2023	4.71%			12.75%
Average	**3.46%**			**12.61%**

(v) However, the Respondent failed to take the above into consideration and instead adjusted the interest rates using a methodology that combines a risk-free rate, a risk premium, and an additional country risk premium, thereby duplicating the risk elements/factors already reflected in the risk premium applied. The adjusted rates exceed prevailing market lending rates and do not reflect the economic reality of the transaction, to the extent that an independent borrower under comparable circumstances would not have agreed to borrow at such rates.

Royalty Payments under the Licensing Agreement

(vi) The Applicant entered into a trademark licensing agreement with NGHL, the legal owner of the SUPA LOAF mark, granting the Applicant the right to use the trademark in the manufacturing, branding, and selling of its bakery products in Uganda. The licence granted to the Applicant is non-exclusive and permits the Applicant to commercially exploit the trademark within its market in consideration for a royalty payable at a rate equivalent to 2% of net sales exclusive of taxes.

(vii) The Applicant stated that NGHL is responsible for brand conceptualization, creation, and strategic positioning of the brand across the markets in East Africa. It undertakes enhancement functions of the trademark including oversight of packaging standards and presentation of the trademark, participation in brand strategy decisions aimed at strengthening the trademark's market positioning and recognition within the region and ensuring brand consistency. The Applicant also stated that NGHL is responsible for quality control, enforcing brand standards, and ongoing monitoring the use of the trademark by licensees to preserve its integrity.

(viii) The Applicant presented a benchmarking analysis of comparable licensing arrangements, including the ktMINE database, which shows royalty rates ranging between 0% and over 10%, with common averages between 3% and 5%, confirming that the rate applied by the Applicant is within the acceptable arm's length range.

(ix) The Respondent erred in disallowing the royalty by disregarding NGHL's functions and failing to reflect the commercial reality and value of the trademark to the Applicant's business.

Withholding Tax and Value Added Tax on Royalty Payments

(x) The Applicant accounted for and remitted Withholding Tax and VAT on royalty payments to NGHL. Even though the royalty expense was disallowed, the Respondent neither refunded nor credited these taxes. The taxes were paid on the basis that the royalties were valid taxable consideration for VAT and subject to WHT. If royalty expense is disallowed, the WHT and VAT must be refunded or credited to avoid double taxation. Even if the disallowance stands, WHT should be refunded to Northgate Holdings Limited and VAT to the Applicant, as required by law.

11. A summary of the Respondent's evidence is below.

Intra-group loan transactions

(i) Following the Applicant's failure to demonstrate that the interest rates charged adequately reflected the risks associated with unsecured cross-border lending to borrowers located in Kenya and Tanzania, the Respondent evaluated the controlled transactions using a risk-adjusted pricing framework comprising:

a) a risk-free rate representing the time value of money for USD-denominated lending;

b) a lending risk premium of four per cent (4%) adopted by the Applicant in its own transfer pricing documentation to compensate for the risks associated with extending credit; and a country risk premium reflecting additional risks arising from lending to borrowers located in Kenya and Tanzania. Therefore, each component addressed a separate and distinct source of risk and therefore does not result in duplication.

c) The country risk premium reflected jurisdiction-specific risks not captured by the general lending risk premium, including sovereign, political, legal, and macroeconomic risks. Applying a separate country risk premium is consistent with the arm's length principle and reflects independent lending practices.

(ii) The Applicant did not provide any contemporaneous transfer pricing analysis, pricing model, credit assessment, or other documentary evidence demonstrating that its pricing of the related party loan incorporated the country-specific risks associated with lending to borrowers resident in Kenya and Tanzania. There is no basis to conclude that the country risks had already been reflected in the pricing of the controlled loans.

Royalty Payments under the Licensing Agreement

(iii) The Respondent adduced a Deed of Assignment dated 2 January 2010, by which MIBSCO Uganda Limited assigned the "SUPA LOAF" trademark to NGHL for no disclosed consideration; it was later registered in NGHL's name in Uganda. MIBSCO was not actively operating in Uganda prior to this assignment.

(iv) Audit records show MIBSCO had no employees, ran no bakery or confectionery business, and filed no returns with the Respondent or URSB. Further, the Respondent adduced minutes of functional analysis interviews and the Applicant's records, which confirm that the Applicant, and not NGHL, performed all development, enhancement, maintenance, and protection functions for the trademark in Uganda.

(i) The Applicant failed to prove that NHGL created or strategically developed the Supa Loaf trademark in Uganda or employed personnel or third parties to perform those functions. The Applicant, through its common directors, bore the directors' fees and related expenses, indicating that it, rather than NHGL, undertook the trademark enhancement functions.

(ii) The Applicant's benchmarking analysis selected licensing agreements drawn from industries materially different from the Applicant's bakery business, including dairy products, alcoholic beverages, toys and entertainment licensing, and were therefore not sufficiently comparable to the controlled transaction.

(iii) Several licensing agreements relied on involved related-party transactions between the Dannon Company, Inc. and YoCream International, Inc.; Panamerican Beverages, SA de CV and Panamco Golfo, SA de CV; Panamerican Beverages, SA de CV and Panamco Bajio, SA de CV; Hansen's Juices, Inc. and Hansen's Juice Creations; and entities within the Kraft Foods and Intercontinental Great Brands groups. They did not constitute reliable uncontrolled comparables for applying the Comparable Uncontrolled Price method.

Withholding Tax and Value Added Tax on Royalty Payments

(iv) The remittance of withholding tax and VAT on imported services by the Applicant did not validate the deductibility of the royalty expense to NHGL under Section 22 and, 116 of the Income Tax Act or establish that the royalty payment was arm's length. The deductibility operates under separate statutory regimes. It did not reverse the underlying transaction, nullify the Trademark User Agreement, or extinguish taxes that arose independently under the Income Tax Act and the VAT Act. The Applicant has not demonstrated that the withholding tax or VAT on imported services was overpaid, paid in error, or not lawfully due.

V. The Submissions of the Applicant

Whether disallowance of the royalty expenses was lawful or justified?

12. The gist of the Applicant's position regarding the royalty payment is as follows:

(i) The royalty rate applied was benchmarked using the Comparable Uncontrolled Price ("GUP") Method, through the ktMINE Royalty Rate Finder database, which analysed comparable trademark licensing arrangements within the food and beverage industry. The 2% royalty rate was within the range of royalty fees paid in comparable transactions.

(ii) However, the Respondent did not adduce any contrary benchmarking analysis demonstrating that the 2% royalty rate was excessive or inconsistent with market practice.

(iii) In the case of ***Kilombero Sugar Company Limited Vs Commissioner General (TRA) Income Tax Appeal No. 299 of 2021*** where it was found that Tanzania Revenue Authority *"cannot fault a transaction between associates on the reason that the transaction was not at arm's length based on assumptions and without conducting a credible benchmarking analysis to test whether the transaction between associates is really not at arm's length".*

(iv) The "SUPA" and "SUPA LOAF The trademarks constituted valuable marketing intangibles that enabled the products to benefit from established brand recognition, customer loyalty, and market goodwill in Uganda.

(v) The Trademark User Agreement shows that NGHL retained control over the exploitation of the trademarks through quality control standards, inspection rights, and intellectual property protection obligations, reinforcing that the trademarks remained NGHL's economically significant asset. NGHL also bears the key economic risks associated with the trademarks, such as market risk, obsolescence, legal, and reputational risks.

(vi) The Respondent's disallowance of the royalty expense fails to reflect the commercial and economic reality of the transaction. The royalty payments were incurred wholly and exclusively in the production of income and were directly connected to the Applicant's ability to manufacture, market and sell products under the "SUPA LOAF" brand.

(vii) The Applicant cited ***Principal Commissioner of Income Tax-8 V Samsung India Electronics Pvt Ltd IITA 40/2018,*** where the court held that *"Samsung Korea as the owner of the technological know-how which was inherently required for Samsung India to manufacture the mobile handsets under the brand name of Samsung, was entitled to receive an arm's length return on the value of the intangibles provided in the form of royalty payments".*

(viii) The Respondent neither demonstrated that the royalty arrangement lacked commercial substance nor produced evidence showing that independent parties would not have agreed to similar terms under comparable circumstances.

Whether the Respondent's uplift of the interest rates on intra-group loans was lawful?

13. The Applicant made the following arguments regarding the arm's length nature of the interest payments:

(i) The Respondent's methodology was flawed, comprising a purported risk-free rate, a risk premium and an additional country risk premium.

(ii) The Respondent failed to consider the prevailing commercial conditions within Kenya and Tanzania, including the rates that independent borrowers could realistically obtain from commercial lenders operating in those markets. Paragraph B.3.4 of the OECD Guidelines recognises that comparability in financial transactions requires consideration of the borrower's economic circumstances, including prevailing market conditions, central bank rates, interbank rates, and broader financial market conditions.

(iii) An analysis indicates the average lending rate of 9.0% for Kenya compared to 12.3% as per the adjusted interest rate workings, while the average lending rate for Tanzania is 6.88% compared to 12.91% as per the adjusted URA interest rate workings.

(iv) The Applicant also argued that the Respondent failed to consider the lender's opportunity cost of funding as reflected by the central bank deposit rates. By disregarding these relevant comparable and relying instead on an abstract and overstated model, the Respondent arrived at rates that are commercially unrealistic and inconsistent with the arm's length principle.

Whether the Respondent is entitled in law to retain the WHT and VAT remitted in respect of the said payments?

14. The Applicant made the following arguments regarding the WHT and VAT implications of the adjustments.
    (i) The disallowance extinguished the basis for the taxes and the taxes should therefore be refunded or credited to the Applicant. The Respondent's failure to refund or credit the said taxes gives rise to unjust enrichment and double taxation.

    (ii) The Applicant submitted that the royalty payments are found by this Tribunal to have been properly disallowed, then the corresponding Withholding Tax and Value Added Tax collected on the same payments ought to be refunded or credited to NGHL and to the Applicant respectively.

15. The Applicant prayed for the following:
    (i) A declaration that the additional assessment is unlawful, and the assessment is set aside.
    (ii) Should the Tribunal uphold the assessment, an order that the Respondent refunds the withholding tax and VAT remitted in respect to the royalty payments.
    (iii) Respondent is ordered to refund the 30% paid by the Applicant.
    (iv) Applicant is awarded costs of this Application.
    (v) Any other remedy that this Tribunal deems fit.

VI. Submissions of the Respondent

Whether the Respondent lawfully disallowed the royalty expense paid to Northgate Holdings Limited?

16. The Respondent made the following arguments in this regard:
    (i) NGHL did not perform the Development, Enhancement, Maintenance, Protection, and Exploitation ("DEMPE") functions as required by Paragraph 6.34 of the OECD Guidelines.

(ii) Paragraph 6.42 further provides that legal ownership of an intangible does not, by itself, entitle the legal owner to retain the returns generated by that intangible. Paragraphs 6.54, 6.56 and 6.59 provide:

"*returns from intangibles must follow the party that performs, controls and finances the DEMPE functions and assumes the economically significant risks associated with those functions.*"

(iii) The existence of a licence agreement does not establish that a royalty expense is at arm's length or deductible in full. The Respondent's adjustments were made on the basis that the 2% royalty paid to NGHL was not at arm's length because NGHL did not perform the DEMPE functions or assume the risks necessary to earn that return.

(iv) DEMPE Functions: The Respondent, through functional analysis interviews, established that the Applicant performed the DEMPE functions relating to the Supa Loaf trademark in Uganda. The Applicant developed and enhanced the brand in Uganda by incurring costs in packaging design, market research, advertising, product line extensions, recipe improvements, customer engagement, digital engagement and strategic partnerships. (**JTB at pages 841-1000).** The Applicant maintained the trademark's value through ongoing marketing, quality assurance, product consistency, employee training on brand standards, and monitoring of consumer feedback.

(v) The Applicant exploited the trademark locally by manufacturing and selling products under the Supa Loaf brand, expanding the market, optimising distribution and logistics, and implementing stock-replenishment systems. The Applicant also undertook protection-related activities in Uganda, including maintaining production process integrity, monitoring for infringement and counterfeiting, and protecting against market competition, **annexure REX 1 JTB.**

(vi) The Applicant assumed the operational, market, obsolescence, legal and reputational risks associated with the Supa Loaf brand in Uganda. It controlled the day-to-day and strategic decisions relating to the manufacture, marketing and sale of products bearing the Supa Loaf trademark in Uganda. The Applicant determined production levels, maintained product quality, managed inventory and distribution, undertook advertising and promotional activities, developed customer relationships and responded to changing consumer preferences and competition. NGHL's contractual rights to oversee standards or protect the trademark do not establish that it assumed these risks.

(vii) Accordingly, any value associated with the Supa Loaf brand in Uganda was generated and maintained through the Applicant's own operations, including manufacturing, quality control, marketing, distribution, customer engagement and market development. NGHL was incorporated in Mauritius in October 1999; the Respondent's review of Northgate's management accounts, tax returns and functional evidence showed that Northgate did not perform the DEMPE functions in Uganda.

(viii) The nil allocation to Northgate Holdings Limited was justified because the Applicant failed to provide any reliable basis upon which an arm's-length compensation for NGHL's alleged limited trademark administration functions could be determined.

Uplift of the interest rates on the related-party loans advanced to associates

17. The Respondent made the following arguments in this regard:

(i) Chapter X of the OECD Transfer **Pricing Guidelines** provides guidance on the pricing of intra-group financial transactions. Paragraphs 10.17, 10.18, 10.29, 10.51 to 10.55, and 10.89 to 10.96 require that an arm's length interest rate be determined having regard to, the contractual terms of the loan, the currency in which the loan is denominated, the amount and duration of the facility, the borrower's creditworthiness and financial capacity, collateral, guarantees and security, the purpose of the borrowing, prevailing market conditions and the economically significant risks assumed by the lender.

(ii) The Applicant did not demonstrate that the controlled USD-denominated loans were priced by reference to prevailing commercial bank lending rates in Uganda, Kenya or Tanzania. Nor did it demonstrate that the LIBOR plus 4% formula adequately captured the borrowers' full risk profile and the loan terms.

(iii) On this basis, the Respondent used a risk-adjusted pricing framework comprising three components: a USD risk-free rate, the 4% lending risk premium adopted by the Applicant in its own transfer pricing documentation, and a country risk premium for the borrowers' jurisdictions. However, the Applicant did not provide evidence showing that the 4% premium specifically incorporated the country risks of Kenya and Tanzania, including country risk, transfer and convertibility risk, macroeconomic risk, legal enforcement risk and jurisdiction-specific credit risk. The Respondent therefore considered country risk separately, not as a duplication of the same risk, but as a distinct risk factor arising from the borrowers' countries of operation.

(iv) The Respondent further submitted that the Applicant bears the burden of showing that its related-party pricing was arm's length. Having adopted a LIBOR plus 4% formula, the Applicant was required to explain what risks the 4% covered and how that premium was determined.

(v) The Respondent also argued that the central bank rates and deposit rates were not reliable comparables because they do not represent the price that an independent lender would charge a specific borrower for an unsecured cross-border USD loan. A deposit rate reflects the return earned by a depositor placing funds with a regulated financial institution. It does not reflect the return that an independent lender would require to advance funds to a borrower.

(vi) Furthermore, the third-party bank facilities are not reliable comparables because the Applicant did not demonstrate that the related-party lenders had rights equivalent to those of the legal mortgages, debentures, and guarantees contained in the third-party bank facilities, or that unpledged assets were available to provide equivalent protection.

(vii) The Respondent cited paragraph 10.20 of the OECD Transfer Pricing Guidelines which recognizes that potential comparables may differ from the tested transaction, and that material differences must be considered. The facilities are relied upon as corroborative evidence of how independent lenders price USD facilities in practice.

(viii) The distinction is particularly relevant to the Pangani Plantation loans priced at 4.6% and the other controlled facilities priced at 7%. The Applicant did not demonstrate that an independent lender would have accepted those rates for unsecured cross-border USD loans without legal mortgages, debentures, corporate guarantees, facility fees, default margins or comparable enforcement protections.

(ix) The Respondent also stated that the recognition of interest income does not prove arm's length pricing. It merely confirms that interest accrued or was charged but does not establish that the rates charged were arm's length.

Whether the Applicant is entitled to a refund or credit of WHT and VAT

18. The Respondent made the following arguments in this regard:

(i) The transfer pricing adjustment under section 116 of the Income Tax Act concerned the arm's length deductibility of the royalty expense in computing the Applicant's chargeable income. It did not reverse the underlying transaction, nullify the Trademark User Agreement, or extinguish tax liabilities that arose independently under the Income Tax Act and the VAT Act. WHT was properly accounted for because the royalty payment constituted Uganda-sourced income in the hands of NGHL.

(ii) Under section 78(k) of the Income Tax Act, *Income is* derived *from sources in Uganda to the extent that it is a royalty paid by a resident person.* **Section 82(1)** ITA imposes tax on a non-resident person who derives royalties from sources in Uganda. **Section 137 ITA** requires the person making the payment to withhold tax from the payment.

(iii) The Applicant acted as a withholding agent in respect of the royalty payments made to NGHL. The Income Tax was imposed on NGHL, the non-resident recipient of the royalty income, and was collected through the withholding mechanism. The Applicant is therefore not the proper party to claim a refund, the proper party would be NGHL, subject to satisfying the statutory requirements for a refund under the Law.

(iv) The Uganda–Mauritius Double Taxation Agreement does not require Uganda to refund the withholding tax. Article 12 permits Uganda to tax royalties arising in Uganda and paid to a resident of Mauritius, subject to the treaty limitation where applicable. The transfer pricing adjustment did not alter the character of the payment as royalty income in the hands of NGHL and did not affect Uganda's taxing rights over that income.

(v) The Respondent submitted that **Article 12(6) of the Uganda–Mauritius DTA** *also contemplates that where royalties exceed the amount that would have been agreed at arm's length by reason of a special relationship between the payer and beneficial owner, treaty protection applies only to the arm's length amount and the excess remains taxable under the laws of each Contracting State.* A non-arm's-length element, therefore, does not invalidate Uganda's right to tax the payment.

(vi) The Respondent submitted that **Article 9 of the Uganda–Mauritius DTA** does not compel Uganda to refund withholding tax following a transfer pricing adjustment. It provides a framework for applying the arm's length principle and, where appropriate, corresponding relief in the other contracting state. It does not convert lawfully imposed Ugandan withholding tax into a refundable tax.

VAT on imported services was not extinguished by the TP adjustments

(vii) The Respondent submitted that the VAT in issue was VAT on imported services in respect of the Trademark User Agreement between the Applicant and NGHL. The VAT on imported services was non-creditable in the circumstances of the Applicant and did not constitute creditable input tax. It constituted ordinary business expenditure. The Respondent allowed the VAT on imported services as a deduction under section 22 of the Income Tax Act in computing the Applicant's chargeable income. The Applicant therefore already obtained income tax relief for the VAT as a deductible business expense.

(viii) The transfer pricing adjustment did not reverse the importation of services, nullify the Trademark User Agreement, or render the VAT unlawfully charged. The adjustment addressed only the arm's-length deductibility of the royalty expense. The Respondent submitted that since the VAT on imported services was properly accounted for, treated as a business cost and allowed as a deduction in determining the Applicant's chargeable income, there is no legal basis for a refund or additional credit.

(ix) The Respondent prayed that this Tribunal be pleased to order that:

a) The Respondent's objection decision and Additional income tax assessment of Shs. 2,002,240,302 was lawful, is due and Payable by the Applicant.

b) That this Application be dismissed with costs to the Respondent

c) The Applicant is not entitled to any refund or credit of withholding tax and VAT.

d) The Applicant is not entitled to any refund of the 30% paid in respect of the assessment.

VII. The Applicant's Submissions in Rejoinder

19. The Applicant filed submissions in rejoinder and reiterated their previous arguments in respect of the three issues in contention.

VIII. The Determination

20. We have carefully considered the pleadings, affidavit evidence, documentary evidence and submissions of both parties. This is our decision.

21. This application arises from transfer pricing adjustments made by the Respondent in respect of two categories of controlled transactions entered into by the Applicant with its related parties, namely:

    (i) royalty payments made to Northgate Holdings Limited ("NGHL"), a Mauritius-based related party and the legal owner of the SUPA LOAF trademark, for the Applicant's use of that trademark in Uganda; and

    (ii) interest charged by the Applicant on loans advanced to related parties in Kenya and Tanzania.

22. The Applicant challenged the adjustments on the ground that its pricing was consistent with the arm's length principle and that the Respondent's adjustments were unreasonable, excessive and unsupported by an appropriate comparability analysis. The Respondent maintains that the Applicant failed to demonstrate that the pricing of either category of controlled transaction reflected conditions that would have been agreed between independent parties.

<u>The applicable transfer pricing framework</u>

23. **Section 116 of the Income Tax Act ("ITA") provides:**

    "Transactions between associates

    (1) In any transaction between associates or persons who are in an employment relationship, the <u>Commissioner General may distribute, apportion or allocate income, deductions or credits between the associates or persons who are in an employment relationship, as the case may be, as is necessary to reflect the chargeable income realised by the taxpayer in an arm's length transaction.</u>

    (2) The Commissioner General may adjust the income arising in respect of any <u>transfer or licence of intangible property between associates so</u> that it is commensurate with the income attributable to the property.

(3) In making any adjustment under subsection (1) or (2), the Commissioner General may determine the source of income and the nature of any payment or loss as revenue, capital or otherwise."

(i) Section 116 is read together with the subordinate legislation in the Income Tax (Transfer Pricing) Regulations, 2011 ("the TP Regulations"). The regulations require that transactions between related companies are conducted in accordance with the **arm's length principle**. Regulation 3 of the TP Regulations defines the arm's length principle to mean:
"the results of the transaction are consistent with the results that would have been realised in a transaction between independent persons dealing under the same conditions."

(ii) In simple terms, the **arm's length principle** requires that when companies in the same group (like the Applicant and its related parties) trade with each other, they should set prices as if they were independent companies dealing at arm's length. In other words, there should be no favouritism or special deals just because they are related. Therefore, section 116 empowers the Respondent to review such transactions and make the appropriate adjustments "*as is necessary to reflect the chargeable income realised by the taxpayer in an arm's length transaction."*

(iii) The TP Regulations also require such companies to maintain **documentation** demonstrating that their related party transactions meet the arm's length principle. Specifically, Regulation 8 provides:

"8. Documentation

(1) A person shall record, in writing, sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle.
(2) The documentation referred to in sub-Regulation (1) for a year of income shall be in place prior to the due date for filing the income tax return for that year."

(iv) The implications of the above provision are that the documentation must be prepared for each year of income and must contain sufficient information and analysis concerning the transactions that took place in that respective year of income. A taxpayer who engages in related party transactions is required to have completed the preparation of their transfer pricing documentation by the due date of filing the income tax return for the relevant year of income – not a year later, two years later or five years later. This therefore introduces the requirement for documentation to be contemporaneous.

(v) Regulation 6 of TP Regulations recognises the applicability of the OECD Documents, which **include Article 9 of the Model Tax Convention on Income and Capital** and **the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations**. Specifically, Article 9 provides:

"[Where] conditions are made or imposed between the two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

(vi) In simple terms, if two connected companies (for example a parent and subsidiary) agree on terms that do not reflect what independent companies would agree on, tax authorities can adjust the profits to reflect what they ought to be if they were independent of each other.

(vii) The OECD TP Guidelines provide international standards for pricing transactions between related entities, emphasising the "arm's length principle". They outline methods and documentation requirements, serving as best practice for countries to ensure fair taxation and prevent tax avoidance, and are widely adopted by tax authorities globally. ***Unilever Kenya Limited v Commissioner, Income Tax [2005] KEHC 3176 KLR*** established that the OECD Transfer Pricing principles, though not law, are highly persuasive as they represent international best practice, setting a precedent for their application in transfer pricing disputes, especially in Africa.

24. It is against this background that, when applying the arm's length principle in the context of section 116 of the Income Tax Act, the OECD TP Guidelines are applied. However, the OECD TP Guidelines are not a one-size-fits-all solution. They are a framework that requires adaptation to specific facts and circumstances. Therefore, local context matters, and understanding the commercial realities of the transaction, industry, and entities involved is important.

Burden of proof

25. The taxpayer bears the burden of proof (section 19 of the TAT Act) to show that it is more likely than not that the assessment is excessive. This requires the taxpayers to present evidence that tips the scales in their favour; the Tribunal will then weigh the evidence against the Respondent's evidence to decide which version is more probable.

26. With the above in mind, we now turn to each transaction in scope of the present dispute.

A. Whether the disallowance of the royalty expense was lawful and justified?

27. The Applicant and NGHL entered into a Trademark User Agreement under which the Applicant was granted the right to use the "SUPA LOAF" trademark in Uganda. Clause 4 of the Agreement provides:

"MBU shall pay NGHL an amount equivalent to 2% of the sales as compensation for the use of the Trademark/royalty..."

28. The Applicant has consistently paid the trademark licence fee, but the Respondent disputes its validity and has disallowed the entire amount.

29. It is worth noting that the SUPA LOAF trademark was originally owned by MIBISCO Uganda Limited, a Ugandan company, and was assigned to NGHL in

2010 without any disclosed payment. NGHL then registered the trademark in Uganda and started charging the Applicant a royalty fee for its use.

30. Any Analysis of the arm's length nature of the trademark license fee/royalty payment should be guided by the considerations contained in Chapter VI of the OECD Transfer Pricing Guidelines, and titled, "Special Considerations for Intangibles."

31. Chapter VI of the OECD TP Guidelines recommends that the following be taken into consideration when evaluating the arm's length nature of transactions involving intangibles:
   (i) Identifying intangibles: Clearly define the intangible asset (e.g., trademark, patent) – In the present case, **the intangible is the trademark, "SUPA LOAF."**
   (ii) Ownership and control: Determine legal and economic ownership based on which entity performs DEMPE functions (Development, Enhancement, Maintenance, Protection, Exploitation) – **this will be determined based on the evidence adduced by the parties**
   (iii) Valuation: Use arm's length principles to value intangibles, considering expected economic benefits – **the remuneration for the use of the SUPA LOAF trademark will be considered in view of (ii) above.**
   (iv) Transactions involving intangibles: Apply transfer pricing methods (e.g., CUP, valuation techniques) to determine arm's length compensation – **this depends on the DEMPE analysis in (ii) above.**
   (v) DEMPE functions: Assess which entity performs value-creating activities related to the intangible – **this will be determined based on the parties' evidence**

32. In simple terms, the determination of the arm's length royalty hinges on an evaluation of NGHL's role in DEMPE functions vis-à-vis the Applicant's role. This is because the legal ownership of an intangible does not, by itself, entitle the owner to all returns arising from that intangible. Rather, the allocation of returns depends upon the party performing and controlling the economically significant

Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) functions in relation to the intangible.

The DEMPE analysis

33. A DEMPE analysis identifies which entity in a multinational group is entitled to returns from intangibles (like trademarks, patents). It looks at who performs the Development, Enhancement, Maintenance, Protection, and Exploitation of the intangible. The entity performing these functions is considered the economic owner and should get the returns. In other words, the determination as to whether NGHL is justified to earn 2% of the Applicant's net sales will depend on whether the Applicant has demonstrated that NGHL performs the DEMPE functions. If this question is answered in the negative, it would mean that NGHL is not entitled to the royalty fee charged to the Applicant.

34. Para. 6.48 of the OECD TP Guidelines provides guidance on the DEMPE analysis. It states:

"It is therefore necessary to determine, by means of a functional analysis, which member(s) perform and exercise control over the development, enhancement, maintenance, protection, and exploitation functions, which member(s) provide funding and other assets, and which member(s) assume the various risks associated with the intangible. Of course, in each of these areas, this may or may not be the legal owner of the intangible."

35. It is not in dispute that NGHL is the legal owner of the trademark. What is disputed is whether, as the legal owner, it is justified in charging the Applicant a royalty fee, equivalent to 2% of net sales, for the use of the SUPA LOAF trade mark.

36. Each aspect of the DEMPE is analysed below.

Development

37. In the context of a trademark, "Development" in DEMPE refers to activities such as creating or improving the trademark (e.g., design, branding strategy), building the brand's reputation and value, and expanding the trademark's use into new

markets or products. For "SUPA LOAF", development might involve NGHL creating the brand, designing the logo, or strategizing its market positioning.

Enhancement

38. Enhancement refers to activities that increase the value of the trademark over time, for example, marketing and advertising efforts, improving product quality associated with the trademark, expanding distribution channels or geographic reach, innovating products under the trademark.

39. For "SUPA LOAF", enhancement could involve NGHL investing in advertising, improving product quality, or expanding distribution in Uganda.

Maintenance

40. "Maintenance" refers to activities that preserve the trademark's value, such as protecting the trademark from infringement, ensuring consistent quality of products/services, monitoring and enforcing trademark rights, and renewing trademark registrations.

41. For "SUPA LOAF", maintenance would involve NGHL ensuring the brand's quality standards are met in Uganda and protecting it from counterfeits.

Exploitation

42. Exploitation refers to using the trademark to generate income, such as licensing the trademark to others (like the Applicant), selling products/services under the trademark (exploited by the licensee), and leveraging the brand for business opportunities.

43. For "SUPA LOAF", exploitation involves NGHL licensing the trademark to the Applicant for use in Uganda, earning royalties. It also involves the Applicant selling bread under the SUPA LOAF trademark. It is not in dispute that both parties exploit the trademark.

Analysis of the evidence regarding the functions performed, risks assumed, and assets utilised

44. We now turn to the parties' evidence to determine the extent to which NGHL, the party that earns a royalty income, performed the DEMPE functions.

(a) The trademark user agreement (Page 315 of the trial bundle)

45. According to para 6.35 of the OECD TP Guidelines, legal rights and contractual arrangements form the starting point for any transfer pricing analysis of transactions involving intangibles. The provision further states:

"The terms of a transaction may be found in written contracts... Contracts may describe the roles, responsibilities and rights of associated enterprises with respect to intangibles. They may describe which entity or entities provide funding, undertake research and development, maintain and protect intangibles, and perform functions necessary to exploit the intangibles, such as manufacturing, marketing and distribution...The prices and other conditions contained in such contracts may or may not be consistent with the arm's length principle."

46. In the present case, the Trademark User Agreement grants the Applicant a license to use the trademark within Uganda. However, regarding the roles and responsibilities of the parties, the agreement states:

"MBU (the Applicant) agrees at its cost to do the following:

(i) To actively and diligently promote the sale of goods in the territory during the period of the agreement;

(ii) To protect, on NGHL's behalf, NGHL's intellectual property rights to whatever extent possible and in consultation with NGHL at all times

(iii) To advertise, through various forms of media, billboards and pamphlets etc to suit MBL's marketing demands."

47. Therefore, based on the parties' agreement, it was envisaged from the very word go that the Applicant would perform the DEMPE functions at its cost. From the inception of this arrangement, the Applicant has been contractually responsible for maintenance and enhancement activities such as advertising and marketing. The Applicant is also duty-bound to protect the trademark, at its cost and at all times.

48. It is important to note that the agreement does not assign any duties or responsibilities to NGHL. Therefore, it is reasonable to assume that there was never any intention for NGHL to perform any of the functions expected of a trademark owner. Accordingly, under the agreement, NGHL is merely a holder of legal title.

(b) The Applicant's transfer pricing documentation

49. The Applicant's transfer pricing documentation is exhibited at page 115 of the Joint Trial Bundle.

    (i) The documentation lists key demand drivers of the baking industry to include the influence of healthy food choices, raising prominence of in-store bakeries, increased internet penetration and speciality baking stores. The documentation does not indicate trademarks or brands as key demand or value drivers.

    (ii) The functional analysis is only a paragraph long – it contains no information as to which entity performs any of the DEMPE activities. In the absence of a functional analysis, it is not possible to ascertain the real economic activities performed by NGHL as the owner of the trademark.

50. Para 4.1.1 of the TP documentation states that NGHL ensures that the brand is of high quality and performs functions such as brand marketing, brand awareness and brand loyalty. However, without factual evidence of what, when and how NGHL performs these activities, this remains a mere sweeping statement. We would have expected the Applicant's documentation to provide insights into:

    (i) How the logo was developed and how NGHL has contributed to the development work

    (ii) Examples of trademark concepts developed by NGHL to guide the Applicant

    (iii) Examples of people functions and the custodians of the trademarks

    (iv) The marketing and advertising campaigns, if any, developed and undertaken by NGHL

(v) Brand guidelines

None of the above is evident in the documentation.

51. Overall, we find the Applicant's transfer pricing documentation lacking in substance. Transfer pricing documentation is not just paperwork - it is the first line of defence against the Respondent's transfer pricing adjustments. Further, in the context of a tax dispute before a court or tribunal, the taxpayer's transfer pricing documentation goes to the core of discharging the taxpayer's burden of proof. This is because a well-prepared TP documentation package provides contemporaneous evidence that:

   (i) The taxpayer considered the arm's length principle.
   (ii) They applied a suitable transfer pricing method.
   (iii) The pricing was based on reasonable assumptions and data.
   (iv) The taxpayer complied with local regulations.

52. Consequently, the Applicant's transfer pricing documentation corroborates the Trademark User Agreement in establishing the non-existence of DEMPE functions on the part of NGHL.

(c) The functional analysis interviews performed by the Respondent

53. Having considered the Applicant's key sources of evidence, namely, the contractual terms and the transfer pricing documentation, we now turn to the Respondent's analysis.

54. Chapter IV of the OECD TP Guidelines requires tax administrators to *"take into account the taxpayer's commercial judgment about the application of the arm's length principle, so that the transfer pricing analysis is tied to business realities."*

55. In the present case, before making the TP adjustments that gave rise to the dispute at hand, the Respondent performed a transfer pricing analysis that

began with interviews of key Applicant staff. According to the record (pages 841-880 of the JTB), the Respondent interviewed the following employees:

(i) Joseph Kamau – Accountant
(ii) Kennedy Ndonye – General Manager
(iii) Krishna Bochare – Operations Manager
(iv) Moses Oduor – Sales Manager

56. The minutes of the meetings were duly signed by the interviewees and the Respondent's audit team. The following insights can be drawn from the interviews:

(i) Bread recipes are developed by the Applicant's production function.
(ii) The value of the SUPA LOAF brand lies in the quality of the products such as softness, freshness, and consistency.
(iii) The Applicant's widespread distribution network to wholesalers, retailers and supermarkets enables availability, which makes the bread customers' preferred choice (over 150 distributors countrywide)
(iv) The Applicant carries out several activities to enhance the SUPA LOAF brand such as social media campaigns, school outreaches, posters and market audits.
(v) The quality of the product is determined by the raw materials. The Applicant sources raw materials and tests their quality through continuous use.
(vi) Quality is also assured through the manufacturing process and the use of improved machinery.
(vii) Market perception is influenced through efficient distribution (e.g. satellite shops), vehicle branding, merchandising, sponsorship of high visibility events such as Miss Tourism, market research by third party research companies, use of digital channels. All these are done at the Applicant's expense
(viii) Marketing strategy is developed by the Applicant's sales team.

57. The above paints a clear picture of a business (the Applicant) that is self-reliant – relying on its manufacturing and distribution process to build value, create a

positive brand perception, improve and check quality and develop and continuously improve the recipes. The functional analysis points to the Applicant as a full-risk entity that sets the marketing strategy, spends on research, marketing, and advertising, and makes commercial decisions regarding its operations. The Applicant did not adduce any evidence of budgetary control, decision-making, or intellectual contribution by NGHL towards marketing, recipe development, or quality control or assurance.

58. This corroborates the Trademark User Agreement insofar as it imposes the duty and obligation on the Applicant to protect and market the trademark. Being the legal owner of a trademark is not enough to justify the compensation received for exploiting a trademark. The trademark owner must be compensated only for the functions it performs. In the present case, the Applicant has not demonstrated, with sufficient evidence, NGHL's performance of the development, enhancement and maintenance functions regarding the SUPA LOAF trademark.

(d) The Historical ownership of the SUPA LOAF trademark

59. It is also worth highlighting that NGHL has not always been the owner of the trademark. A Ugandan entity, MUBISCO Uganda Limited, previously owned the trademark and transferred it to NGHL via an assignment deed dated 2 January 2010 (Exhibit REX 4 at pages 1005 – 1020 of the JTB).

60. This was further confirmed by the Applicant's General Manager, who stated during the functional analysis interviews that the trademarks were initially owned by MIBISCO (Exhibit REX1 at page 841 of the JTB).

61. However, there is nothing to show that the trademark was assigned /transferred for consideration. Since the deed of assignment does not specify any consideration for the transfer of the trademarks, the following can be deduced:

    (i) Either the transfer was not at arm's length, as independent companies would not give away valuable corporate assets for free; OR

(ii) The trademark had little or no value, which then questions the licensing arrangement between NGHL and the Applicant.

62. In the present case, the Applicant hasn't explained the free transfer of the trademark to NGHL. Considering this, the Trademark User Agreement (where the Applicant covers DEMPE costs), and the functional analysis, it suggests a transaction that's not at arm's length and lacks commercial substance.

63. Therefore, we find that the Applicant has not discharged the burden of proving that the Respondent's adjustments were unjustified, excessive or arbitrary. On the contrary, the Respondent conducted a thorough transfer pricing analysis of the transaction and followed best practice as contained in Chapter VI of the OECD TP Guidelines before reaching its conclusion.

(e) The benchmarking study

64. The Applicant has challenged the Respondent's rejection of their benchmarking study.

65. Para. 6.74 of the OECD Guidelines is to the effect that the arm's length price and other conditions for transactions should be determined taking into account the contributions to anticipated intangible value of functions performed, assets used, and risks assumed at the time such functions are performed, assets are used, or risks are assumed.

66. To test the arm's length nature of the 2% royalty rate, the Applicant used the Comparable Uncontrolled Price Method (CUP) and adduced agreements which they consider to be comparable to the Trademark User Agreement.

67. The Respondent rejected the CUP and the "comparable agreements" for several reasons, including the functional profile discrepancy. In simple terms, the Respondent found that the "comparable agreements" indicated that both the licensor and licensee contribute to DEMPE functions.

68. This is also in line with the Tribunal's findings that NGHL did not perform any DEMP functions. The functional analysis forms the basis for determining the arm's length nature of an intercompany transaction. In the present case, the Applicant's transfer pricing documentation did not contain any functional analysis. Accordingly, the benchmarking analysis the Applicant presented was performed in a vacuum, without the context of NGHL's actual role, making it flawed and misrepresentative of the real functions performed, assets used, and risks assumed by NGHL. It therefore follows that the Respondent was right in rejecting the analysis.

69. Having considered the totality of the evidence, the Tribunal is persuaded that the Applicant performed the substantial activities responsible for developing, maintaining and enhancing the commercial value of the SUPA LOAF trademark within Uganda. The evidence demonstrates that the Applicant controlled the manufacturing process, managed product quality, undertook pricing decisions, developed customer relationships, expanded the market and assumed the operational and commercial risks associated with the business.

70. NGHL, on the other hand, was the legal owner of the trademark, granted the Applicant the legal right to use it and retained rights associated with ownership and registration of the trademark. Those matters are relevant and cannot simply be disregarded. Legal ownership alone, however, does not establish entitlement to a turnover-based royalty where the substantive value-creating functions are performed and controlled by another associated enterprise.

71. The issue before the Tribunal is therefore not whether the SUPA LOAF trademark is an intangible capable, in principle, of commanding remuneration. Nor is it necessary for the Applicant to prove that the trademark is "unique" before any arm's length remuneration can arise. The relevant question is whether the Applicant has demonstrated that the 2% royalty appropriately remunerated NGHL for the rights it provided and the functions, assets and risks attributable to it.

72. On the evidence before us, the Applicant has not done so. It has neither demonstrated substantive DEMPE functions performed or controlled by NGHL

sufficient to justify the 2% turnover-based royalty nor produced a reliable benchmarking analysis connecting that rate to NGHL's actual functional and risk profile.

73. We emphasise that this conclusion does not establish as a general proposition that a legal owner which performs limited functions can never be entitled to arm's length remuneration. The appropriate return, if any, depends upon the actual contribution made by that owner. In the present case, however, the Applicant bears the statutory burden of proving that the Respondent's assessment was excessive or should have been made differently. It has not produced a reliable alternative quantification of the arm's length remuneration attributable to the limited functions and rights demonstrated on the evidence.

74. Accordingly, while we do not accept that the mere absence of substantive DEMPE functions automatically establishes a nil value for legal ownership of an intangible, the Applicant has failed, on the evidence before the Tribunal, to establish that the Respondent's disallowance produced an excessive assessment or that a different quantified royalty deduction ought to have been allowed.

75. In the circumstances, the Respondent's transfer pricing adjustments regarding the trademark are upheld.

B. Whether the Respondent's uplift of the interest rates on intra-group loans was lawful?

76. The Applicant entered into intra-group loan arrangements with several related entities in Kenya and Tanzania and advanced funds to them to support their business operations. The total amount of the intercompany loans is approximately USD 2.2 million, with tenors ranging from 3 – 5 years. The interest rates were determined by reference to indicative market rates or prevailing commercial bank lending rates in Uganda at the time of lending. The rates applied during the audited period ranged from 4.6% to 10% per annum.

77. According to the Applicant, the loans advanced were unsecured and exposed the lender to credit risk, liquidity risk, and market risk, all of which were factored into the pricing of the interest rates applied. The Applicant's position is that the rates:

(i) Are consistent with rates observed in comparable uncontrolled transactions,

(ii) Are aligned with prevailing lending rates in similar jurisdictions, and

(iii) Were benchmarked against publicly available data, including central bank lending rates and financial market indicators.

78. On the other hand, the Respondent adjusted the interest rates applying a methodology that combines a risk-free rate, a risk premium, and an additional country risk premium. The Applicant argues that this approach duplicates the risk elements/factors already reflected in the risk premium applied. Further, the Applicant contends that the adjusted rates exceed prevailing market lending rates and do not reflect the economic reality of the transaction, to the extent that an independent borrower under comparable circumstances would not have agreed to borrow at such rates.

79. The Respondent's position is that the third-party facilities are not comparable uncontrolled transactions and are merely facilities relied upon as corroborative evidence of how independent lenders price USD facilities in practice. In addition, the third-party facilities differed from the related-party lending agreements in several respects.

80. In determining this issue, we took into consideration the following principles:

i. Options realistically available

81. Chapter X of the OECD TP Guidelines guides on the transfer pricing considerations for intragroup financial transactions. The fundamental principle underlying related party lending is the principle of "realistically available options" for both parties. Specifically, Para. 10.51 of the OECD Guidelines states:

"In considering the commercial and financial relations between the associated borrower and lender, and in an analysis of the economically relevant characteristics of the transaction, both the lender's and borrower's perspectives should be taken into account, acknowledging that these perspectives may not align in every case."

82. Furthermore, para. 10.53 provides:

The lender's perspective in the decision of whether to make a loan, how much to lend, and on what terms, will involve evaluation of various factors relating to the borrower, wider economic factors affecting both the borrower and the lender, and other options realistically available to the lender for the use of the funds.

83. The dispute before us is primarily premised on the Respondent's rejection of the Applicant's comparability analysis and both CUPs and the substitution of the same with a benchmarking study that the Respondent performed, which the Applicant contests.

84. From an arm's length perspective, the conditions of a related party transaction should be imposed in a comparable manner as if the transaction was made between independent parties under comparable circumstances.

85. A benchmarking study is generally needed to examine uncontrolled comparable transactions to identify the range of market interest rates that are comparable to the functions, assets and risk profile of the related party financial transaction. However, the "realistically available alternatives" principle is premised on the understanding that independent parties would enter into a potential transaction only after evaluating its terms and conditions and establishing that there are clearly no other possible alternatives that would make them better off in achieving their commercial objectives.

86. In other words, independent parties would not enter into an arrangement if it makes them worse off. Therefore, the best 'realistically available alternative' is the option that should be chosen.

87. Therefore, the question that should be addressed is what options were realistically available to the Applicant?

88. The Applicant defended its pricing by reference to central bank rates and Bank of Uganda foreign currency deposit rates and argued that the Respondent's adjusted rates exceeded those benchmarks. In other words, the Applicant's position is that one of the options realistically available to it was to deposit the funds in a foreign currency account. The Applicant presented a list of central bank lending rates for Kenya and Tanzania at paras 157–177 of the JTB for the years 2015–2023.

89. It is not clear at what point this evidence was presented to the Respondent. However, the Applicant's transfer pricing policy at pages 115 – 132 of the JTB does not contain any analysis of the current/fixed deposit option versus the intercompany lending option. Transfer pricing documentation should be contemporaneous – this means that it should demonstrate the arm's length pricing when the transaction occurred and not after the tax authorities asked. It also means that details are fresh and not reconstructed months/years later.

90. The Income Tax (Transfer Pricing) Regulations, 2016 require that TP documentation be prepared by the tax return filing date. In the present case, the only available TP documentation at page 116 of the JTB contains no analysis concerning the intercompany loans. The Applicant's TP documentation ought to have contained an analysis of the options realistically available to it and the outcome of the analysis ought to have informed the decision whether to lend to its related parties or to deploy the resources to more economically viable activities.

91. **In *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation* (2017)**, a leading authority on intragroup lending, the court firmly established the **"options realistically available" (ORA) concept** in financial transactions and held that a controlled party must choose the most economically rational alternative available to it. In that case, Chevron Australia borrowed from a related party at interest rates which the tax authority considered high and non-

arm's length. Chevron argued that it should be evaluated as a subsidiary, isolated entity and with no parental backing. The court ruled that an independent party in Chevron Australia's exact position would have considered the available option of using its parent group's strong credit standing to access much cheaper financing.

92. In the same vein, the Applicant ought to have considered whether it could have obtained more favourable economic outcomes from other options such as government securities, among others. However, the Applicant has not adduced evidence to this effect.

ii. The Applicant's comparability analysis

93. The Applicant advanced loans to various related parties to fund the borrowers' business activities. The loans were:
   (i) Denominated in USD
   (ii) Unsecured
   (iii) The tenor ranged from 3 - 7 years.

94. The Applicant adduced the following comparability data:

a. Loan offers from commercial banks (pages 149 – 156) of the JTB

95. The Applicant submitted offers from KCB Bank to Supaflo Flour Mills for overdraft facilities. The amounts in the offer are Kshs. 190,000,000 or USD 8,000,000. Furthermore, the loans were secured (page 154 of JTB).

96. We agree with the Respondent's position that the loan offer from KCB is not comparable to the intercompany loan between the Applicant and Supaflo Flour Mills. For example, the KCB offer is premised on a secured loan while the intercompany financing is unsecured. Furthermore, the intercompany loan agreement is dated 27 April 2018, while the KCB loan offer is dated 12 April 2022, indicating a four-year gap. The comparability analysis does not account for changes in the economic environment and the taxpayers' circumstances

over this period of time ***(see Chapter III, para. 3.4 of the OECD TP Guidelines on comparability analysis).***

97. In addition, there are significant variations in the quantum of the loan, with the intercompany lending indicating USD 500,000 (as per the intercompany loan agreement with Supaflo) and a further USD 200,000. The KCB loan offer is for Ksh. 190,000,000 or USD 8,000,000. These differences are material and cannot be wished away. The Applicant ought to have explained the extent to which the difference affected comparability, if at all, and if so, the adjustments that the Applicant made to account for the differences in comparison (if possible). The Applicant's transfer pricing documentation makes no mention of this.

b. Foreign currency deposits

98. The Applicant also relied on foreign currency deposits for comparability purposes. We also agree with the Respondent that deposits with a bank are materially different from unsecured lending because the degree of risk associated with bank deposits is significantly different from that of unsecured lending. Quotes are just indications of interest, not actual transactions - just like an "invitation to treat" is not a binding contract. Anyone can quote, but whether the deal is consummated is a different story altogether. Therefore, we find the comparability analysis performed by the Applicant unreliable for purposes of demonstrating whether its funding arrangements with its related parties were at arm's length.

iii. The Respondent's benchmarking study

99. On the other hand, the Respondent carried out a benchmarking study which took into consideration the USD risk-free rate, the Applicant's own 4% lending premium and a country risk premium for the borrower's jurisdiction. The Applicant argued that including the country risk premium amounted to double dipping, as this is already factored into the lending premium.

100. Ordinarily, the country risk premium (CRP) is implicitly or explicitly included in a lending premium. When lenders set loan interest rates, they build the macro-level risks of operating within a specific nation—such as sovereign default, currency devaluation, and political instability—into the total cost of credit. Therefore, adding a country risk premium to a lending premium would be inappropriate.

101. However, the present case should be evaluated on the totality of the evidence. For example, we have established that the Applicant's comparability analysis (as per its submissions) is flawed. Secondly, the Applicant's transfer pricing documentation addresses the intercompany loans in only three sentences:

"MBUL may provide or receive loans from other related parties. The interest rate will be based on indicative market rates using commercial bank lending rates in Uganda at the time of lending as reference rates."

102. The evidence before the Tribunal demonstrates that the Applicant advanced unsecured, multi-year USD loans to operating entities in Kenya and Tanzania. Such lending would ordinarily require an independent lender to consider borrower-specific credit risk, the absence of security, duration, currency, prevailing market conditions and relevant jurisdictional risks.

103. The rates adopted by the Applicant were not supported by contemporaneous borrower-specific credit analyses or reliable uncontrolled comparables. The Applicant's reliance upon bank deposits, general central-bank lending rates and materially different secured facilities does not establish what an independent lender would have charged the particular borrowers under comparable circumstances.

104. Non the less, to the extent that the Respondent's adjustment depends upon the proposition that a country risk premium must invariably be added to a general lending premium, we do not endorse that proposition as a universal transfer pricing methodology. Care must be taken to ensure that the same risk is not remunerated twice.

105. The question for purposes of this Application is whether the Applicant has proved that the assessment resulting from the Respondent's methodology is excessive or should have been made differently. The Applicant has not presented a reliable alternative arm's length range derived from sufficiently comparable uncontrolled transactions, borrower-specific credit analysis or another appropriately supported transfer pricing method from which the Tribunal could conclude, on a balance of probabilities, that the rates substituted by the Respondent resulted in excessive taxable interest income.

106. We therefore find that the Applicant has not discharged the burden imposed upon it by section 19 of the Tax Appeals Tribunal Act in respect of the financial transactions.

107. For avoidance of doubt, our conclusion does not amount to a general endorsement of a formula consisting in every case of a risk-free rate plus a lending premium plus a separate country risk premium. The reliability of such an approach must be determined on the facts of each case and care taken to avoid duplication of risk. Our conclusion in the present application rests upon the Applicant's failure, on the evidentiary record before us, to demonstrate that the assessment was excessive or to establish a sufficiently reliable alternative arm's length result.

108. In the circumstances, the Respondent's transfer pricing adjustments relating to the intercompany lending are upheld.

C. Whether the Respondent is entitled to retain the Withholding Tax and VAT remitted on the royalty

109. The Applicant accounted for and remitted withholding tax in respect of royalty payments made to NGHL. It argues that once the royalty deduction was disallowed for income tax purposes, the legal basis for withholding tax on the corresponding payments ceased to exist.

110. The transfer pricing adjustment under section 116 concerns the determination of the Applicant's chargeable income by reference to arm's length conditions. A restriction or disallowance of a deduction in computing the Applicant's chargeable income does not, by itself, establish that the underlying payment was never made or that its character in the hands of the recipient is retrospectively extinguished.

111. Withholding tax is imposed on royalty income derived by a non-resident from a source in Uganda. The legal incidence of that tax falls on the non-resident recipient, with the Ugandan payer merely acting as a withholding agent. Accordingly, the subsequent disallowance of the royalty expense in the hands of the Applicant under the transfer pricing provisions does not alter the character of the payment as royalty income earned by the non-resident, nor does it invalidate the Respondent's right to levy withholding tax on that income.

112. The transfer pricing adjustment merely determines the amount deductible by the Applicant for income tax purposes by substituting the arm's length consideration for the actual consideration paid.

113. The withholding tax lawfully withheld and remitted on behalf of Northgate Holdings Ltd does not become refundable merely because the underlying expense is subsequently adjusted or disallowed.

114. In the case of ***Goal Relief Development Organisation, CA No. 50 Of 2023***, Hon. Justice Ocaya Thomas O.R stated that:

"I agree entirely with the dicta in The Elma Philanthropies (EA)Ltd v URA TAT Application No. 46 of 2019 in which the court held that the categorization/booking of a transaction by a party did not change its character for tax purposes. I agree with the Respondents that the payments for the imported licenses constituted international payments and, more specifically, royalties in respect of which withholding tax was applicable and correctly assessed.

115. The court further stated that:

"Section 5(1)(c) of the VAT... imposes the liability to collect VAT on imported services on the recipient of those services. This is what is colloquially referred to as VAT Withholding or Reverse VAT.

Having held as I have above on the question of the computer licenses above, it follows that VAT was applicable on the impugned transactions and should have been accounted for by the Appellant. Accordingly, the VAT assessment on the above-mentioned transactions was correctly issued by the Respondent."

116. Furthermore, Article 12 of the Uganda-Mauritius Double Taxation Agreement provides:

"1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State".

The above article permits Uganda to tax royalties arising in Uganda and paid to a resident of Mauritius.

117. Further, Article 12(6) of the DTA provides:

"6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention".

118. The above expressly provides that where, because of a special relationship between the parties, the royalty exceeds the amount that would have been agreed upon at arm's length, the treaty benefits apply only to the arm's length portion, while the excess remains taxable in accordance with the domestic laws of each Contracting State. Thus, the treaty itself contemplates that a transfer pricing adjustment does not extinguish Uganda's taxing rights over the royalty payment.

119. Any question whether the recipient is entitled to treaty relief or a refund in respect of an amount exceeding the arm's length consideration must be determined in accordance with the applicable provisions of the Income Tax Act and the Double Taxation Agreement, including the character and treatment of the excess payment and the statutory requirements governing refund claims.

120. In the present application, the Applicant was the withholding agent and has not established a legal basis upon which the withholding tax borne in respect of NGHL's income becomes refundable to the Applicant merely because the Applicant's corresponding deduction has been adjusted under section 116.

121. Consequently, the withholding tax was lawfully imposed under the Income Tax Act and the DTA. The Applicant's claim on this issue therefore fails.

Value Added Tax

122. The Applicant also seeks a refund or credit of VAT accounted for in respect of the imported services arising under the Trademark User Agreement.

123. VAT and income tax operate under distinct statutory regimes. The liability to account for VAT on imported services arises from the relevant supply and receipt of those services in accordance with the Value Added Tax Act. A subsequent transfer pricing adjustment affecting the deductibility or arm's length quantum of expenditure for income tax purposes does not, without more, establish that the underlying supply did not occur.

124. In the present case, the Applicant used the SUPA LOAF trademark pursuant to the Trademark User Agreement and made payments under that arrangement. The transfer pricing adjustment did not rescind the agreement or establish that no right or service had been supplied to the Applicant.

125. The Applicant has not demonstrated that the VAT was paid in error, was not lawfully due at the relevant time, or otherwise satisfies the statutory conditions for refund merely because the corresponding royalty deduction has been disallowed for income tax purposes.

126. Furthermore, the Respondent states that the VAT on imported services was allowed as a deductible business expense in determining the Applicant's chargeable income. On the evidence before us, the Applicant has not demonstrated an additional statutory entitlement to a refund or credit.

127. The Applicant's claim in respect of VAT therefore fails.

Remedies and orders

128. The Tribunal finds that the Applicant has not discharged its burden of proving that the royalty and interest adjustments were excessive or should have been made differently. The Applicant has also failed to establish any legal entitlement to a refund or credit of the withholding tax and VAT remitted in respect of the royalty payments.

129. Consequently, the Tribunal makes the following orders:

(i) The transfer pricing adjustments and resulting additional income tax assessments are upheld.

(ii) The Applicant's claim for a refund or credit of Withholding tax and VAT is dismissed.

(iii) Costs are hereby awarded to the Respondent.

It is so ordered

Dated at Kampala this **21st** day of **August** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. STELLA NYAPENDI CHOMBO
MEMBER

HON. REBECCA PROSCOVIA NAMBI
MEMBER