

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 141 OF 2023

NDUGU BENSON & ISINGOMA EDGAR.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE
MRS. KABAKUMBA MASIKO

RULING

This ruling is in respect of an application challenging the Respondent's treatment of insurance premiums paid in respect of Group Life Accident (GLA) as a disallowed deduction under section 22 (2) (i) of the Income Tax Act.

1. Background Facts

The Applicants are a firm of Certified public accountants offering audit, tax, and advisory services in Uganda. In 2018, the Respondent carried out an audit for the period 1 September 2013 to 31 August 2018 covering VAT and Income Tax. The Respondent disallowed payments made by the Applicant relating to Group Personal Accident (GPA)/ Group Life Accident (GLA) amounting to Shs. 603,980,688.

The Applicant objected to the disallowed GPA/GLA payments. The Respondent issued an objection decision disallowing the objection.

The Applicant being dissatisfied with the objection decision filed TAT Application No. 69 of 2019 which was later withdrawn. On 16 January 2023, the Applicants requested for Alternative Dispute Resolution of the matter and the Respondent issued a decision in which it allowed for income tax purposes the Applicant's insurance premiums paid for

GPA and disallowed Shs. 301,990,344 that relates to insurance premiums paid in respect of Group Life Accident (GLA) which is now the dispute before the Tribunal.

2. Representation

The Applicant was represented by Mr. Charles Bethel Muwanguzi and Mr. Derrick Nahumuza while Mr. Donald Bakashaba appeared for the Respondent.

3. Issue for determination

The issue for determination is whether the Applicant is liable to pay the tax assessed.

Mr. Kyambadde Peter, a tax partner of the Applicant, stated in his witness statement that the Applicants are Partners of a firm of accountants offering audit, tax and advisory services. He stated that as part of its risk mitigation mechanism, the Applicant acquires Group Personal Accident (GPA) and Group Life Assurance (GLA) for its employees.

He testified that the Respondent carried out an audit on the Applicant for the period 1 September 2013 to 31 August 2018 and issued assessments in respect of VAT and Income Tax. The Applicant objected and the Respondent disallowed GLA/GPA premiums that are payments made in respect of life insurance.

Mr. Kyambadde Peter testified that the premium paid for GLA is a business expense that should be allowed for tax purposes because it is short term in nature. Where the Applicant does not renew or pay premiums for a given year, the GLA policy expires, and employees previously covered would not be entitled to a benefit even though the policy was in place and fully paid in the previous year.

Mr. Kyambadde Peter testified that unlike a typical life insurance cover where the insured or their nominee benefits from the policy at a time, where the premium paid out is a guaranteed saving with an expected return; the compensation under the Applicant's GLA policy only arises if the risk insured materializes and there is no benefit to the employees at the point of expiry of the GLA insurance policy.

During cross examination, the witness stated that GLA enhances a group of people. The risk is in cases of accident incapacity of an employee or in case of death and this policy is different from medical insurance, but both are on the life of employees.

During re-examination, he testified that the nature of this policy, is that premium is paid on annual basis to cover the risks and paid annually at the expiry of the year (period). If the risks covered have not materialised, no benefit accrues to any of the people covered. He likened it to car or home insurance whereby if the risk does not materialise at the expiry of the period, the policy lapses. Death risks are part of the risks the insurance policy covers. The payments cover risks to the life of employees as well as the partners of the Applicant.

Ms. Agnes Busingye, an Officer in the Respondent's Objections Unit testified that the Respondent reviewed the group insurance policy document and pursuant to Section 22(2)(i) of the Income Tax Act, issued her objection decision disallowing the group life insurance expense. The basis of objection decision was due to the disallowed Group Accident Premium of Shs. 603,980,688 treated as non-allowable deduction. Consequently, half of the premium expense of Shs. 301,990,344 was adjusted as an allowable deduction and the balance of Shs. 301,990 was disallowed as it relates to Group Life Assurance premium.

During Cross examination, the witness confirmed that she is not aware that insurance policies whose period does not exceed five years are categorized as short-term insurance policies. She stated that the policy does not separate what is Group Life Assurance or Group personal accident. She stated that from the debit note in the trial bundle, she saw UAP Life Insurance as the insurance company which provides life insurance business.

During re-examination, the witness stated that the beneficiaries of the Life Insurance are the employees of KPMG. She testified that the total premium for group personal accident and group life insurance was Shs 603,980,323. Half of the total amount was allowed leaving a balance of Shs, 301,990,344 which was treated as a non-allowable deduction for tax purposes.

4. Submissions of the Applicant

The Applicant submitted that premiums paid to an insurer for its GLA are allowable deductions in accordance with Section 22 (1) (a) of the Income Tax Act. All losses and

expenditures incurred by a person during the year of income are allowed as a deduction to the extent to which they were incurred in the production of income.

Section 22 (1) (a) of the Income Tax Act provides:

“(1) Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction -

(a) All expenditures and losses incurred by the person during the year of income to the extent to which the expenditures and losses were incurred in the production of income included in the gross income”.

The Applicant relied on the case of ***Uganda Revenue Authority vs Mukwano Enterprises Limited (HCCA No. 55 of 2019)***, where the High Court held:

“Section 22 (1) of the ITA allows a taxpayer, in the course of tabulating his or her chargeable income, to deduct all expenditures and losses incurred by him or her during a year of income to the extent to which those expenditures or losses were incurred in the production of his or her gross income”.

The Applicant submitted that it is not in dispute that the expenditure was incurred during the year of income and included in the Applicant's gross income. The expenditure was also incurred in the production of income.

The Applicant submitted that in the case of ***Sub Nigel Ltd vs Commissioner for Inland Revenue 15 SATC 381***, it was held that payments made towards insurance companies for premiums are expenditures incurred in the production of income. The Court stated

“The whole raison d'etre of the Company is to earn profits, and in taking out these policies it was endeavoring to maintain its profits by making provision against loss.... Now, was the act entailing the expenditure of the amounts paid by way of premium performed for the purpose of earning income? In my opinion the answer to this question is in the affirmative. The mere fact that no income has actually resulted is, in my view, irrelevant: the purpose was to obtain income on the happening of a fire which would prevent the carrying on of income-producing operations...”.

The Applicant submitted that the main contention of the Respondent is that premium contributions made by the Applicant under GLA are life insurance in nature and therefore in line with Section 22 (3)(i) of the Income Tax Act are disallowed for income tax purposes.

Section 22 (3) (i) provides:

"Except as otherwise provided in this Act, no deduction is allowed for –

(i) a premium or similar payment made to a person carrying on a life insurance business on the life of the person making the premium or on the life of some other person"

The Applicant further cited Section 16 (3) of the Income Tax Act which provides:

"Life insurance business" means business of any of the following classes -

- (a) effecting, carrying out and issuing policies on human life or contracts to pay annuities on human life;*
- (b) effecting, carrying out and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequences of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from taking effect or are expressed to be so terminable before the expiry of such period only in special circumstances specified in the contract; or*
- (c) Effecting, carrying out and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates or otherwise, where, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insurer in the future, not being such contracts as fall within paragraphs (a) and (b)".*

The Applicant submitted that the premiums paid by the Applicant for GLA do not fall within the meaning of life insurance business under Section 16 (3) of the Income Tax Act. The Applicant addressed the sections as follows:

(i) Section 16 (3) (a)

The Applicant submitted that under this Section of the Income Tax Act, life insurance business includes effecting or carrying out and issuing policies on human life or contracts to pay annuities on human life.

The Applicant submitted that the Applicant's policy is contingent on the insured person being in service at the time of the risk materializing. For example, the policy under the First Schedule while defining the Life Assurance Benefit states:

"In the event of death of the member while in service with the employer prior to terminal death..."

The policy further provides under clause 7:

"In the event of a member's death while in the service of the employer before retirement..."

The Applicant submitted that the beneficiary/grantee must be in the service of the employer and before retirement or terminal death. This is distinct from life insurance provisions that solely provide for benefits without a pre-condition. Indeed, where an insured ceases to be in the service of the employer, they cannot be entitled to the benefits provided for in the Applicant's GLA policy.

The Applicant further submitted that the GLA policy taken out by the Applicant is issued to the group of employees of the Applicant and not on the individual human life of any employee. On Page 2 of the Applicant's GLA/GPA Insurance Policy, it is provided:

"all persons in service of the employer who become members of the scheme."

Once an employee ceases to be a member of the Group, the Applicant does not benefit from the policy even if the risk assured materializes. Therefore, the insurance policy is not on the human life of individual members but on the group of employees.

The Applicant submitted further that although Section 16 (3) (a) of the Income Tax Act provides that effecting, carrying out, and issuing policies on human life or contracts to pay annuities on human life are a reference to life insurance business, this must be properly interpreted. Medical insurance premiums paid by employers are allowable for income tax purposes. However, medical insurance is taken out on human life. Similarly, a workman's compensation premium is allowable for income tax purposes, however it is issued on human life, and GLA is an enhanced workman's compensation policy.

The Applicant further submitted that under a typical life insurance scheme, the beneficiary is assured to benefit even in circumstances where the risk has not materialized by the time the insurance policy expires. Under GLA policy, the benefit is only applicable where

the employee is still employed with the Applicant. Where the employee resigns from the Applicant, he or she is not entitled to any benefit in these circumstances.

The Applicant submitted that if the Applicant does not renew or pay premiums for a given year, the GLA policy expires and employees previously covered would not be entitled to any benefit even though the policy was in place and fully paid in the previous year. Therefore, the Applicant's insurance policy is short-term in nature.

(ii) Section 16 (3) (b)

The Applicant submitted that under this Section, insurance contracts are affected against the risk of sustaining injury or dying as the result of an accident or becoming incapacitated in consequence of disease for a period of not less than five years.

Whereas the policy covers injuries, death because of an accident and incapacitation as a consequence of disease, it does not fit within the provisions of Section 16 (3) (b) above because it is a short-term insurance policy that covers a period of one year as opposed to 5 years indicated in the above provision.

The Applicant submitted that under exhibit A7 of the Joint Trial Bundle, the debit notes clearly demonstrate that the GLA/GPA cover for the employees is for a period of one year.

(iii) Section 16 (3) (c)

The Applicant submitted that under this provision, an insurance contract is entered into between an insured and an insurer, and in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insured in the future.

The premium paid under Section 16 (3) (c) is a saving made with a guaranteed expected return. This is regardless of whether the risk has materialized or not. Where the five years lapse, and the insured has been paying premiums to the insurer, but the risks covered have not materialized, the insured would still be entitled to a return from the insurer which is not the case under the Applicant's GLA scheme.

The Applicant submitted in the present case, upon expiry of the policy, the beneficiaries are not entitled to any benefits. In contrast, for life insurance policies covered by Section 16 (3) (c) of the Income Tax Act, the insured pays premiums for only one year under a

policy which is five years, the insured is entitled to a prorated payment to cover for the premiums the insured made during the life time of the insurance policy, regardless of whether the risk materialized or unlike the Applicant's GLA policy where the risk must materialize. The Applicant submitted that GLA policy does not fall within the ambit of Section 16(3) (c) of the Income Tax Act.

Considerations under the Workers Compensation Act

The Applicant further noted that the Applicant's GLA/GPA insurance policy is an extension of the workers' compensation insurance covered under the Workers' Compensation Act.

Section 3 of the Worker's Compensation Act provides:

"(1) If personal injury by accident arises out of and in the course of a worker's employment, the injured worker's employer shall be liable to pay compensation in accordance with this Act.

(2) The employer shall not be liable in respect of an injury which does not either -

(a) Result in permanent incapacity; or

(b) Incapacitate the worker for at least three consecutive days from earning full wages at the work at which he or she was employed.

(6) Compensation shall be payable under this section whether or not the incapacity or death of the worker was due to the recklessness or negligence of the worker or otherwise.

(7) Compensation in cases of permanent incapacity or death shall, in principle, be paid in the form of periodic payments; otherwise, they may be awarded in lump sums as provided under this Act".

The Applicant submitted that the risks insured are covered under the Worker's Compensation Act. The Applicant further submitted that, since premium paid in respect of workers compensation insurance is an allowable deduction for income tax purposes, premium paid in respect of GLA which is an enhancement of workman's compensation insurance, should also be allowable for income tax purposes.

5. The Submissions of the Respondent

The Respondent submitted that in interpretation of tax statutes and provisions like those cited herein, it is settled law that Courts should apply strict interpretation and not look at

the intent but use the literal meaning of words and phrases. In the case of **Cape Brandy Syndicate V IRC (1921) K.B 64** where Rowlatt J held:

"In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used".

The Respondent submitted that Section 22 (3) (i) of the Income Tax Act, provides:

"(3) Except as otherwise provided in this Act, no deduction is allowed for-

(i) a premium or similar payment made to a person carrying on a life insurance business on the life of the person making the premium or on the life of some other person".

The Respondent submitted that under section 16(3), the term "life insurance business" means business of any of the following classes—

(a) effecting, carrying out and issuing policies on human life or contracts to pay annuities on human life;

(b) effecting, carrying out and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from taking effect or are expressed to be so terminable before the expiry of such period only in special circumstances specified in the contract; or

(c) effecting, carrying out and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates or otherwise, where, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insurer in the future, not being such contracts as fall within paragraph (a) or (b); and

"short-term insurance business" means any insurance business, including general takaful, which is not a life insurance business or family takaful;

The Respondent submitted that the **Black's Law Dictionary 11th Edition**, defines "life insurance" to mean:

“an agreement between an insurance company and a policyholder to pay a specified amount to a designated beneficiary on the insured's death. Also means life assurance.”

Nature of Transaction

The Respondent submitted that the Applicants do not dispute the fact that life insurance payments are not allowable deductions as per the income tax Act. All they dispute is that their payments are not for life Insurance. It is also not in dispute that the insurance company (UAP Insurance Uganda Limited) to whom the Applicant makes payments to carries on a life insurance business.

Premium or similar payment

The Respondent submitted that according to Annexure A8 of the Supplementary Trial Bundle, it is clear that there are payments to be made as consideration for the Policy. Annexure A7 of the Joint Trial Bundle at pages 39-48, shows in the debit notes issued by UAP to the Applicant that premium is paid for Group Life Assurance.

Made to a person carrying on a life insurance business

The Respondent submitted that the premium paid above was made to UAP, it is clear from the Policy and debit notes that UAP carries on a life insurance business and the risks covered in the debit notes in Annexure A7 include death.

On the life of the person making the premium or on the life of some other person

The Respondent submitted that in this case it is possible that the premium was also paid on the lives of the two partners. However, the Applicant's Witness AW1, during cross examination stated that as partners they had their own different policy.

The Respondent submitted that the Policy shows that it has lives that are assured, these are the members who upon their death benefits are granted by the Insurance Company. This benefit is called the Life Assurance benefit, and it is paid to the grantees who hold it in trust for the family members, nominees or legal representative to whom this benefit is payable.

The Respondent submitted that therefore, in this case upon the demise of the employee being a member of the scheme, the insurance Company pays the sum assured as per the debit note to the Applicant or grantee who then pays the member's family, nominee or legal representative. This is a benefit for the member and not Applicant as AW1 tried to imply in his testimony. This benefit is held in trust for the person expressed by the member to be payable upon the member's death.

Strict interpretation of exclusions and exceptions

The Respondent submitted that the Applicant is trying to add the transaction onto the list of allowable deductions in the name of interpreting Section 22 of the Income Tax Act. This is erroneous as the law so establishes that it is not the duty of the Court/Tribunal to grant or confer tax exemptions, that being a duty solely reserved for the legislature.

The Respondent submitted that it is the law that any ambiguity in a taxing statute should tenure to the benefit of the taxpayer, but any ambiguity in the exemption clause or exemption notification must be conferred in favor of revenue and such exemption should be allowed to be availed only to those tax payers are who specifically spelt out in the statute. ***See Comm of Customs (Import), Vs. M/S. Dilip Kumar and Company on 30 July 2018, Supreme Court Civil Appeal No. 3327 of 2007.***

6. Submissions of the Applicant in rejoinder

In reply, the applicant reiterated its earlier submissions and further submitted that the nature of its policy expires after a period of one year and therefore short term in nature. The Applicant submitted that the premiums paid for GLA were in respect of short-term insurance and not towards life insurance business as defined by Section 16 (3) of the Income Tax Act.

The Applicant further submitted that the fact that the premium is paid to UAP Insurance Uganda Limited does not necessarily make the policy one of life insurance which would render Section 16 (3) of the Income Tax Act redundant.

The Applicant submitted that whereas it's not in dispute that UAP Insurance Uganda Limited carries out life insurance business, life insurance business is defined under

Section 16 (3) of the Income Tax Act. The definition of life insurance business does not cover short term insurance. It's the Applicant's submission that its policy is one that is short term in nature and regardless of who is paid (as to whether they carry on a life insurance business or not), it is allowable for tax purposes as submitted earlier.

The Applicant submitted that the Applicant's GLA policy also covers other forms of risks including accidents, illness, natural risks, critical illness, permanent total disablement, and temporary total disablement. This is not in line with typical life insurance policies which solely provide for insurance of human life or annuity on human life without covering any other aspects.

On the life of a person making the premium or on the life of some other person

The Applicant submitted that where a member dies after retiring from employment of the Applicant, they cannot obtain any benefit from the policy. Therefore, the policy is not a life insurance policy or a policy to pay annuities for human life. Besides, the policy is taken out by members of a group of employees and not the individual human life of the employees. Additionally, this policy is only premised on death as a risk.

The Applicant reiterated that the provision of death in this policy does not necessarily make it a policy on human life as covered under Section 16 (3) of the Income Tax Act but rather provides it as a risk that would entitle a beneficiary's representatives a compensation upon its materialization.

Therefore, the Applicant premiums do not fall within the ambit of Section 22(3)(i) and ought to have been allowed as a deduction in accordance with Section 22 of the Income Tax Act.

The Applicant submitted that the deductions are allowed under Section 22 of the Income Tax Act. The Applicant reiterates that the Applicant's policy is a short-term insurance policy that entitles them to deduction. This is because the Applicant's policy is taken out on an annual basis and is paid for a period of one year.

This is different from typical life insurance covers where the insured or their nominee must benefit from the policy as the premium paid out is a guaranteed saving with an expected

return, compensation under the Applicant's GLA policy only arises if the risk insured materializes.

Additionally, the Applicant's policy does not guarantee a future payment in return for one or more premiums paid to the insurer.

Therefore, the Applicant was able to demonstrate that their policy is a short-term policy whose premium payments are allowed as a deduction under the Act. Section 22(3)(1) disallows only premiums paid for life insurance businesses and not short-term insurances. The nature of the Applicant's policy is a short-term policy whose premium payments ought to be allowed as a deduction.

7. The determination by the Tribunal

Having heard and read the submissions of the parties, this is the ruling of the Tribunal.

The Applicants are a firm of Certified public accountants offering audit, tax, and advisory services in Uganda. In 2018, the Respondent carried out an audit and disallowed payments made by the Applicant relating to Group Personal Accident (GPA)/ Group Life. After Alternative Dispute Resolution, the Respondent issued a decision allowing income insurance premiums paid for GPA and disallowed Shs. 301,990,344 relates to insurance premiums paid in respect of Group Life Accident (GLA).

The issue before the Tribunal is whether premiums paid in respect of group life assurance is an allowed deduction under the income tax act.

The law that provides for allowable deductions is provided for under Section 22 (1) (a) of the Income Tax Act which provides:

"(1) Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction -

(a) All expenditures and losses incurred by the person during the year of income to the extent to which the expenditures and losses were incurred in the production of income included in the gross income.

However, not all expenditures that are incurred by a person during are allowable deductions for income tax purposes even where such expenses were incurred in the production of income included in gross income.

For example, section 22 (3) of the ITA contains a list of expenses that are not allowable for income tax purposes.

Of particular relevance to the dispute at hand is section 22 (3) (i) which provides:

"(3) Except as otherwise provided in this Act, no deduction is allowed for-

(i) a premium or similar payment made to a person carrying on a life insurance business on the life of the person making the premium or on the life of some other person."

Section 16(3) defines "life insurance business" as:

"Business of any of the following classes—

(a) effecting, carrying out and issuing policies on human life or contracts to pay annuities on human life;

(b) effecting, carrying out and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from taking effect or are expressed to be so terminable before the expiry of such period only in special circumstances specified in the contract; or

(c) effecting, carrying out and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates or otherwise, where, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insurer in the future, not being such contracts as fall within paragraph (a) or (b); and

In addition to the above, we also find the definition of "life insurance" in the Black's Law Dictionary (9th Edition) to be instructive. The term is defined to mean:

"An agreement between an insurance company and the policyholder to pay a specified amount to a designated beneficiary on the insured's death"

In other words, the demise of a person triggers a payment by an insurance company in respect of a life insurance policy.

The Applicants have argued that the GLA policy is not a life insurance policy. Their position is that their policy is a short term insurance policy.

A short term insurance business is defined by section 16 (3) of the ITA to mean:

“any insurance business...which is not a life insurance business...”

Since from the above definition, any insurance business that is not a life insurance business is a short term insurance, we must determine whether the Applicants' GLA policies fall within the definition of life insurance.

Section 16 (3) provides for three definitions of life insurance. One need only fall in one category.

Going by the first definition of life insurance as per section 16 (3) (a) of the ITA, the following ingredients must be present for a policy of insurance to be treated as a life insurance policy for income tax purposes:

- (i) There should be a policy;
- (ii) On human life

Presence of a policy

In the present case, the Applicants entered into a Group Term Assurance Policy on 31 January 2012 as exhibited at page 1 -11 of the Applicant's supplementary trial bundle. The policy has since then been renewed by way of endorsements and debit notes as explained by the Applicant in a letter to the Tribunal exhibited as A9 at pages 12 of the Applicant's supplementary trial bundle.

Therefore, there is no doubt that the first condition i.e. that there exists a policy.

Whether the policy is on human life

To determine whether the policy concerns human life, we must study the terms of the policy to understand the risks that were underwritten.

According to the policy, the insured event is indicated as:

“Death, permanent total disablement, temporary total disablement, medical expenses including hospitalisation.”

The policy states the following concerning death:

“Life Assurance Benefit – in the event of death of a member while in service with the employer prior to the terminal date, a life assurance benefit of 30 months' salary is payable.”

Further, clause 7 of the policy states what will happen in the event of the death of a member. Specifically, it states:

“In the event of a member's death while in the service of the Employer before retirement, and subject to the exclusions herein, the Life Assurance benefit would be payable to the Grantees....the Life Assurance benefit may be paid to one or more...of a class consisting first of the member's wife, children, parents, grandparents and spouse or issue....”

Exclusions to the policy include:

“Suicide or intentional injury.”

Based on the above, the Applicants' policy covers both death and disability, whether permanent or temporary.

However, it is clear that the policy is in respect to human life to the extent that it provides for a payment upon the death of a member.

The Applicant has argued that their policy does not fit squarely within the definition of life insurance because:

- (i) It is renewable annually;
- (ii) Members (employees) only benefit from the policy only for as long as they remain employees of the Applicants; and
- (iii) The policy is not issued in respect to a specific human life but to a group of employees

The above considerations do not negate the existence of a life insurance policy as defined by section 16 (3) of the ITA.

In the present case, it does not matter that the policy is issued in respect to a group of employees – what matters is that each individual employee is entitled to a payment upon their death provided that they are at the time employees of the Applicants.

Further, the restriction to employees of the Applicants is naturally expected as there is no reason why the Applicants would offer life insurance to persons who are strangers to them.

Therefore, the above considerations are an attempt by the Applicants to read into section 16 (3) exclusions that have not been provided for. If the Legislature intended for such exclusions to apply, they would have clearly legislated for the same.

To this end, we are guided by the decision in ***Uganda Revenue Authority v Siraje Hassan Kajura SCCA No. 09 of 2015***, where the Supreme Court stated:

“It is a trite principle of taxation that in tax matters, one has to look at the language of the tax statute to determine the taxability of the taxpayer.”

There is no language in section 16 (3) of the ITA that subjects the definition of life insurance to the exclusions advanced by the Applicants.

The other definitions in section 16 (3) (b) and (c) of the ITA

We have stated that the policy combines aspects of life insurance and other aspects and we must look at the others within the context of section 16 (3) (b) and (c).

The second definition of life insurance concerns:

“...issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five years.”

Therefore, where the risk insured concerns personal injury or death as a result of an accident or becoming incapacitated, that too falls within life insurance, except that the contract must not be less than five years.

In the present case, the Applicants' policy also covers permanent total disablement and temporary total disablement. However, in view of the fact that the policy is annual, it falls short of the five-year requirement. Therefore, that aspect of the policy that concerns disablement can appropriately be classified as short-term insurance.

The final definition of life insurance concerns:

"...issuing of insurance whether effected by the issue of policies, bonds, endowment certificates or otherwise, where, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insurer in the future..."

The above definition covers policies that are akin to saving schemes where premiums paid entitle the holder to an amount or amounts payable in the future.

There is nothing in the Applicants' policy that resembles such schemes.

In conclusion, we have established that the Applicants' policy covers aspects of both life insurance and short-term insurance. The next step therefore is to determine how much of the premiums should be attributed to life insurance and consequently should be treated as non-deductible for income tax purposes.

Allocation of the premium between life and short-term insurance

In view of the fact that the Applicant holds one policy that covers both aspects mentioned above, the Respondent treated 50% of the premiums as allowable and the other 50% as non-allowable on account of the fact that they relate to life insurance.

However, there was need for a more logical approach towards the allocation.

A guiding point can be found in the compensation attributed to each respective insured event:

- (i) Death – 30 months' earnings
- (ii) Permanent total disablement – 30 months' earnings plus 25% of 30 months' salary
- (iii) Temporary disablement – Actual weekly earnings up to 50% of 96 months' salary (effectively, 48 months)
- (iv) Medical expenses – maximum of Shs. 13,025,400 per person per year

Therefore, going by the above compensation, it is clear that a 50:50 split of the premium is not representative of the allocation. Therefore, a more logical approach would be to allocate the premium, as far as is possible, proportionally to the compensation.

While the allocation of the premium cannot be scientifically computed to a decimal point, the compensation split indicates that earnings attributed to death are less than 50% as they are lower than the combined earnings attributable to permanent and temporary total disablement.

Therefore, on the whole, we would allocate 75% of the premium to short term / non-life insurance as tax deductible and 25% to life insurance as non-allowable for income tax purposes. This would be a fairer allocation of the premium between life and short-term insurance.

In the circumstances, the Tribunal orders as follows:

- (i) Part of the Applicants' policy covers life insurance and the related premium is not an allowable deduction for income tax purposes;
- (ii) The assessment of Shs. 301,990,344 is hereby set aside and the Respondent should recompute the liability in line with the Tribunal's guidance above;
- (iii) The revised liability should be computed by 30 July 2025; and
- (iv) 75% of the costs are awarded to the Respondent.

Dated at Kampala this 17th day of July 2025.



MS. CRYSTAL KABAJWARA



**MS. CHRISTINE KATWE
MEMBER**



**MS. KABAKUMBA MASIKO
MEMBER**