TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO.9 OF 2024

ORYX ENERGIES UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. GERALD AGABA KAKIMA
MS. CHRISTINE KATWE

RULING

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's imposition of VAT and withholding tax on throughput fees, which the Respondent treated as imported services.

II. Background Facts

2. The Applicant's principal business in Uganda is the selling and distribution of petroleum products and other related products. These include Automotive Gas Oil (AGO) or Gasoil, Petrol Motor Spirit (PMS) or petrol, lubricants, and fuel oil.

3. The Respondent conducted a comprehensive audit of the Applicant's tax declarations and issued assessments comprising the following:

(i) Income Tax of Shs. 7,254,476,676,

(ii) Value Added Tax (VAT) of Shs. 1,881,084,324

(iii) Pay As You Earn (PAYE) of Shs. 112,727,926

(iv) Rental Tax of Shs. 119,357,663, and

(v) Withholding Tax (WHT) of Shs. 1,085,897,028.

4. The Applicant objected to the assessments and the Respondent issued its Objection Decisions partially allowing the objections. The Applicant, being dissatisfied with certain aspects of the Objection Decisions, filed this Application.

5. Pursuant to the Tribunal-guided mediation conducted by the parties, a Partial Consent Settlement was reached, by which significant portions of the disputed tax were conceded to and paid by the Applicant, while the remaining disputes were referred to this Tribunal for determination.

III. Issues for determination

6. The parties invited the Tribunal to determine the following issues:

(i) Whether the Applicant is liable to pay the VAT liability of Shs. 188,019,703

(ii) Whether the Applicant is liable to pay the outstanding WHT liability of Shs. 190,221,276, which relates to undeclared WHT on deemed throughput miscellaneous payments and other services?

(iii) Whether the Applicant is liable to pay the outstanding income Tax liability of Shs. 119,971,443, which relates to overstated related party loans, bonus on provision and other expenses that were partially allowed?

(iv) What remedies are available to the parties?

IV. Representation and evidence

7. At the hearing of the Application, Mr. Blaise Okwero Alenyo, Ms. Shillah Nambi Balaba, Ms. Fancy Gender Laker, Mr. Muhammed M Ssempijja (EY Partner) of Ernst and Young represented the Applicant, while Ms. Diana Mulira represented the Respondent.

8. The Application is supported by the affidavit of **Ms. Phiona Achan Aisu**, the Finance Manager of the Applicant company, who depones that she is conversant with the facts of the dispute. She states that the Applicant, **Oryx Energies Uganda Limited, is a company incorporated in Uganda and a wholly owned subsidiary of Oryx Energies SA of Switzerland.** She further states that Addax Energy SA, also incorporated in Switzerland, is an affiliate within the Oryx Energies Group and serves as the Group's trading and bunkering arm responsible for sourcing petroleum products for supply to the Applicant and other downstream entities. Pursuant to a Supply Agreement dated 19 January 2018, Addax Energy SA supplied petroleum products to the Applicant.

9. She also states that the Respondent conducted a comprehensive tax audit of the Applicant. Following the audit, the Respondent issued an Audit Management Letter dated 13 April 2023 together with assessments for Corporate Income Tax, VAT, PAYE, Rental Tax and Withholding Tax. Dissatisfied with the assessments, the Applicant lodged objections and subsequently paid the tax liabilities it conceded were due.

10. She further states that the Respondent partially allowed the Applicant's objections by reducing the Corporate Income Tax, VAT and Rental Tax assessments and wholly allowing the PAYE objection. However, the Respondent maintained the Withholding Tax assessment and the VAT assessment on imported services. Being dissatisfied with the objection decisions, the Applicant filed the present Application before the Tribunal challenging the residual assessments.

11. She states that during Tribunal-guided mediation, the Applicant conceded and paid additional liabilities relating to Corporate Income Tax, Withholding Tax, VAT and Rental Tax. She further states that the parties subsequently

negotiated and executed a partial consent, which was filed before the Tribunal on 12 January 2026, substantially reducing the disputed tax liabilities.

12. Following the partial settlement, the only outstanding liabilities comprised Corporate Income Tax, VAT and Withholding Tax on imported services. The Applicant further conceded and paid part of the Withholding Tax on imported services, leaving a disputed balance.

13. The Respondent opposed the Application by way of an affidavit sworn by **Mr. Brian Amanya, an Officer in the Independent Review of Objections in the Domestic Taxes Department of the Respondent**. He disputes the Applicant's claims and maintains that the impugned assessments were lawfully raised following a comprehensive audit of the Applicant's tax affairs for the period 1 January 2018 to 31 December 2020.

14. He further states that following the audit, the Respondent issued assessments for Corporate Income Tax, VAT, PAYE, Rental Tax and Withholding Tax. Although the Respondent partially allowed the Applicant's objections by reducing the Corporate Income Tax, VAT and Rental Tax assessments and vacating the PAYE assessment, the Withholding Tax assessment was maintained.

15. During Tribunal-guided mediation, the Applicant furnished additional documentation, including contracts, invoices, ledgers, proof of payments and import records, which the Respondent reviewed together with the Applicant through joint reconciliations culminating in a partial consent settlement.

16. Consequently, the only outstanding liabilities relate to Corporate Income Tax, VAT on imported services and Withholding Tax on imported services, which remain in dispute before the Tribunal. This followed the Respondent's review of the Applicant's related-party payable ledgers, reconciliations and supporting accounting records.

17. He further maintains that the remaining Corporate Income Tax assessment represents the unreconciled variance in the Applicant's related-party

liabilities together with excess provisions and other expenses which were not satisfactorily supported and therefore remain properly due.

V. Submissions of the Applicant

VAT and WHT on deemed throughput services

18. The Applicant submitted that they don't import services as alleged by the Respondent. The Applicant rather purchases petroleum products from AESA pursuant to a written Agreement for the Supply of Goods. The contract for the supply of petroleum products provides a transparent cost build-up mechanism to determine the final invoiced price. This mechanism merely aggregates various incidental costs (including Operational premiums, overheads, and margins) inherent to the cross-border delivery of physical commodities. The Applicant makes a single payment for the supply of the goods. The Applicant declares the whole value of the transaction as a good for the purposes of customs duty.

19. The Applicant further submitted that the importation of petroleum products in Uganda constitutes an exempt supply of imported goods and not services as per the VAT Act, and thus the Respondents' assessment is untenable.

20. The Applicant contended that the Respondent artificially fragmented the elements of the cost build-up under the supply of goods agreement by disaggregating what constituted an economically indivisible single supply, contrary to the principles established in ***Card Protection Plan Ltd v Customs and Excise Commissioners [2001] UKHL 4***. In that case, the House of Lords held that VAT treatment must follow the essential features and economic reality of the transaction and that artificial fragmentation must be avoided where a supply is, in substance, a single economic whole.

21. The Respondent therefore erroneously introduced non-existent VAT and WHT charges on "Operational premium" and "overheads and margins," which were merely internal components of the Applicant's cost build-up and not separate or independent services supplied to, or received by, the Applicant as contemplated under the VAT Act.

22. The Applicant submitted that its 's position is simple and anchored firmly in the law: The Applicant does not import services. The Applicant imports goods. The cost-build-up in the Supply Agreement constitutes the consideration for the goods not for performance of a service. To hold otherwise would permit the taxation of a pricing methodology rather than an actual economic event.

23. The Applicant argued that the Respondent's assessment is an error in characterization that falls short of the express and unambiguous language of the VAT Act and Income Tax Act. The Applicant relied on the following foundational statutory provisions, which collectively demonstrate the legal impossibility of the Respondent's position:

24. Section 1 of the VAT Act, which defines an import to mean.

"to bring, or to cause to be brought, into Uganda from a foreign country or place."

25. Section 4 of the VAT Act provides for the charge of VAT and it stipulates that: A tax to be known as a value added tax, shall be charged in accordance with this Act on:

a) Every taxable supply

b) Every import of goods other than an exempt import

c) The supply of imported services, other than an exempt service, by any person.

26. Section 5 (1) (b) & (c) of the VAT Act provides for the person liable to pay taxes, and it stipulates:

"Except as otherwise provided in this Act, the tax payable

a) In the case of a taxable supply, is to be paid by the taxable person making the supply:

b) In the case of import of goods, is to be paid by the importer;

c) In the case of a supply of imported services, other than an exempt service, is to be paid by the person receiving the supply."

27. Section 11 (1) (a) of the VAT Act, which provides further guidance on what amounts to a supply of services, states:

"Except as otherwise provided under this Act, a supply of services means a supply which is not a supply of goods or money. including:

i. the performance of services for another person"

28. Section 20(2) of the VAT Act provides:

"Import of a service is an exempt import if the service would be exempt had it been supplied in Uganda."

Schedule 3(1) (0) of the VAT Act highlights that,

"The supply of petroleum fuels subject to excise duty (motor spirit, kerosene and gas oil), spirit-type jet fuel, kerosene-type jet fuel and residual oils for use in thermal power generation to the national grid"

29. In addition, Regulation 13 (1) of the VAT Regulations stipulates:

A person who receives imported services other than an exempt service shall account for the tax due on the supply, and the taxpayer shall account for that service when performance of the service is completed, or when payment for the service is made, or when the invoice is received from the foreign supplier, whichever is the earliest

30. Accordingly, the Applicant submitted that the Respondent's assessment is arbitrary, contrary to the plain meaning of the VAT Act, and represents an unlawful attempt to tax the very act of pricing petroleum products.

31. The Applicant submitted that its legal argument is that the elements of the cost build-up in a supply of goods agreement don't constitute a supply of imported services. Section 11(1)(a) of the VAT Act provides the definitive statutory definition:

"Except as otherwise provided under this act, a supply of services means a supply which is not a supply of goods or money, and the performance of services for another person"

32. The Applicant submitted that the section above establishes a clear and unyielding dichotomy that a transaction is either a supply of goods or a supply of services. It cannot be both.

33. The Respondent does not dispute that the Applicant received a supply of petroleum products- Gasoil, Petrol, and Fuel Oil- these are tangible, movable items that fall squarely within the ordinary and legal meaning of "goods." The Agreement is titled and structured as an "Agreement for the Supply of Petroleum Products." The consideration paid by the Applicant is for the delivery of these goods.

34. The Applicant contended that the cost build-up in Schedule 1 of the Agreement does not alter the fundamental nature of the supply, merely the methodology by which the final price of the goods is calculated. The components of that build-up, whether labelled "overheads and margins," "operational premium," "financing cost, or "margin", are not separate juridical acts.

35. The Applicant submitted that because the supply is a supply of goods, it follows inexorably from Section 11(1)(a) that the supply is not a supply of services. Consequently, the supply cannot be an "imported service" for the purposes of Sections 4(c) and 5 of the VAT Act. The Respondent's attempt to re-characterise part of the consideration as a supply of services is therefore a direct contravention of the plain language of Section 11(1)(a).

36. The Applicant further submitted that the Respondent's assessment attempts to collapse this statutory distinction. It seeks to tax a single cross-border supply of goods under both heads, i.e., the goods themselves under Section 40(b) and a portion of the price under Section 4(c) as "deemed services." This is legally impermissible. A single transaction in goods cannot simultaneously be a supply of services. The Respondent's approach amounts to double taxation of the same economic activity through the back door of recharacterisation.

37. The Applicant argued that the Respondent has no right to bifurcate a single composite supply into its constituent parts and tax each part separately, unless the legislation specifically provides for such disaggregation. The

VAT Act contains no provision permitting the Respondent to sever a pricing formula and re-classify its components as services. To permit such an approach would be to authorise the Respondent to tax the very act of pricing goods.

38. The Applicant in its submission relied on the case of ***Total Marketing v Uganda Revenue Authority***, where the tribunal distinguished between the case of ***UTODA vs Uganda Revenue Authority, SCCA No.13 of 2015*** and that case of Total Marketing stating that in In UTODA, a single supplier provided both the principal exempt service (passenger transport) and the incidental service (park management), allowing the latter to be treated as purely ancillary. In contrast, the Total Marketing case involved multiple suppliers, separate contracts, and distinct revenue streams, thereby undermining the existence of a single economically indivisible supply. Accordingly, the services cannot be subsumed into the importation of fuel for VAT purposes.

39. The Applicant submitted that the evidence they have provided demonstrates that the Applicant receives a single invoice from AESA for the total consideration payable for the petroleum products. (Exhibit AEX13). There is no separate invoice for "overheads and margins," "operational premium, or any other cost component. The Applicant makes a single payment for the goods. This is the hallmark of a single, indivisible supply. The Applicant also makes a single, undivided payment for the goods supplied. Unlike Total Marketing, there is therefore no multiplicity of suppliers, no contractual separation, and no distinct revenue streams. These facts point squarely to a single, indivisible supply, rendering any disaggregation of internal cost components an impermissible artificial fragmentation for VAT purposes.

40. The Applicant submitted that the existence of a transfer pricing documentation (Exhibit AEX10) utilising the CUP method confirms that the pricing arrangement is an arm's length mechanism for the supply of goods. It is not a disguised service fee. The arm's length nature of the pricing

further underscores that the cost build-up is a legitimate commercial pricing mechanism, not a vehicle for the provision of services.

41. The Applicant submitted that if the Respondent's logic were accepted, every international sale of goods that includes a cost build-up for freight, insurance, or financing would be vulnerable to re-characterisation as a supply of imported services. This would create uncertainty, undermine the predictability of the VAT system, and impose a compliance burden on importers. The Respondent's position leads to an absurdity, and a construction of the VAT Act that avoids absurdity must be preferred.

Whether the WHT on imported services of Shs. 190,221,276 is due and payable

42. The Applicant submitted that in their workings at mediation, the Respondent also stated that the Financing Cost and the fictitiously created "margin proportionate to services are being charged WHT due to "Finance cost to be subjected to WHT because its interest paid for ex Tanzania and that for ex Kenya, the fictitiously created "margin proportionate to services" and letters of credit are being charged to withholding tax "to be reclassified as management fees".

43. The Applicant submitted that the so-called "margin proportional to services" and the associated finance costs, which the Respondent seeks to subject to WHT on the basis that they constitute interest, do not, in substance or in law, amount to interest within the meaning of the Act on the definition of interest under Section 2. The "margin proportional to services" was fictitiously created out of actual costs embedded in AESA'S pricing, built up with no underlying services.

44. The Applicant relied on Section 82 (1) of the Income Tax Act that provides that:

> *"Subject to this Act, a tax is imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment, agency fee in case of Islamic financial business, or management charge from sources in Uganda."*

45. The Applicant also cited ***Section 2 of the Income Tax Act*** that defines *"interest" to include: "any payment, including a discount or premium, made under a debt obligation which is not a return of capital"*

46. The Applicant submitted that the created "margin proportional to services and the Finance Cost that Respondent is subject to WHT, and stated that the interest paid only comprises a cost of credit, which is embedded in the cost build-up of AESA to come up with the actual cost of petroleum products. The Respondent's attempt to characterise this cost build-up as interest is therefore misconceived and demonstrates a continued effort to artificially impute the existence of services or income where none exists.

47. The Applicant submitted that under ***Section 77 of the Income Tax Act***, "management charge" means "*any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however, calculated".*

48. The Applicant submitted that the letters of credit are bank-issued guarantees that ensure a seller receives payment from a buyer upon satisfaction of agreed contractual conditions. They are financial instruments used to mitigate payment risk, not a vehicle for the provision of managerial, advisory, or technical services. As such, any costs associated with letters of credit cannot lawfully be reclassified as management charges for tax purposes.

49. The Applicant submitted that the cost build-up reflected in the agreement between AESA and the Applicant does not, in law or in substance, amount to a supply of imported services. The agreement is unequivocally a sale of goods agreement, and the pricing mechanism merely itemises the components of the product's cost.

50. The Applicant cited the decision of the Andhra Pradesh High Court ***in Halliburton Offshore Services Inc. v. Union of India. The Pr. Commissioner of CST, Vishakhapatnam (Writ Petition No. 14517 of 2073, decided on 11 February 20.26).***

51. In that case, the Court was dealing with a contract that involved the supply of drilling fluids and chemicals (goods) along with mud engineering

services. The revenue authority had attempted to split the contract and treat certain elements as independent services. The Court rejected that approach and laid down several principles that are directly applicable to the present dispute

52. The Court held that a contract must be examined holistically and not artificially split into separate supplies. The substance of the contract, not the form of billing or cost allocation, determines its true character. The Court further observed that where goods are integral and essential to the performance of an obligation, they form a single composite supply with the principal element. In that case, the supply of chemicals had *"no independent commercial identity in the absence of the service component."*

53. The Applicant submitted that in the present case, their contract is, in law and substance, a contract for the sale of petroleum products. The parties' dominant objective is the transfer of title to and possession of petroleum goods. The consideration, arrived at through a cost build-up, is nothing but the price for those goods.

54. The Applicant further submitted that the cost build-up is merely an internal pricing mechanism. The cost build-up elements (i.e., Overheads and margins, operational premiums) are not independent contractual obligations capable of being performed separately, are not intended to confer any independent benefit upon the recipient, and are merely components used to compute the single, all-inclusive price of the petroleum goods.

55. The Applicant further submitted that those cost elements do not represent discrete services supplied to AESA. They are neither separately contracted for, nor independently consumed, nor capable of being supplied on a standalone basis since AESA is not in the business of offering credits and the Applicant is not a buyer of credits. They are simply internal cost inputs absorbed into the final price of the goods.

Whether the Respondent erroneously computed CIT amounting to Shs. 119,971,443.

56. The Applicant submitted that the Respondent did not adequately validate the Applicant's reconciling items included in a reconciliation of related party payable balance in the Applicant's financial statements to the Respondent-derived related party payables for the period FY 2018.

57. The Applicant submitted that it shared with the respondent the information that totals to Shs. 2,037,394,562 showing Goods Received Notes ("GRNs") that are part of the December 2018 provision, but the dates are captured as 2020 in the PO listing due to a change made in the company ERP system.

58. The Applicant submitted that in validating the Applicant's reconciling item "excess provision booked vs billed subsequently, the Respondent only considered the amount of Shs.1.855,531,259 instead of Shs. 2,037,394,562 submitted by the Applicant as the total amount attributed to "excess provision booked vs billed subsequently giving rise to a variance of Shs. 181.863,302.

59. The Applicant further submitted that the Respondent's action of only considering Shs. 1,855,531,259 resulted in an overstated balance of Shs. 399,904,810, which the Respondent taxed at 30%, resulting in the disputed amount of Shs. 119,971,443. Had the Respondent considered the correct amount, Shs. 2,037,394,562, the overstated balance would be Shs. 217,675,771.

60. The Applicant submitted that the Respondent failed to properly evaluate the Applicant's submitted system evidence and corresponding explanations, and as a result, the Respondent did not validate the portion of the reconciling item amounting to Shs. 332,279,997 relating to provisions for purchases during the period FY 2018.

61. The Applicant submitted that the provision entries were captured in the supplier account to recognise fuel received for which invoices had not been received by the end of the period FY 2018, which the Respondent disputed

due to the same entries having an overall NIL value in the purchase ledger report. The Excel report, when exported, shows overall balances of a single Purchase Order irrespective of whether the receipt and return happened in different years, which was the case here, i.e. receipt in 2018 and return in 2019, giving an overall NIL balance; however, as at 2018, the receipt was recorded.

62. The Applicant submitted system evidence in the form of screenshots showing entries for receipt of fuel in 2018 for which provisions were created since invoices had not yet been received. Four additional screenshots were submitted for entries recording fuel receipts in 2018, for which reversals/returns were made in 2019. However, since the Respondent chose to rely only on the purchase ledger report, which presents the purchase order date of 2018 and therefore a net nil position due to the receipt and return (in and out), these receipts were erroneously disregarded for 2018.

63. The Applicant also submitted that the Respondent erroneously included an additional reconciling item of Shs. 150,416,695 while validating the related-party payables balance for the FY 2018 period. This amount consisted of two entries for the receipt of fuel in 2018, for which screenshots of the system entries were submitted to the Respondent to demonstrate the end-to-end accounting of the transactions. The two transactions were never returned or reversed; therefore, they were not a reconciling item for purposes of this reconciliation. The Respondent, however, chose to disregard this evidence and maintain the entries.

64. The Applicant further submitted that the additional reconciling amount of Shs. 150,416,695 was never presented as part of the Shs. 2,037,394,562 under the reconciling item "excess provision booked vs billed subsequently" as the 2 entries in question were never returned or reversed, and hence not a reconciling item.

65. The Applicant submitted that the difference between the two amounts of Shs. 332.279,997 and Shs. 150,416,695 gives rise to the variance of Shs. 181,863, 302 above.

66. The Applicant submitted that the variance is attributed to provisions booked by the Applicant relating to fuel product received in the period FY 2018 but pending subsequent invoicing from the supplier, less the Shs. 150,416.695, which was erroneously introduced by the Respondent during validation of the related party payables balance for FY 2018.

67. In addition, the Applicant submitted that, whereas no invoice was issued within the same period of 2018, five provisional entries were booked in anticipation of the incoming invoices based on the GRNs in the period FY 2018.

VI. Submissions of the Respondent

Whether the Applicant is liable to pay the VAT liability of Shs. 188,019,407

68. The Respondent submitted that section 1 of the VAT Act provides that "services "means anything that is not goods or money. In addition, an exempt supply means a supply of goods or services to which Section 19 applies. Section 19 of the VAT Act provides that a supply of goods and services is an exempt supply if it is specified in the Second Schedule. Under item 1(o) of the Third Schedule, the supply of petroleum fuels (petrol, diesel and paraffin) subject to excise duty is exempt.

69. Therefore, it is not in dispute that a supply of fuel is an exempt supply. What is in dispute is whether the throughput costs the Respondent deems as imported services are incidental to the supply of the product.

70. The Respondent relied on Section 11 of the VAT Act, which provides that:

"Except as otherwise provided under this Act, a supply of services means any supply which is not a supply of goods or money, including –

i. *the performance of services for another person;*

ii. *the making available of any facility or advantage;*

iii. *the toleration of any situation or the refraining from the doing of any activity; or*

iv. *the provision of thermal and electrical energy, heating, gas, refrigeration, air conditioning, and water."*

71. The Respondent relied on the case of ***Total Energies Marketing U Ltd V URA, TAT Application No. 104 of 2023***, where the court held that handling services were not incidental to the supply of fuel on the following grounds, which are similar to the present case:

(i) The taxpayer's transfer pricing report indicated that transportation was outsourced to third parties. In the present case, AEX 8, the Agreement for the supply of petroleum products by AESA to the Applicant, on page 99 of the Applicant's Trial Bundle, shows that the transportation /distribution was to a third party. Clause A of the Preamble provides that the seller has entered into a service agreement with the distributor for handling and storage of petroleum products, including storage facilities with a storage Agent as agreed with the Distributor. Clause 1.5 on page 100 of the Applicant's Trial Bundle provides services as agreed by the seller.

(ii) The present case differs from ***UTODA V URA SCCA No. 13 of 2015***, since in UTODA the principal incidental services were furnished by the same supplier within one integral contractual relationship, but the taxpayer's fuel supply transaction had a multiplicity of suppliers and separate contractual arrangements. In the present case, AEX 8 and AEX 10 clearly indicate that there are multiple suppliers and separate contractual arrangements. Despite the Applicant relying on AEX 8 as a single agreement, this is incorrect, as the same AEX 8 recognises a distributor different from the seller and buyer, indicating multiplicity rather than the same supplier.

(iii) The taxpayer's transfer pricing policy report uses a Comparable Uncontrolled Price (CUP) method to determine the arm's length remuneration, which implies that the services are distinct instead of using the TNMM.

(iv) There was a functional characterisation of Total Kenya as a locally fully-fledged service provider of technical services. In the present matter, AEX 8 also shows that AESA, the Applicant and the distributor are independent entities providing different services to one another.

(v) The handling services were not included in the declared customs value of fuel for import duties. In the present case, the Applicant has not proved that all the throughput services are in the declared customs value for fuel import duties.

72. The Respondent submitted that its objection team observed from the audit workings that the audit team based on the price buildup of invoices and contracts provided for purchases of fuel and issued additional assessments on imported services. Below is an extract from the audit working paper that formed the basis for the assessment.

*(i) For the case of volumes imported through Tanzania, overheads and Margins charged at **five dollars** for the petroleum products volumes, as forming part of the price buildup as per the invoices, were considered throughput charges.*

*(ii) For the case of volumes imported through Kenya, operational premiums charged at ten **dollars** for the petroleum product volumes, as forming part of the price buildup as per the invoices, were considered throughput charges.*

(iii) The reimbursable costs incurred by the applicant, such as local charges, costs of storage, and transport, did not form part of the throughput services computation.

(iv) *The basis for charging VAT was that through put costs are imported services/supplies and therefore the applicant was under an obligation to account for VAT.*

73. The Respondent submitted that its review team requested the purchase ledgers for the period under review, importation documents, a demonstration of price build-up, payment proof, and a sample of a proforma invoice (commercial invoices) used to make payments.

74. The Respondent further submitted that during mediation, the Applicant stated that the overheads and margin are capped at USD 5 and explained that the USD 5 charged for supplies made to the Applicant through Tanzania comprises the finance cost and margin; however, the finance

cost fluctuates depending on the value of the invoice (Spot Price + Port charges).

75. The Applicant submitted that according to them, the finance cost is 3.5% pa over 60 days of the invoice value. The value obtained is reduced from USD 5 to determine the margin. For example, if the finance cost is USD 3.3, then the margin is 1.7.

76. In addition to the above, the Respondent submitted that for the supplies made to the Applicant through Kenya, an operational premium of USD 10, being USD 2 for letters of credit and USD 8 as margin, is charged.

77. The Respondent presented the Applicant's commercial invoices as shown below.

ORYX OIL UGANDA LIMITED
PLOT 166
6TH STREET INDUSTRIAL AREA
P.O. BOX 6338

KAMPALA
UGANDA

Swiss VAT n° CHE-100.203.207 TVA

Geneva, 18.10.2019

COMMERCIAL INVOICE No I7393950

Contract Nova No. C7330877-001, Ref.: L7012402
12.499 CUBIC METER OF Motor Gasoline 93
Delivery Terms: FCA, DAR ES SALAAM - 12.10.2019
Vessel: JAG PAVITRA (CPP24 C1 MSP MT JAG PAVITRA)
Payment terms: 60 Calendar days after Bill of lading (Bill of lading=0)
Suppliers: CPP24 C1 MSP MT JAG PAVITRA
Trucks Loaded (in L): 12'499 - T326CER/ T115CCC - - BARWAAQO

Quantity and price calculation:
FIXED PRICE

BL Date	Gross Quantity		Invoice Quantity		USD/M3 price	Total Amount	
12.10.2019	12.499	M3	12.499	M3	562.190	USD	7'026.81
	12.499	**M3**	**12.499**	**M3**	**Commodity Amount**	**USD**	**7'026.81**

TOTAL INVOICE AMOUNT	USD	7'026.81
TOTAL AMOUNT TO BE PAID	USD	7'026.81

	Cost Build up AGO ex TZ			
	Platts basis	USD/MT	556.05	
Plus	Premium & Freight	USD/MT	76.89	
Plus	LC cost	USD/MT	2.00	Fixed
Plus	TIPER fees	USD/MT	0.84	As per govt review
Sub Total	UNIT COST CIF Dar (Cost per MT)	USD/MT	635.77	
Sub Total	UNIT COST CIF Dar (Cost per M3)	USD/M3	527.69	
	conversion rate	0.83		Actual
Plus	Costs and local charges	USD/M3	20.00	Fixed
Plus	Storage & Handling	USD/M3	9.50	Fixed
Plus	Overheads and Margins	USD/M3	5.00	Fixed
Total	FCA Dar Price	USD/M3	562.19	

ENERGIES

ORYX OIL UGANDA LIMITED
PLOT 166
6TH STREET INDUSTRIAL AREA
P.O. BOX 6338

KAMPALA
UGANDA

Swiss VAT n° CHE-100.203.207 TVA

Geneva, 24.10.2019

COMMERCIAL INVOICE No I7393799-RV02

Contract Nova No. C7349028-001, Ref.: L7014685
128.389 CUBIC METER OF Gasoil 0.005% Sulphur
Delivery Terms: FOT, ELDORET EX - 08.10.2019
Vessel: (EX-KENYA - AGO - GALANA)
Payment terms: 60 Calendar days after Bill of lading (Bill of lading=0)
Suppliers: ex-Kenya - AGO - Galana
Trucks Loaded (in L): 32'894 - KBH392J/ZC6982
34'904 - KCQ018L/ZF6199
27'571 - KBP309Q/ZD6404
32'920 - KBQ830P/ZD7298

Quantity and price calculation:
FIXED PRICE

BL Date	Gross Quantity		Invoice Quantity		USD/M3 price		Total Amount
08.10.2019	128.389	M3	128.389	M3	573.270	USD	73'601.56
	128.389	M3	128.389	M3	Commodity Amount	USD	73'601.56

TOTAL INVOICE AMOUNT	USD	73'601.56
TOTAL AMOUNT TO BE PAID	USD	73'601.56

Due date: Friday, December 6 2019
Payment to be effected as follows:
Payment in USD quoting invoice number by telegraphic transfer to:
Favour: ADDAX ENERGY SA

	Cost Build up AGO ex Kenya			
	Spot price ex-Eldoret	USD/M3	559.97	
Plus	Operational Premium	USD/M3	10.00	Fixed
Plus	Financing cost for 60 days (3.5%)	USD/M3	3.30	Variable
Total	FOT ex-Eldoret price	USD/M3	573.27	
Plus	Transport to Kla	USD/M3	35.00	As per transport contract
Total	DAP Kla Price	USD/M3	35.00	

78. The Respondent submitted that it observed from the proforma invoice no. GOKL/PMS/18/10/010 that Galana Oil Kenya Limited charged USD 620 to

Addax Energies Ltd and that Addax Energies Ltd charged the Applicant an extra USD 13 for 140m3 of PMS, which is in line with the cost pricing build-up in the agreement.

79. The Respondent contended that the financing cost is the interest charged to the Applicant by Addax Energies for late payment. The Respondent submitted that the interest forms part of the cost of the product; therefore, VAT is not applicable. Consequently, the VAT charged on the financing costs was excluded from the deemed throughput services, as per the assessment.

80. The Respondent submitted that the Respondent did not issue a VAT assessment on the financing costs that were visible on the face of invoices for supplies made through Tanzania.

81. The Respondent submitted that according to the Respondent's review team, the average finance cost within the USD 5 is USD 3.3. This means that USD 1.7 is the margin. The Respondent submits that the margin charged by Addax Energies Limited comprises the margin on fuel. Therefore, the review team correctly apportioned the unit cost of fuel vs the invoice price as per the samples submitted by the Applicant. Based on the samples, the Respondent found that the proportion of unit cost of fuel to the invoice for the case of supplies made through Tanzania is 94%. Hence, 94% of USD 1.7 was excluded from the deemed throughput computation. This is also because the Applicant cannot split the margin for the different cost items. This means that USD 0.1 was correctly charged as throughput.

82. The Respondent submitted that the operational premium as charged by Addax Energies Limited for supplies made through Kenya comprises USD 2 for letters of credit and USD 8 for Margin. The Respondent submitted that the Letters of Credit charge should form part of throughput because it's a management service, as the cost is expected to be borne or incurred by Addax Energies Limited. Since the margin is fixed at USD 8, the margin charged by Addax Energies Limited on fuel is excluded from the margin. Therefore, the Respondent's review team correctly apportioned the unit

cost of fuel vs the invoice price as per the samples submitted by the applicant. Based on the samples, the Respondent found that the proportion of the unit fuel cost to the invoice for supplies made through Tanzania is 97%. Hence, 97% of USD 8 shall be excluded from the deemed throughput computation. This is also because the Applicant cannot split the margin for the different cost items. This means that USD 0.24 was correctly charged as throughput.

Whether the Applicant is liable to pay the WHT liability of Shs. 190,221,276, on deemed throughput miscellaneous payments and other services?

83. The Respondent submitted that it reiterates its arguments on Issue 1 on how the Applicant's services are not incidental to the supply of petroleum products since the Applicant also maintained its arguments on VAT. Regarding the argument that income was not sourced in Uganda, the Respondent submits that AEX8 is a Uganda-sourced contract. This is because AESA earns the throughput fees for services rendered in relation to the Applicant's Ugandan Operations, and the income arises under a Ugandan-Source contract under Sections 78, 84, and 137 of the ITA, which impose a duty on the Applicant to withhold tax on payments to non-residents for services performed.

84. The Respondent submitted that with reference to the assessment, the Respondent noted that, in addition to the financing cost visible on the invoices for supplies made through Kenya, through put/imported services charged under VAT were also subjected to WHT.

85. The Respondent submitted that, according to Section 78(d)(2) of the ITA, income is derived from sources in Uganda to the extent to which it is a fee for the provision of services paid by a resident person. In the present case, the Applicant made payments to Addax Energies SA for deemed throughput services and was therefore obliged to remit WHT where applicable.

86. The Respondent submitted that since Addax Energies charges the Applicant a financing cost, namely, interest for late payment, then WHT is

applicable on the interest charged in accordance with Section 82 of the ITA. This means that, as per the assessment, the financing costs (letters of credit and 3.5% finance cost) visible on invoices were maintained. In addition, the financing cost that was determined during the review after a split of the overheads and margins (Financing cost of USD 3.3-Tanzania) and operational premium (Letters of Credit of USD 2-Kenya) by the applicant has been maintained in the assessment.

87. Furthermore, the margins as reviewed under VAT that were regarded as services were also maintained in the assessment. Therefore, the Applicant is liable to pay the outstanding WHT liability of **Shs. 190,221,276**, which relates to undeclared WHT on deemed throughput miscellaneous payments and other services.

Whether the Applicant is liable to pay the Income Tax liability of Shs. 119,971,443

88. The Respondent submitted that the Applicant objected to this portion of the assessment on the grounds that there is no unexplained variance of Shs. 2,372,702,081 between the closing balance of the Applicant's related party payables as computed by the Respondent and the Applicant's related party payables as per its CIT returns for the period FY 2018.

89. The Respondent submitted that during the objection review, the recomputed related party payable was Shs. 23,135,785,919 against Shs. 25,508,488,000 as per the financial statement based on adjustments made on interest, storage fees, receipts (GRNs) in 2018, and purchases declared in 2019 returns, but in the 2018 purchase ledger.

90. The Respondent further submitted that during mediation, the Applicant maintained opening balances of Shs. 9,628,524,251, net purchases of Shs.130,372,029,690, Returns made in 2019 against 2018 purchases of Shs. 653,827,208, GRNs receipts made in 2018 under the names of Oryx supplies and storage instead of Addax (OSS) of Shs. 397,873,382 and payments of Shs. 125,507,234,924 as per both the audit and objection.

91. The Respondent further submitted that, accordingly, the Applicant is liable to pay the outstanding income tax liability of Shs. 119,971,443, which relates to overstated related party loans, bonus on provision and other expenses that were partially allowed.

92. The Applicant filed submissions in rejoinder wherein they reiterated their earlier submissions.

VII. The determination

93. The Tribunal has carefully reviewed and considered all the pleadings, evidence, and documents on the record.

94. Section 18 of the Tax Appeals Tribunal Act places the burden of proof squarely on the Applicant to demonstrate that a tax assessment is excessive, or that a taxation decision should not have been made, or should have been made differently. The standard of proof required is on a balance of probabilities. The Tribunal shall proceed to determine whether the Applicant has discharged this burden in respect of each of the three outstanding issues.

Whether the Applicant is liable to pay VAT on Imported Services amounting to Shs. 188,001,703?

95. Section 4 of the VAT Act provides for the charge of VAT, stipulating that tax shall be charged on:

    (a) Every taxable supply made by a taxable person;
    (b) Every import of goods other than an exempt import; and
    (c) The supply of imported services, other than an exempt service, by any person.

96. Section 1 of the VAT Act defines "services" broadly as anything that is not a good or money. In ***Metropolitan Life Limited v Commissioner for the South African Revenue Service (A 232/2007),*** "services" were defined as:

"...anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of good."

97. Furthermore, Section 11(1)(a) of the VAT Act provides the statutory baseline for a supply of services, stating:

"Except as otherwise provided under this Act, a supply of services means a supply which is not a supply of goods or money, including the performance of services for another person."

98. The Respondent contended that the Applicant imported taxable services. Under Regulation 13 of the VAT Regulations, a person who receives an imported service (other than an exempt service) must account for the tax due. Section 1 of the VAT Act defines "import" as bringing or causing to be brought into Uganda from a foreign country or place.

99. In ***Metropolitan Life Limited (supra)***, the court noted that "imported services" involve a supply made by a non-resident supplier to a resident recipient, to the extent that such services are utilised or consumed in the recipient's country otherwise than for making taxable supplies.

100. Consequently, three requirements must be met:

(i) The services must be rendered by a supplier located outside Uganda;
(ii) The recipient must be within Uganda; and
(iii) The services must be utilised or consumed in Uganda and be taxable.

101. In the present case, the Applicant imports petroleum products from Addax Energy S.A. (AESA) under a sale-of-goods agreement. While a single commercial arrangement may encompass both goods and services, the law requires each element to be properly characterised. A single transaction in goods cannot, without distinct contractual evidence, be artificially split and categorised as a supply of services.

102. The Tribunal reviewed the Agreement for the Supply of Petroleum Products, pricing schedules, invoices, transfer pricing documentation, and

the parties' submissions. The evidence establishes that the relationship was strictly governed by a goods supply arrangement where AESA delivered petroleum products at agreed prices. The pricing structure comprised components such as operational premiums, overheads, and margins, which collectively formed the final price payable for the goods.

103. The Respondent argued that portions of these pricing components constituted separate imported services. However, the Respondent failed to point to any contractual provision creating an independent obligation upon AESA to render services, nor did it identify any distinct service supplied apart from the petroleum products.

104. The Applicant received and declared invoices for petroleum products at customs. No separate service invoices were issued, no independent service fees were charged, and no evidence was adduced to show that the Applicant contracted for or consumed any standalone service from AESA.

105. The Respondent relied on ***Total Energies Marketing (U) Ltd v Uganda Revenue Authority and Vivo Energy Uganda Ltd v Uganda Revenue Authority***. The Tribunal finds these decisions distinguishable. Unlike those cases, the facts here disclose no separate service agreement, no independent invoicing, and no distinct service identifiers.

106. While the VAT Act defines services broadly, Section 11(1)(a) requires the actual performance of a service for another person. The dominant and substantive character of this transaction was unequivocally the sale and purchase of petroleum products. Embedded operational premiums, overheads, and margins were elements of the pricing mechanism for goods, not a separate supply of services.

107. This principle is supported by ***Card Protection Plan Ltd v Customs and Excise Commissioners [2001] UKHL 4***, in which the UK House of Lords held that a transaction must be viewed as a single composite supply in which its principal element governs its tax status, and that over-zealous tax splitting should be rejected. Similarly, in ***Halliburton Offshore Services Inc. v. Union of India & Others (2026)***, the Andhra Pradesh High Court

held that contracts cannot be artificially sliced into isolated segments when the elements are part of an integrated economic package.

108. The core of this contract was the sale of petroleum products; any minor pricing components built into the rate were auxiliary and did not alter the integrated economic reality. As no service was supplied, the prerequisites for an imported service fail. The Respondent was unjustified in treating portions of the purchase price as service consideration.

109. Accordingly, the Applicant is not liable to pay VAT on imported services amounting to Shs. 188,001,703.

Whether the Applicant is liable to pay WHT amounting to Shs. 190,221,276?

110. The disputed Withholding Tax (WHT) assessment stems from the Respondent's characterisation of financing costs, letter-of-credit fees, and portions of operational premiums as payments subject to WHT under the Income Tax Act.

111. Having already established under Issue One that the relationship was exclusively a sale-of-goods transaction with integrated pricing mechanisms, the Tribunal must determine whether these specific components are capable of attracting WHT on "interest" or "management charges."

112. Section 2 of the Income Tax Act defines "interest" as:

> *"...any payment, including a discount or premium, made under a debt obligation which is not a return of capital."*

Section 77 of the same Act defines a "management charge" as:

> *"...any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated."*

113. A review of the documentation reveals no management, consultancy, or advisory agreements between the Applicant and AESA. The consideration paid was purely for petroleum products. Furthermore, the decisions in Total

Energies (supra) and Vivo Energy (supra) remain distinguishable for the same lack of separate invoicing or standalone service agreements.

114. Regarding financing costs, the Tribunal finds they were part of the agreed purchase pricing structure for the goods and did not arise under a separate debt obligation. The evidence does not disclose an independent loan arrangement or a debtor-creditor relationship separate from the supply of petroleum products. They do not constitute "interest" under the Income Tax Act.

115. Regarding the costs of the letter of credit, there is no evidence that AESA provided managerial, supervisory, or technical services to the Applicant. These costs arose during AESA's logistics and procurement operations and were structurally factored into the goods' commercial price. They do not constitute "management charges."

116. WHT under Sections 84 and 85 of the Income Tax Act presupposes a Ugandan-source services contract. Since the Respondent failed to establish any separate service supplied by AESA, no such contract exists.

117. Notably, the Respondent accepted during the internal objection review that the financing costs formed part of the cost of the petroleum products. Having conceded that these amounts were part of the consideration for goods, the Respondent cannot logically or legally recharacterize them as independent payments of interest or management fees for WHT purposes.

118. Accordingly, the Applicant is not liable to pay the Withholding Tax amounting to Shs. 190,221,276.

Whether the Respondent erroneously computed Corporate Income Tax of Shs. 119,971,443?

119. This issue concerns the reconciliation of the Applicant's related-party payables to AESA for the 2018 financial year. The Respondent alleged that the Applicant overstated its related-party payables, thereby understating its chargeable income.

120. Following audits, objection reviews, and mediation, the dispute was narrowed down to a single item: the quantum of the *"excess provision for 2018 purchases booked versus actual billed subsequently."*

    (i) The Applicant claimed an excess provision of **Shs. 2,037,394,562** (leaving an overstated payable balance of Shs. 217,675,771).
    (ii) The Respondent verified only **Shs. 1,855,531,259** (leaving an overstated payable balance of Shs. 399,539,073).
    (iii) The unresolved variance of **Shs. 181,863,302**, when taxed at 30%, yields the disputed tax of **Shs. 119,971,443**.

121. The Respondent argued that the additional Shs. 181,863,302 could not be verified against the purchase order ledger. It noted that while the Applicant blamed an ERP system error causing date interchanges, its review team could only confirm the provisions that lacked corresponding purchase orders up to Shs. 1,855,531,259.

122. Conversely, the Applicant submitted that the Respondent failed to validate a reconciling item of Shs. 332,279,997 (provisions booked in 2018 for fuel products received but pending subsequent invoicing). The Applicant provided system screenshots showing 2018 fuel receipts for which provisions were created, along with their subsequent 2019 reversals. The Applicant contended that by looking only at a net nil position across years, the Respondent erroneously ignored the 2018 transactions and improperly introduced an external reconciling item of Shs. 150,416,695.

123. Under Section 18 of the Tax Appeals Tribunal Act, the Applicant does not need to establish its case with absolute mathematical precision, but rather on a balance of probabilities.

124. Therefore, the Tribunal makes the following findings from the evidence:

    (i) The Applicant produced a comprehensive provision ledger of Shs. 12,467,984,708 alongside supporting accounting records explaining the excess provisions.

(ii) The Applicant provided system-generated records displaying fuel receipts recognised in FY 2018 and corresponding adjustments in FY 2019.

(iii) The Respondent's partial verification confirms that the purchase order ledger was incomplete and did not capture all provision-related transactions due to the ERP system date interchanges.

(iv) The math shows that the difference between the provisions booked (Shs. 332,279,997) and the Respondent's contested reconciling item (Shs. 150,416,695) exactly equals the disputed variance of Shs. 181,863,302.

125. The Tribunal is satisfied that the Applicant's system evidence and explanation regarding the ERP date discrepancies provide a credible and coherent account that satisfies the burden of proof. While the Applicant presented detailed ledgers, GRNs, and records to support its position, the Respondent failed to provide sufficient evidence explaining the basis for introducing and maintaining its alternative reconciling items.

126. As espoused in ***Kenya Revenue Authority vs. Mann Diesel & Turbo Se, Kenya Ltd (2021) eKLR*** (citing the landmark Supreme Court of Canada decision in ***Johnson vs. Minister of National Revenue***):

> *"A prima facie case is made when the taxpayer can produce unchallenged and uncontroverted evidence. Once the taxpayer has made out a prima facie case, the onus shifts to the Revenue Authority to rebut... If the Revenue Authority cannot provide any evidence to prove their position, the taxpayer will succeed."*

127. The Respondent failed to rebut the prima facie case established by the Applicant's system accounting logs. The evidence supports a reduction of the payable overstatement to Shs. 217,675,771 rather than the Respondent's figure of Shs. 399,539,073.

128. Accordingly, the Tribunal finds that the Respondent erroneously computed the residual Corporate Income Tax assessment of Shs. 119,971,443.

Final Orders

129. Tribunal hereby orders that:

(i) The assessments for VAT, WHT, and Corporate Income Tax under dispute are hereby vacated and set aside in their entirety.

(ii) The Partial Consent Settlement Order previously entered into by the parties remains in full force and effect, and the amounts conceded to and paid by the Applicant thereunder remain unaffected by this Ruling.

(iii) Costs are awarded to the Applicant.

It is so ordered.

Dated at Kampala this **26th** day of **June** 2026.

HON CRYSTAL KABAJWARA
CHAIRPERSON

HON. GERALD AGABA KAKIMA
MEMBER

MS. CHRISTINE KATWE
MEMBER