TAX APPEALS TRIBUNAL

Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 303 OF 2024

QUALITY CHEMICAL INDUSTRIES LIMITED..............................APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

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

RULING

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's assessment of Capital Gains Tax amounting to Shs. 4,777,121,735 following a substantial change in the Applicant's ownership structure after the disposal of shares by non-resident shareholders. The dispute centers on whether the resulting transaction triggered the deeming provisions under sections 74(2) and 78(h) of the Income Tax Act, thereby rendering the Applicant liable to tax on a deemed realization of its assets and liabilities, and whether the applicable Double Taxation Agreements restrict Uganda's taxing rights in respect of the transaction.

II. Background Facts

2. The Applicant is a publicly listed company on the Uganda Securities Exchange engaged in the manufacture and sale of pharmaceutical products, particularly medicines used in the treatment of HIV/AIDS and

malaria. This dispute arises from the disposal of a 51.05% shareholding in the Applicant by Meditab Holdings Limited together with a further 0.13% shareholding held by Cipla EU Limited to Africa Capitalworks SSA 3.

3. Following the change in ownership, the Respondent issued a letter dated 19 April 2024 communicating a tentative Capital Gains Tax assessment of Shs. 7,378,681,082 pursuant to Sections 74(2) and 78(h) of the Income Tax Act, (formerly Sections 75(2) and 79(ga)). By letter dated 24 May 2024, the Applicant disputed the assessment on grounds that the Applicant had not derived any income from the transaction and that the Respondent had incorrectly adopted a consideration of USD 30 million instead of USD 25 million.

4. The Respondent subsequently accepted the Applicant's objection regarding the consideration amount but rejected the Applicant's substantive objections to the applicability of the impugned provisions of the Income Tax Act. Consequently, on 4 June 2024, the Respondent issued a revised assessment reducing the tax liability to Shs. 1,708,561,082.

5. The Applicant thereafter lodged an objection to the revised assessment online, which objection was received by the Respondent on 26th June 2024. By an objection decision dated 23 September 2024, the Respondent disallowed the objection and maintained that the deeming provisions under the Income Tax Act were applicable to the transaction.

6. Subsequently, on 2nd October 2024, the Respondent issued an amended assessment increasing the Applicant's tax liability by Shs. 3,068,560,153. The increase arose following a review by the Respondent's Independent Review Objection Unit which revised the written down values of the Applicant's assets during the objection process. As a result of the revised computation, the Respondent determined the Applicant's final tax liability at Shs. 4,777,121,735. Dissatisfied with the Respondent's decision, the Applicant filed the present application before this Tribunal seeking, inter alia, orders setting aside the impugned assessment together with costs of the application.

III. Issues for determination

7. The following issues were agreed upon for determination;

i. Whether the Applicant is liable to pay the tax as assessed by the Respondent?

ii. What remedies are available to the parties?

IV. Representation

8. The Applicant was represented by Mr. Timothy Lugayizi and Mr. Dalton Kisuule. The Respondent was represented by Mr. Agaba Edmond, Mr. Franklin Kamagyezi and Mr. Tonny Kalungi from its legal Services and Board Affairs Department.

9. The Applicant's case was supported by the affidavit and witness statement of AW1, the Finance Manager of the Applicant company. AW1 testified on behalf of the Applicant and set out the factual background leading to the impugned assessment together with the Applicant's objections to the tax decision. AW1 stated that the dispute arose following a 51.18% change in the ownership structure of the Applicant company after Meditab Holdings Limited and Cipla EU Limited disposed of their shareholding to Africa Capitalworks SSA 3.

10. AW1 testified that on 19th April 2024, the Respondent issued a tentative Capital Gains Tax assessment amounting to Shs. 7,378,681,082. AW1 further stated that by letter dated 24 May 2024, the Applicant disputed the assessment on grounds that the Applicant had not derived any income from the share transaction and that the Respondent had incorrectly adopted a consideration of USD 30 million instead of USD 25 million.

11. AW1 further testified that on 4 June 2024, the Respondent revised the assessment downward to Shs. 1,708,561,082. AW1 stated that following subsequent engagements and meetings between the parties in August 2024, the Respondent agreed to revise the computation using the written down value of the Applicant's assets instead of their net book value. The

witness however stated that notwithstanding those engagements, the Respondent subsequently issued a revised amended assessment on 2nd October 2024 increasing the Applicant's tax liability to Shs. 4,777,121,735.

12. AW1 testified that the Applicant neither sold nor transferred any shares in the impugned transaction. AW1 stated that the shares were disposed of exclusively by Meditab Holdings Limited and Cipla EU Limited in their capacities as shareholders and not by the Applicant company itself. AW1 further stated that the Applicant did not receive any proceeds or other financial benefit arising from the share transfer. AW1 therefore contended that the Applicant did not derive business income within the meaning of Section 18(1)(a) of the Income Tax Act.

13. AW1 further testified that the Applicant did not satisfy the statutory test of "disposal" under Section 49(1)(a) of the Income Tax Act because the Applicant itself did not sell, exchange, distribute, redeem or otherwise alienate any asset. The witness additionally stated that even if a deemed gain arose under the Income Tax Act, such gain ought to be exempt under Section 21(1)(k), now Section 21(1)(j), because it constituted a capital gain not included in business income.

14. AW1 further testified that the impugned assessment violated the general principles of taxation under Sections 4, 15, 17 and 41 of the Income Tax Act. AW1 stated that the Respondent sought to impose tax on income that was neither received nor receivable by the Applicant and which therefore amounted to taxation of notional income.

15. The witness also relied on Section 88 of the Income Tax Act and testified that the Uganda–Mauritius and Uganda–United Kingdom Double Taxation Agreements take precedence over inconsistent provisions of domestic legislation. AW1 stated that the applicable treaty provisions allocate taxing rights over gains arising from the disposal of shares to the state of residence of the seller, namely Mauritius and the United Kingdom respectively. AW1 therefore contended that the Respondent's reliance on

Sections 74(2) and 78(h) of the Income Tax Act amounted to an impermissible override of Uganda's treaty obligations under the applicable Double Taxation Agreements.

16. The witness further testified that the impugned assessment amounted to compulsory deprivation of property contrary to Article 26 of the Constitution because it imposed tax liability upon the Applicant in respect of gains allegedly realized by third-party shareholders. AW1 additionally stated that the Applicant intended to challenge the constitutionality of Section 74(2) of the Income Tax Act before the Constitutional Court.

V. The Applicant's submissions

17. The Applicant submitted that the Respondent unlawfully assessed Capital Gains Tax amounting to Shs. 4,777,121,735 against the Applicant arising from the disposal of a 51.18% shareholding by Meditab Holdings Limited and Cipla EU Limited. The Applicant argued that the Respondent erroneously treated the deemed capital gain arising from that transaction as the Applicant's business income yet the shares in question were owned and disposed of by third-party shareholders and not by the Applicant itself.

18. The Applicant contended that under Sections 18(1)(a) and 2 of the Income Tax Act, business income must arise from a business activity carried on by the taxpayer or from the disposal of a business asset belonging to that taxpayer. The Applicant argued that the shares sold were neither owned by the Applicant nor constituted business assets of the Applicant and therefore the Applicant did not derive any income from the transaction.

19. The Applicant further submitted that it did not satisfy the statutory test of "disposal" under Section 49(1)(a) of the Income Tax Act because the Applicant was not the person that transferred, sold, exchanged, redeemed, cancelled or otherwise alienated the shares. The Applicant maintained that the disposal was undertaken exclusively by Meditab Holdings Limited and Cipla EU Limited in their capacities as shareholders and not by the Applicant company itself.

20. The Applicant argued that because it neither disposed of the shares nor received any proceeds from the transaction, the alleged gain could not lawfully constitute its taxable income. The Applicant therefore contended that the gain fell within the exemption under Section 21(1)(j) of the Income Tax Act, formerly Section 21(1)(k), which excludes capital gains from tax unless they are included in business income.

21. The Applicant further submitted that the Respondent's assessment offended the fundamental principles governing income taxation under Sections 4, 15 and 17 of the Income Tax Act. The Applicant argued that liability to income tax can only arise where income has accrued to, been derived by, or become receivable by a taxpayer. In reliance on Section 41 of the Income Tax Act, the Applicant contended that the Respondent improperly sought to tax "notional income" which the Applicant neither received nor became entitled to receive.

22. The Applicant also challenged the assessment on the basis of international tax law obligations. The Applicant submitted that Section 88(1) of the Income Tax Act grants statutory force to Double Taxation Agreements entered into by Uganda, while Section 88(2) expressly provides that such agreements prevail in the event of inconsistency with domestic legislation.

23. The Applicant specifically relied on Article 14(4) of the Uganda–Mauritius Double Taxation Agreement and the Uganda–United Kingdom Double Taxation Agreement. The Applicant argued that those treaty provisions allocate taxing rights over gains arising from the disposal of shares exclusively to the state of residence of the seller, namely Mauritius and the United Kingdom respectively.

24. The Applicant therefore contended that the Respondent's reliance on Sections 74(2) and 78(h) of the Income Tax Act, formerly Sections 75(2) and 79(ga), amounted to an impermissible treaty override contrary to Section 88(2) of the Income Tax Act. The Applicant argued that Uganda could not lawfully impose tax contrary to the allocation of taxing rights agreed under the applicable Double Taxation Agreements.

25. The Applicant additionally challenged the constitutionality of the assessment under Article 26 of the Constitution of the Republic of Uganda. The Applicant argued that imposing tax liability on the Applicant in respect of gains allegedly realized by its former shareholders amounted to compulsory deprivation of property without lawful justification.

26. In support of that contention, the Applicant relied on the decision in ***Kyotera Tax Operators Cooperative Union v Attorney General & 2 Others, Civil Suit No. 35 of 2018 [2021] UGHC 335***, where the High Court observed that an excessive or unlawful tax burden may amount to an unconstitutional deprivation of property.

27. The Applicant consequently urged the Tribunal to adopt an interpretation of the Income Tax Act that recognizes the separate legal personality of a company and its shareholders. The Applicant maintained that a company does not own its own shares and derives no benefit from the transfer of shares by its shareholders. The Applicant therefore prayed that the assessment be vacated in its entirety with costs.

VI. The Respondent's Submissions

28. The Respondent submitted that the Applicant is lawfully liable to pay Capital Gains Tax amounting to Shs. 4,777,121,735 as assessed by the Respondent. The Respondent argued that the assessment was properly raised under the relevant provisions of the Income Tax Act governing indirect transfers and deemed disposals following a change in ownership of a resident entity.

29. The Respondent further submitted that the burden of proving that the assessment was erroneous lies squarely on the Applicant. The Respondent relied on Section 28 of the Tax Procedures Code Act, Section 19 of the Tax Appeals Tribunal Act, and Section 101 of the Evidence Act. The Respondent further relied on ***Williamson Diamonds Ltd v Commissioner General [2008] 4 TTLR 167*** and argued that the burden of disproving an assessment remains throughout on the taxpayer and does not shift to the revenue authority.

30. The Respondent contended that the disposal of a 51.18% shareholding in the Applicant by Meditab Holdings Limited and Cipla EU Limited triggered the operation of Sections 74(2) and 78(h) of the Income Tax Act. The Respondent argued that those provisions create a statutory deeming mechanism requiring the resident entity to be treated as having realized all its assets and liabilities at market value immediately before the change in underlying ownership.

31. The Respondent submitted that the resulting gain constitutes business income within the meaning of Section 18(1)(a) of the Income Tax Act, which includes gains derived from the disposal of business assets. The Respondent further argued that under Section 2 of the Income Tax Act, all assets of a company constitute business assets and therefore the gain could not qualify for exemption under Section 21(1)(j) of the Act.

32. The Respondent rejected the Applicant's contention that no "disposal" occurred within the meaning of Section 49(1)(a) of the Income Tax Act. The Respondent argued that Section 74(2) is a specific deeming provision which operates independently of the ordinary definition of disposal under Section 49. The Respondent submitted that once the statutory threshold for change in ownership is satisfied, the law deems the resident company to have disposed of its assets irrespective of whether an actual transfer occurred.

33. In support of that contention, the Respondent relied on the principle of *generalia specialibus non derogant* and the decision in Brookhouse Schools Limited v Commissioner of Domestic Taxes. The Respondent further relied on ***Uganda Revenue Authority v Siraje Hassan Kajura*** and ***Cape Brandy Syndicate v Inland Revenue Commissioners*** and submitted that taxing statutes must be interpreted according to their plain and ordinary meaning.

34. The Respondent additionally relied on the Tribunal decision in ***Enviroserv (U) Limited v Uganda Revenue Authority, TAT Application No. 378 of 2024,*** and submitted that Section 74(2) imposes tax liability on the resident entity notwithstanding that the proceeds of the share transfer may have accrued to non-resident shareholders rather than the resident company itself.

35. Regarding the Applicant's reliance on Double Taxation Agreements, the Respondent submitted that the Uganda–Mauritius and Uganda–United Kingdom DTAs do not override the impugned assessment. The Respondent argued that the Applicant improperly conflated two distinct taxable events, namely the offshore disposal of shares by non-resident shareholders and the deemed disposal of assets by the resident company under Ugandan domestic law.

36. The Respondent contended that the relevant DTAs govern the taxation of gains arising to the non-resident shareholders from the disposal of shares, but do not restrict Uganda's right to impose tax on a resident company under domestic deeming provisions. The Respondent therefore submitted that Section 88(2) of the Income Tax Act was not engaged in the present dispute.

37. The Respondent further relied on the reasoning in ***Enviroserv (U) Limited v Uganda Revenue Authority*** and on the OECD Model Tax Convention Commentary to support the position that treaty provisions do not preclude a contracting state from taxing deemed gains arising to its own resident entities under domestic law.

38. The Respondent also challenged the Applicant's constitutional arguments and submitted that this Tribunal lacks jurisdiction to determine the constitutionality of Acts of Parliament. The Respondent relied on Article 137 of the Constitution and the decision in ***Attorney General v David Tinyefuza*** and argued that exclusive jurisdiction to determine constitutional questions lies with the Constitutional Court.

39. Without prejudice to that objection, the Respondent submitted that the impugned assessment does not amount to compulsory deprivation of property contrary to Article 26 of the Constitution. The Respondent argued that taxation is constitutionally sanctioned under Article 152(1) and that the Applicant remains the owner of its assets notwithstanding the assessment.

40. The Respondent further distinguished the decision in ***Kyotera Tax Operators Cooperative Union v Attorney General & 2 Others*** and submitted that Sections 74(2) and 78(h) of the Income Tax Act serve a legitimate legislative purpose aimed at preventing tax avoidance and erosion of Uganda's tax base through indirect offshore transfers.

41. The Respondent consequently prayed that the Application be dismissed with costs. The Respondent relied on Section 27 of the Civil Procedure Act and the decision in ***Godfrey Katunda v Betty Atuhaire Bwesharire*** and submitted that costs follow the event and should therefore be awarded to the successful party.

42. The Applicant did not file submissions in rejoinder as directed by the Tribunal.

VII. Determination of the issues

43. Having carefully considered the pleadings, the witness statements and oral testimony of AW1 and RW1, the documentary evidence contained in the Joint Trial Bundle and the Respondent's Trial Bundle, the Joint Scheduling Memorandum dated 28 August 2025, and the written submissions filed by learned counsel for both parties, this is the determination by the Tribunal.

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

44. The Applicant's principal contention is that it neither disposed of any shares nor derived any income from the impugned transaction and therefore cannot lawfully be subjected to Capital Gains Tax arising from the disposal of shares by its shareholders. The resolution of that contention requires the Tribunal to examine the statutory framework governing taxation arising from

qualifying changes in ownership under the Income Tax Act and, in particular, the relationship between sections 74(2) and 78(h) of the Act.

45. Section 78(h) of the Income Tax Act provides as follows:

> *"Income is derived from sources in Uganda to the extent to which it is—*
> *(h) derived from the direct or indirect change of ownership by fifty percent or more of a person other than an individual, a government, a political subdivision of a government and a listed institution located in Uganda."*

46. Section 74(2) of the Income Tax Act further provides that:

> *"For the purposes of section 78(h), a person other than an individual, a government, a political subdivision of a government, or a listed institution that changes its ownership by fifty percent or more within a period of three years shall be treated as—*
> *(a) realising all its assets and liabilities immediately before the change;*
> *(b) having parted with ownership of each asset and deriving an amount in respect of the realisation equal to the market value of the asset at the time of the realisation;*
> *(c) re-acquiring the asset and incurring expenditure of the amount referred to in paragraph (b) for the acquisition;*
> *(d) realising each liability and being deemed to have spent the amount equal to the market value of that liability at the time of the realisation; and*
> *(e) re-stating the liability for the amount referred to in paragraph (d)."*

47. Section 78(h) therefore is a source rule. It identifies income as derived from sources in Uganda where it is derived from a direct or indirect change of ownership by fifty percent or more of a person, other than an individual, government, political subdivision of government or listed institution, located in Uganda. Section 74(2) is the operative provision which gives tax effect to that source rule. It prescribes the legal consequences that follow once the qualifying ownership-change threshold is met.

48. The two provisions must therefore be read together. Section 78(h) identifies the Ugandan source nexus; section 74(2) creates the statutory realization event. It would be an error to read section 78(h) in isolation, or to treat

section 74(2) as merely procedural. Section 74(2) is substantive. It directs that the resident entity whose ownership has changed shall be treated as having realized all its assets and liabilities immediately before the change. The Tribunal must interpret the provisions harmoniously and in a manner that gives effect to every enacted word of Parliament. An interpretation which renders any statutory language redundant is ordinarily to be avoided.

49. The words "*shall be treated as*" are deliberate. They create a statutory fiction. Once Parliament creates such a fiction, the Tribunal is bound to carry it to its logical statutory conclusion, but no further than the Act permits. The fiction is not that the shareholder's proceeds were received by the company. The fiction is that the company realized its own assets and liabilities at market value immediately before the qualifying ownership change.

50. Accordingly, the Applicant's reliance on separate legal personality is correct as a statement of company law, but insufficient as an answer to section 74(2). A company is separate from its shareholders. However, that principle does not prevent Parliament from attaching tax consequences to a material change in the economic ownership of that company. Section 74(2) does not collapse the company into its shareholders; rather, it taxes the company precisely because it remains the resident person whose ownership has undergone a qualifying statutory change.

51. The taxable event under section 74(2) is therefore distinct from the shareholders' disposal of shares. The shareholders disposed of shares. The Applicant, by force of statute, is deemed to have realized its assets and liabilities. Those are not the same event, even if both arise from the same commercial transaction.

52. This approach is consistent with ***Kuku Foods Uganda Limited v Uganda Revenue Authority TAT Application No. 54 OF 2025***, where the Tribunal held that section 74(2) creates a separate deemed realization by the resident entity, and that liability does not depend on whether the resident company received the shareholder's consideration.

53. In the present case, the evidence shows that Meditab Holdings Limited disposed of 51.05% of the Applicant and Cipla EU Limited disposed of 0.13%, producing an aggregate ownership change of 51.18% between 13th and 14 March 2023. That threshold exceeds the statutory requirement under section 74(2).

54. The Tribunal therefore finds that the statutory trigger was met. From that point, section 74(2) operated by force of law. The absence of actual proceeds in the hands of the Applicant does not defeat the assessment, because the Act taxes the deemed realization of the Applicant's assets, not the actual receipt of the shareholders' sale proceeds.

55. The Applicant's argument also requires the Tribunal to consider whether the transaction should instead be treated solely as a shareholder disposal. We do not accept that approach. The Income Tax Act may attach different consequences to different persons arising from one commercial arrangement. A share sale may produce consequences for the seller under one provision, while the same transaction may trigger a deemed realization by the resident entity under section 74(2), if the statutory threshold is crossed.

56. We also note that Section 78(h) is not confined to indirect transfers. Its text refers to "direct or indirect" change of ownership. The inclusion of both words must be given effect. A construction that confines section 78(h) to indirect offshore transfers would render the word "direct" redundant.

57. The Tribunal in ***Kuku Foods*** treated section 78(h) as capable of applying to direct ownership changes falling outside section 78(g), and explained that section 74(2) operationalizes the consequences of such qualifying changes. That reasoning applies in the present case.

58. The Tribunal further notes that section 78(g) addresses gains derived from the disposal of interests in entities whose value is principally attributable to immovable property situated in Uganda. The present dispute does not concern such an entity, nor was evidence led demonstrating that the

Applicant falls within that statutory category. The Tribunal therefore considers section 78(h) to be the applicable charging provision governing the qualifying change in ownership established on the evidence before it.

59. The Applicant additionally argued that, in any case, the resulting gain is exempt under Section 21(1)(j) of the Income Tax Act because it constitutes a capital gain not included in business income. The Tribunal has considered that argument together with Sections 2 and 18 of the Act. Section 18(1)(a) includes within business income any gain arising from the disposal of a business asset, while Section 2 defines a business asset as an asset held or used in the production of income. The Applicant is a commercial entity engaged in the manufacture and sale of pharmaceutical products for profit. Its assets therefore constitute business assets within the meaning of the Act.

60. Accordingly, once Section 74(2) deems the Applicant to have realized its assets at market value, the resulting gain constitutes business income by operation of law and cannot fall within the exemption contemplated under Section 21(1)(j).

<u>Computation of the taxable gain</u>

61. We now turn to computation. Section 74(2) does not authorize an arbitrary or commercially convenient computation. It prescribes the architecture of the calculation. The resident entity is deemed to have realized each asset and each liability at market value immediately before the ownership change. The computation must therefore begin with the statutory question: what was the market value of the Applicant's assets and liabilities immediately before the qualifying change?

62. The Tribunal emphasizes that the purchase price for shares may be relevant evidence, but it is not itself the statutory measure. Share price, enterprise value, equity value, net book value, and written down value are related but distinct concepts. Section 74(2) speaks of assets and liabilities at market value. It does not speak of enterprise value, shareholder consideration, or accounting convenience.

63. In ***Kuku Foods***, this Tribunal cautioned that the computation under section 74(2) must remain faithful to the statutory language. It held that the inquiry is not whether one valuation method is commercially preferable, but whether the valuation exercise sufficiently addresses the statutory requirement to determine the market value of the company's assets and liabilities at the effective date of the ownership change.

64. The Respondent initially adopted a transaction value of USD 30 million. The Applicant challenged that figure and demonstrated that the transaction consideration was USD 25 million. The Respondent accepted that objection and revised the assessment. That history is important because it shows that the initial computation was not beyond correction and that the Applicant did successfully displace one component of the assessment.

65. The subsequent question is whether the final amended assessment of Shs. 4,777,121,735 was shown to be excessive or erroneous. The evidence shows that after further review the Respondent revised its computation from net book value to written down value and issued the amended assessment. Written down value may properly be relevant to the cost base of depreciable assets, especially where capital allowances have already been claimed. However, written down value is not necessarily identical to market value.

66. The statutory phrase "market value" remains controlling. A computation under section 74(2) must therefore distinguish between the market value of the deemed realization proceeds and the cost base or tax written down value used to determine the resulting gain.

67. In the present case, the Applicant did not place before the Tribunal an independent valuation, expert report, or alternative statutory computation demonstrating that the Respondent's final assessment was excessive. Nor did the Applicant provide a competing valuation of the Applicant's assets and liabilities immediately before the March 2023 ownership change. Its case remained principally legal rather than evidential on computation.

68. The burden of proof is material. Under section 28 of the Tax Procedures Code Act and section 19 of the Tax Appeals Tribunal Act, the taxpayer bears the burden of proving that an assessment is excessive or erroneous. That burden is not discharged merely by showing that an earlier computation was wrong. It must be discharged against the assessment before the Tribunal.

69. The Tribunal therefore holds that although the Respondent's computation must always be measured against the statutory command of market value, the Applicant has not discharged the burden of proving that the amended assessment of Shs. 4,777,121,735 is excessive or erroneous. The assessment is accordingly upheld, not because written down value is synonymous with market value, but because the Applicant failed to adduce sufficient evidence to displace the final computation.

70. For emphasis, the Tribunal's conclusion should not be understood as judicial approval of written down value as a substitute for market value under section 74(2). Rather, the Tribunal's conclusion is confined to the evidential posture of this case, where the Applicant failed to adduce sufficient expert or valuation evidence capable of displacing the Respondent's amended assessment.

Applicability of Double Tax Agreements

71. The Applicant also relies on the Uganda–Mauritius and Uganda–United Kingdom Double Taxation Agreements. Its argument is that gains from the disposal of shares are taxable only in the residence state of the disposing shareholder, and that Uganda is thereby precluded from imposing the disputed assessment.

72. That argument would have force if the assessment before us were imposed on Meditab Holdings Limited or Cipla EU Limited in respect of their shareholder gains. It is not. The assessment is imposed on the Applicant, a Ugandan resident company, in respect of a deemed realization of its assets and liabilities under section 74(2).

73. The distinction is not formalistic. It is fundamental. The treaties address allocation of taxing rights over particular classes of income derived by particular persons. The income alleged to arise to the non-resident shareholders from their disposal of shares is not the same juridical income as the deemed gain attributed by domestic law to the resident company upon a qualifying ownership change.

74. Section 88(2) of the Income Tax Act gives treaty provisions priority where there is inconsistency between the treaty and domestic law. The Tribunal finds no such inconsistency here. The treaty may restrict Uganda's right to tax a non-resident shareholder on share-disposal gains. It does not, on the wording relied upon by the Applicant, prohibit Uganda from taxing its own resident company on a separate deemed realization created by domestic law.

75. The Applicant's treaty argument therefore conflates economic connection with juridical identity. One commercial transaction may generate more than one tax consequence. Treaty protection available to one taxpayer in respect of one item of income is not automatically transferred to another taxpayer in respect of a different statutory item of income.

76. The Tribunal is guided in this conclusion by the reasoning in ***Fowler v Commissioners for Her Majesty's Revenue and Customs***, where the court recognized that domestic deeming provisions may create consequences for domestic tax purposes, although such deeming must be carefully confined to its statutory purpose. In the present case, section 74(2) creates a domestic deemed realization by a resident entity. The treaties relied upon do not extinguish that event.

<u>Effective date of change of ownership</u>

77. The Tribunal also considers the effective date of the ownership change. Section 74(2) operates immediately before the change in ownership. The date of that change is therefore not a mere administrative detail. It fixes the valuation point for the deemed realization.

78. In cases involving share transfers, the Tribunal must distinguish between an agreement to transfer shares, the fulfilment of conditions precedent, beneficial ownership, legal title, and registration formalities. The effective date for section 74(2) purposes is the date on which the ownership change legally and beneficially crystallizes, unless the evidence shows that beneficial ownership passed earlier.

79. In ***Kuku Foods***, the Tribunal held that execution of a share purchase agreement alone does not necessarily effect a change in ownership where the agreement remains subject to conditions precedent and company-law transfer formalities. In the present case, the parties' evidence and Joint Scheduling Memorandum point to an aggregate change of 51.18% between 13th and 14th March 2023. The Tribunal therefore treats that period as the effective ownership-change date for purposes of section 74(2). The relevant valuation point is immediately before that change.

Taxation of notional income

80. The Applicant further contends that the assessment taxes notional income which was neither received nor receivable. That submission is understandable as a commercial grievance, but it cannot prevail against the enacted language of section 74(2).

81. A statutory fiction is not defeated merely because the deemed state of affairs did not occur in fact. Its purpose is to require the decision-maker to treat the deemed event as having occurred for the purposes specified by Parliament. Here, Parliament specified that upon a qualifying ownership change, the resident entity is treated as having realized all its assets and liabilities at market value immediately before the change.

82. The Tribunal must, however, apply the fiction carefully. Section 74(2) does not deem the company to have received the shareholders' sale proceeds. It deems the company to have realized its own assets and liabilities. That distinction preserves both the integrity of separate legal personality and the statutory purpose of taxing gains embedded in Ugandan resident entities whose ownership changes substantially.

83. The result may create cash-flow difficulty for a taxpayer, but hardship is not a basis for refusing to apply a clear charging mechanism. Where Parliament has chosen a deemed realization rule, the Tribunal's duty is to give effect to it, provided the assessment remains within the limits of the statute.

Constitutionality of the assessed tax

84. The Applicant additionally raised constitutional objections under Article 26 of the Constitution and argued that the impugned assessment amounted to compulsory deprivation of property. The Tribunal however agrees with the Respondent that under Article 137 of the Constitution, jurisdiction to determine the constitutionality of Acts of Parliament is vested exclusively in the Constitutional Court. This Tribunal, being a statutory tribunal established under the Tax Appeals Tribunal Act, lacks jurisdiction to declare Section 74(2) unconstitutional or to disregard its application. In any event, taxation imposed pursuant to an express Act of Parliament is constitutionally sanctioned under Article 152(1) of the Constitution provided the relevant statutory procedure is followed.

85. For the reasons above, the Tribunal finds that the Respondent lawfully assessed Capital Gains Tax against the Applicant pursuant to Sections 74(2) and 78(h) of the Income Tax Act. Issue 1 is therefore resolved in the affirmative.

Issue 2: What remedies are available to the parties?

86. Having found that the Respondent lawfully issued the impugned assessment, the Applicant's prayers seeking to set aside the assessment cannot succeed.

87. With regard to costs, although the Respondent has substantially succeeded, the dispute raised important questions concerning the scope of Sections 74(2) and 78(h) of the ITA, valuation under deemed realization rules, and the interaction between domestic law and Double Taxation Agreements. Given that the relevant amendments to the ITA are fairly new,

the Tribunal considers this an appropriate case for each party to bear its own costs.

VIII. Orders

88. The Tribunal accordingly makes the following orders:

i. The Application is dismissed.

ii. The Respondent's amended assessment dated 2 October 2024 assessing Capital Gains Tax amounting to Shs. 4,777,121,735 against the Applicant is hereby upheld.

iii. Each party shall bear its own costs.

It is so ordered.

Dated at Kampala this 29th day of May 2026

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HON. PROSCOVIA REBECCA NAMBI
CHAIRPERSON

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HON. WILLY NANGOSYAH
MEMBER

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HON. STELLA NYAPENDI CHOMBO
MEMBER