

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 36 OF 2024**

RWENZORI COMMODITIES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI,  
MS. CHRISTINE KATWE

**RULING**

This ruling is in respect of an application challenging the Respondent's capping of the Applicant's interest expense to 30% of EBITDA as provided under section 25 of the Income Tax Act. The Applicant contends that the Respondent should have applied net interest and not gross interest.

**1. Background Facts**

The Applicant grows tea and manufactures tea products. The Respondent's International Tax Department reviewed the Applicant's corporate income tax returns for 2019–2021 and found that the Applicant had claimed an interest expense of Shs. 1,738,250,300 that exceeded the 30% EBITDA cap. Relying on section 25(3), the Respondent disallowed this excess interest and raised additional assessments totalling to Shs. 521,475,118.

The Applicant objected on grounds that it had paid both interest on debt and earned taxable interest income and the net interest expense should be used in the EBITDA calculation. The Applicant contended that the Respondent's use of gross interest was contrary to international best practice (OECD BEPS Action 4) and resulted in double taxation.

On 30 January 2024, the Respondent rejected the objection maintaining that the interest expenses were correctly considered in the computation of the EBIDTA.

The Applicant asserts that this matter concerns the proper interpretation and application of section 25(3) of the Income Tax Act and the applicability of OECD and BEPS Action Plan 4 in the determination of taxable interest expenses.

## **2. Representation**

The Applicant was represented by Mr. Andrew Kyambadde, Mr. Trevor Mark Ntege and Ms. Lamunu Daisy while the Respondent was represented by Mr. Agaba Edmond and Mr. Amanya Mishambi Rodney.

**Mr. Prakrit Shah, the Managing Director of the Applicant,** was the Applicant's sole witness. He stated in his witness statement that the Applicant is in the business of growing and processing of tea. He also stated that the Respondent reviewed the Applicant's tax returns for the period 2019-2021 and established that the interest expense claimed by it was overstated by Shs. 1,738.250,300 based on EBITDA calculations.

He further testified that the Applicant objected to the assessments on the grounds that it had considered the net interest expenses to comply with section 25(3) of Income Tax Act therefore, the Respondent committed tax computation errors by using gross interest instead of net interest in chargeable income determination. He further testified that the Respondent misinterpreted and misapplied Section 25(3) of the ITA, by ignoring OECD BEPS Action Plan 4.

**Ms. Matovu Lorna, a supervisor in the Respondent's International Trade Unit** was the Respondent's sole witness. She stated in her witness statement that the Respondent conducted a return examination of the Applicant's declarations for the periods 2019 -2021 and established that the Applicant had overclaimed interest contrary to Section 25 of the Income Tax Act.

She testified that the Applicant objected on grounds that the Respondent misinterpreted and misapplied Section 25 (3) of ITA when it ignored best practices as recommended by BEPS Action Plan 4 of applying net interest when computing the

earnings before interest, tax, depreciation and amortization and not gross interest expense. She testified that the ITA provides the method for interest capping computation and its provisions take precedence over OECD guidelines therefore, the Respondent correctly considered the computation of the EBITDA

### **3. Issues for Determination**

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

### **4. Submissions of the Applicant**

The Applicant submitted that the Respondent misinterpreted section 25(3) by insisting on gross interest rather than net interest. In the Applicant's view, section 25(3) does not explicitly say "gross" interest, and the proper accounting treatment (and fairness) is to offset interest income against interest expense. The Applicant contended that net interest expense should have been used in line with international best practice and proper statutory interpretation.

#### **Section 25 of the Income Tax Act**

The Applicant relied on **Section 25(3) of the Income Tax Act, which provides:**

*"The amount of deductible interest in respect of all debts owed by the taxpayer who is a member of the group... shall not exceed thirty percent of the tax earnings before interest, tax, depreciation and amortization."*

The Applicant emphasized that the provision speaks only of "deductible interest" and "interest incurred" (under section 25(1)), without any explicit reference to the word "gross". The Applicant contended that if Parliament intended the cap to apply to gross interest, it would have stated so expressly.

The Applicant further argued that the Tribunal should adopt an interpretation that considers the economic substance of transactions and aligns with modern accounting and tax principles, particularly in situations where a taxpayer earns taxable interest income and also incurs interest expenses.

## Accounting Standards and GAAP Principles

The Applicant cited **Section 38 of the Income Tax Act**, which requires taxpayers to follow Generally Accepted Accounting Principles (GAAP). According to the Applicant, under GAAP, Interest income is recorded as revenue, Interest expense is recorded as a deduction and the net interest figure being the difference between income and expense reflects the actual financing cost incurred during the year.

The Applicant argued that the accounting treatment under GAAP provides a more accurate representation of economic reality and the Tribunal should interpret the tax statute in a way that is compatible with accounting standards especially when the law does not expressly contradict such treatment.

The Applicant relied on **IAS 1 (International Accounting Standard 1)** which governs the Presentation of Financial Statements to argue that the netting of financial income and expense is standard in financial reporting. The Applicant submitted that the Respondent's failure to adopt this approach led to distorted taxable income and an unjustified increase in the Applicant's tax burden.

## OECD BEPS Action Plan 4

The Applicant submitted that **Section 25(3) of the Income Tax Act** should be interpreted in light of international best practices particularly the OECD Base Erosion and Profit Shifting (BEPS) Action Plan 4 which advocates for the use of net interest expense in determining deductible interest under thin capitalization rules.

The Applicant quoted **Paragraph 62 of the BEPS Action 4 Report, which states:**

*"A net interest rule would reduce the risk of double taxation, as an entity's interest income would be set against its interest expense before the interest limitation is applied."*

The Applicant explained that BEPS Action 4 recommends a Fixed Ratio Rule that limits net interest deductions to a percentage (typically 30%) of EBITDA. The use of net interest is intended to reflect the true cost of borrowing and avoid scenarios where a taxpayer is taxed on income that is economically neutralized by corresponding financial expenses.

The Applicant argued that the Respondent's approach of applying the cap to gross interest expense ignores Uganda's tax policy trajectory toward alignment with

international standards and leads to double taxation. The Applicant also submitted that the Respondent's approach contradicts the spirit of the 2018 amendment to the ITA which was intended to replace the older thin capitalization rules with a fairer and more modern EBITDA-based limitation system.

The Applicant cited the case of *Unilever Kenya Ltd v The Commissioner of Income Tax, where Hon. Justice Alnashir Visram held:*

*"We must be prepared to innovate, and to apply creative solutions based on lessons and best practices available to us internationally... To do otherwise would be highly short-sighted."*

The Applicant submitted that the Tribunal should follow the Unilever principle and adopt a contextual interpretation of Uganda's section 25, one that aligns with OECD guidance and economic fairness, especially where the language of the law allows such flexibility.

The Applicant prayed that the Tribunal finds that net interest expense be used in the computation of EBITDA where a taxpayer has both earned taxable interest income and incurred interest expense.

## **5. Submissions of the Respondent**

The Respondent submitted that the additional assessments issued to the Applicant were lawful and correctly calculated in accordance with the literal provisions of Section 25 of the Income Tax Act. The Respondent argued that the Income Tax Act's language is plain and admits no implied netting of interest

### **Section 25 of the Income Tax Act**

The Respondent argued that **section 25(1)** allows a taxpayer to deduct interest incurred on debt obligations used to generate taxable income. The phrase "interest incurred" refers exclusively to actual interest expense paid by the taxpayer, not to a net figure derived by offsetting income.

**Section 25(3)** provides that this deductible interest shall not exceed 30% of EBITDA. The Respondent emphasized that this provision does not refer to net interest and that it must be read in conjunction with **Section 25(1)** which only allows deductions for expenses not income or netting concepts.

According to the Respondent, the computation of EBITDA under **Section 25(5)** further supports the conclusion that gross interest expense is the basis for the cap since EBITDA is calculated by adding back interest deducted under subsection (1). Netting would contradict this statutory structure.

#### **OECD BEPS Action Plan 4**

The Respondent acknowledged that the Applicant relied heavily on OECD BEPS Action Plan 4 but submitted that these guidelines have no force of law in Uganda. They are not binding and cannot override the clear language of domestic legislation.

The Respondent cited ***Paul Mwiru v Igeme Nabeta & Others, Election Petition No. 6 of 2011***, where the Court of Appeal held that:

*“Policy decisions cannot tantamount to legal or statutory requirements and therefore lack force of law.”*

The Respondent submitted that had the Legislature intended to apply a net interest rule, it would have amended **section 25** to that effect. Uganda’s Income Tax (Amendment) Act, 2018, was enacted after the OECD published BEPS Action 4 in 2015, but did not incorporate any such rule. The deliberate exclusion of a net interest reference indicates that Parliament did not intend to adopt it.

#### **Principles of Tax Deductibility and Burden of Proof**

The Respondent also relied on **Section 22(1)(a) of the Income Tax Act**, which allows deductions only for expenditures “wholly and exclusively incurred” in the production of income. It argued that interest income is not an expenditure, and therefore cannot be used to reduce deductible interest expenses under the law.

In support, the Respondent cited the **case of *New Vision Printing & Publishing Corporation v URA, HCCA No. 78 of 1999***, where it was held:

*“For an expenditure to qualify for deduction, some evidence of its character must be adduced. It must be wholly and exclusively incurred in the production of income.”*

The Respondent maintained that only actual, proven interest expense qualifies for deduction and the Applicant failed to provide any legal justification or legislative basis for netting such expense against income.

The Respondent further submitted that under **Section 28 of the Tax Procedures Code Act**, the burden of proof in tax matters lies with the taxpayer. The Applicant had not discharged this burden as it did not demonstrate that the gross interest amounts were incorrectly capped under section 25(3).

The Respondent prayed that the Tribunal finds that the Respondent correctly applied gross interest in the EBITDA computation as provided under the Act and that the OECD BEPS Action Plan 4 does not override Uganda's ITA.

In rejoinder, the Applicant reiterated their earlier arguments.

## **6. The determination of the Issues**

Having listened to the evidence and read the submissions of both parties, this is the decision of the Tribunal.

The dispute revolves around whether the Respondent erred in applying the 30% EBITDA interest deduction cap using gross interest expense rather than net interest expense.

### **Section 38 (1) of the Income Tax Act**

The Applicant relied on **section 38(1) of the Income Tax Act**, which provides:

*"A taxpayer's method of accounting shall conform to generally accepted accounting principles."*

The Tribunal agrees that while accounting principles govern how taxpayers maintain their financial records, taxation does not always follow accounting.

In the recent case of ***Ambitious Construction Ltd v URA***, TAT 219 of 2023, the **Tribunal held;**

*"that accounting and taxation serve different purposes. The purpose of accounting is to provide interested parties information relevant to stewardship, control and decision-making. On the other hand, the main purpose of taxation is to raise revenue for the government's economic and social policy. Therefore, taxation does not always follow accounting as tax is determined by the provisions of the applicable tax legislation and not the taxpayers' accounting".*

Therefore, accounting principles cannot override the express provisions of a taxing Act.

### **Section 25 of the Income Tax Act**

This provision lies at the core of the dispute and must be interpreted based on its express wording.

#### **Section 25 of the Income Tax Act provides as follows:**

*“(1) Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in gross income.*

*(3) The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution, microfinance deposit taking institution, tier 4 microfinance institution or person carrying on insurance business, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortization*

*(4) A taxpayer whose interest exceeds thirty percent of the tax earnings before interest, tax, depreciation and amortization may carry forward the excess interest for not more than three years, and the excess interest shall be treated as incurred during the next year of income.*

*(5) In this section-*

*“group” means persons other than individuals, with common underlying ownership, “tax earnings before interest, tax, depreciation and amortization” means the sum of-*

*(a) gross income less allowable deductions, except a deduction under subsection (1);“*

*Subject to certain exceptions, section 25(3) of the Income Tax Act provides that the deductible interest for a member of a group shall not exceed 30% of the taxpayer's tax EBITDA.*

From the literal reading, the above provision caps “deductible interest”, which is the interest amount that would otherwise have been allowed under **subsection (1)**. That deductible interest is interest incurred and nowhere does the Act refer to net interest. The EBITDA formula in **subsection (5)** reinforces that the interest to be capped is the amount deducted under **subsection (1)**, which is the gross interest expense.

Net interest is not “interest incurred”, neither does it arise from a debt obligation nor is it tax deductible. Net interest refers to the interest income after deducting all interest expenses such as interest paid on deposits or borrowed funds. Therefore, a plain

reading of the provision reveals that the section is concerned with the interest expense that was incurred by the taxpayer which in the absence of the capping provision would have been fully deductible. It does not apply to net interest income or net interest expense.

The Tribunal reiterates the well-established rule of statutory interpretation enunciated in **Cape Brandy Syndicate v CIR [(1921) 1 KB 64]**, which requires the application of the plain meaning of the provision.

The words “interest incurred” in section 25(1) and “deductible interest” in section 25(3) mean exactly what they say. There is no reference or basis in the Act for netting interest income from interest expense. Accordingly, only gross interest incurred qualifies for the deduction and is therefore the basis for the 30% EBITDA limitation.

#### **Applicability of OECD BEPS Action Plan 4**

The OECD BEPS Action Plan 4 recommends the use of net interest expense to prevent double taxation and ensure economic neutrality.

However, the decision of this Tribunal in **Ambitious Construction Ltd v URA** is instructive. The Tribunal held that even where OECD guidelines are persuasive, they cannot override a clear statutory provision.

Further, it is also worth noting that the OECD BEPS Action Plan came into force in 2015. This includes Action Point 4 which sets out a best practice approach for countries to prevent erosion of the tax base through the use of interest expense. Section 25 in its current form was introduced by the Income Tax (Amendment) Act, 2018, 3 years after the BEPS Project. If there was any intention of the government through the Ministry of Finance which shapes the country's tax policy to align section 25 with the BEPS Action Plan 4, the BEPS 'recommendations would have been fully adopted in the Income Tax (Amendment) Bill that was tabled before the Legislature and eventually passed in the form of the Income Tax (Amendment) Act, 2018. However, this was not the case.

We've taken note of the Applicant's reliance on the Unilever case (supra) wherein the OECD Transfer Pricing Guidelines were found to be applicable in Kenya. In **Unilever Kenya Ltd v Commissioner of Income Tax**, the Kenyan court considered OECD Transfer Pricing Guidelines only because Kenya had no domestic legislation on the

matter at the time. That case is therefore distinguishable. Uganda has a clear provision under section 25.

From the above, the statute clearly provides for a capping mechanism based on interest incurred not net interest. The Tribunal cannot read into the law what Parliament chose to leave out.

In the circumstances, we find that the Respondent correctly applied section 25 of the ITA and there was no misinterpretation or misapplication of the law.

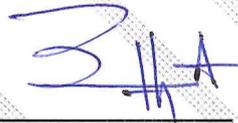
In the circumstances, the application is hereby dismissed and the Tribunal makes the following orders:

- (i) The Applicant is liable to pay the tax assessed.
- (ii) Costs are hereby awarded to the Respondent.

Dated at Kampala this 30<sup>th</sup> day of July 2025.



**CRYSTAL KABAJWARA**  
**CHAIRPERSON**



**SIRAJ ALI**  
**MEMBER**



**CHRISTINE KATWE**  
**MEMBER**