

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 36 OF 2025

RWENZORI COMMODITIES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA R NAMBI,
MS. ROSEMARY NAJJEMBA**

RULING

I. Introduction

1. This ruling is in respect to an application challenging the Respondent's assessment of withholding tax on brokerage fees and commissions paid by the Applicant to non-resident brokers and trade associations in Kenya.

II. Background Facts

2. The Applicant is in the business of growing, processing, and selling tea.
3. The Respondent conducted a customs post-clearance audit into the tax affairs of the Applicant for the period January 2019-December 2023 to assess the Applicant's compliance with its customs-related obligations. On 27 November 2024, the Respondent issued an audit management letter and stated that the Applicant did not withhold tax on brokerage and subscription fees paid to tea brokers and the tea association in Kenya.
4. Therefore, the Respondent assessed Shs. 95,007,270 as withholding tax ("WHT") at the non-resident rate of 15%. On 20 December 2024, the Applicant objected to the WHT assessment on the following grounds:

- (i) The brokerage and subscription fees are paid to non-resident persons for services physically conducted in Mombasa, Kenya, without any connection to Uganda.
 - (ii) The Withholding tax is not applicable on the brokerage fees since the services are not rendered in Uganda and the income is not sourced from Uganda.
5. On 17 January 2025, the Respondent disallowed the objection, maintaining that the brokerage and subscription fees attract withholding tax at a rate of 15% under Section 78(d)(ii) and 84 of the Income Tax Act Cap 338.
 6. The Applicant filed this application before this Tribunal for the review of the Respondent's objection decision.

III. Issues for determination

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

IV. Representation

8. Mr. Bruno Edwin Amanywa and Mr. Bruno Kalibala of Grant Thornton Advisory East Africa Limited represented the Applicant, while Ms. Doreen Amutuhaire of the Respondent's Legal and Board Affairs Department represented the Respondent.
9. Since the dispute in question primarily concerned a question of law, the parties were invited to file written submissions.

V. Submissions of the Applicant

10. The gist of the Applicant's submissions is that subscription and or brokerage fees derived by a non-resident person, for services and or activities physically performed, occurring and utilized wholly outside Uganda in relation to the sale of a resident person's goods, do not amount to income sourced in Uganda therefore do not attract withholding tax within the ambit of Sections 84 and 78 (d)ii) of the ITA.

11. The Applicant argued that the brokerage services are akin to the carriage of passengers and cargo, which does not embark in Uganda, as provided for under section 84 (5) of the ITA. The section provides:

“For the avoidance of doubt, income derived from the carriage of passengers who do not embark in Uganda, or from the carriage of cargo or mail that is not embarked in Uganda, shall not be treated as arising from a Ugandan-source services contract.”

12. The Applicant argued that since payments to non-resident transporters do not fall within the scope of the source rules, it follows that other foreign services, such as brokerage services that are physically rendered in a foreign country, should not be treated any differently. Therefore, the treatment accorded to international transportation services should also apply to all services that *“lack any territorial performance or utilisation connection to Uganda.”*

A literal interpretation of section 78 (d) (ii) would cause an absurdity

13. The Applicant also argued that the source rule under section 78 (d) (ii) is overly broad and, if strictly adhered to, would cause *“manifest absurdity never intended by the Legislature.”* The section provides:

“Income is derived from sources in Uganda to the extent to which it is –

(d) ...a fee for the provision of services –

(ii) paid by a resident person....”

14. The Applicant argued that a strict interpretation of the above provision would mean that a resident person sleeping in a hotel in Dubai or getting treatment in India, or a student studying in Kenya, would be required to withhold tax from the corresponding payments.
15. The Applicant cited the case of ***Goal Relief Development Organisation v URA TAT No. 77 of 2021***, where this Tribunal held that staff training services conducted abroad, in Thailand, are not subject to withholding tax since they were rendered abroad. The Applicant also relied on ***Uganda Revenue Authority v Jacobsen Uganda Power Plant, HCCA 26 of 2018***, where it was held that payments for air tickets procured from Norway were not sourced in Uganda.

16. The Applicant invited this Tribunal to adopt the golden rule of interpretation as the literal interpretation would result in an absurdity. The Applicant cited the case of *Law Society of Kenya v Kenya Revenue Authority & Anor*, High Court Petition 39 / 2017, where it was stated that the absurd result principle authorises a judge to ignore a statute's plain words to avoid the outcome those words would require in a particular situation.

The Applicant never had custody of the commission fees

17. The Applicant also argued that since they were never in custody of the commission fees, nor in receipt of or in control of the fees, the Applicant couldn't withhold the commission fees. Therefore, it is unsound to impose a withholding tax obligation where the relevant payment is never received.

VI. The submissions of the Respondent

18. The Respondent submitted that the Applicant is liable to pay the assessed withholding tax on brokerage and subscription fees paid to non-resident persons. This is because non-resident persons are taxable in Uganda on income derived from sources in Uganda, and withholding tax applies to payments for services connected to economic activity happening in Uganda.
19. Uganda's right to tax income earned by a non-resident person is prescribed under section 17(2) (b) of the Income Tax Act (ITA). Furthermore, Section 84(1) of the ITA imposes tax on every non-resident person deriving income from a Ugandan-source services contract.
20. Section 85(4) defines a Ugandan-source services contract as:
 - (i) *A contract whose principal purpose is the performance of services that give rise to income sourced in Uganda: and*
 - (ii) *any goods supplied are only incidental to that purpose.*
21. The Respondent cited the case of ***Esri Eastern Africa Limited V URA TAT Application 41 of 2023***, where this Tribunal held:

"Section 84(1) presupposes the existence of a contract, whose principal purpose is for the performance of services and must give rise to income sourced in Uganda".

22. The Respondent also referred to Black's Law Dictionary, which defines a service contract as a contract to perform a service. Furthermore, in ***Metropolitan Life Limited v Commissioner for the South African Revenue Service A 232/200***, the court defined a 'service' to mean:

... 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..."

23. The Respondent submitted that brokerage and subscription contracts clearly fall within this definition, as their principal purpose is to facilitate the sale of the Applicant's tea, a core business activity of the Applicant. The services rendered by the brokers are integral to the Applicant's revenue generation; as such, the income earned by the brokers is functionally linked to Uganda, as the source.
24. The Respondent also cited the case of ***Kuehne and Nagel Uganda Ltd v URA TAT Application No. 81 of 2022***, where payments to non-residents for services performed abroad were held to be Uganda-sourced income due to their direct connection to the Ugandan business.
25. The Respondent argued that the Applicant is a resident company engaged in the business of growing, processing, and selling tea—a business clearly carried on in Uganda. The brokerage and subscription fees paid to non-resident brokers and trade associations in Kenya are directly connected to the Applicant's Ugandan business operations. These payments facilitate the sale of Ugandan tea, and without them, the Applicant's business would not reach its export markets. Therefore, the fees paid to non-resident brokers and associations are incurred in the course of generating income from Uganda, thereby establishing a territorial and economic nexus.
26. Furthermore, the Respondent stated that it is a well-established principle of taxation as stated in ***Placer Dome Inc V Canada (1992] 2 CTC 98 at 109***, which cited with approval in the case of ***Intertek Testing Services International Limited V URA HC Civil Appeal 5 of 2002***, where it was held:

"It is the substance of a transaction that must be looked at to determine the true legal rights and obligations of the parties. Similarly, it is the commercial and

practical nature of the transaction, the true legal rights and obligations flowing from it that must be looked at to determine its tax implications."

Section 78 (d) (ii) of the ITA

27. The Respondent also submitted on section 78 (d) (ii) of the ITA, which provides that income is derived from sources in Uganda to the extent to which it is -

"employment income or a fee for the provision of services paid by a resident person, other than as an expenditure of a business carried on by a person outside Uganda through a branch."

28. The Respondent stated that, contrary to the Applicant's allegation, the above provision does not tax all foreign services indiscriminately. It includes a built-in exception for expenditures of a business carried on outside Uganda through a permanent establishment. This ensures that only services functionally connected to Uganda's economy are taxed. The Respondent further cited the case of ***East African Breweries Ltd v URA (TAT No. 17 of 2017)***, where the Tribunal affirmed that Section 78(t) of the ITA was designed to widen the tax net to include activities economically attributable to Uganda. Therefore, section 78(d)(ii) operates in harmony with this principle.

29. The Respondent concluded that a harmonious reading of Section 78(d)(ii) and 78(t) of the ITA supports the taxation of income functionally connected to Uganda, even if it was physically performed abroad. The interpretation advanced by the Respondent is reasonable, practical, and consistent with legislative intent.

The golden rule of interpretation

30. Regarding the Applicant's submissions that the Tribunal should apply the golden rule of interpretation to section 78 (d) (ii), the Respondent countered that the golden rule, as articulated in the case of ***Grey v Pearson (1857)***, allows modification of literal meaning only to the extent necessary to avoid absurdity, so as not to rewrite the statute. However, in ***Cape Brandy Syndicate v Inland Revenue Commissioners (1921) 1 K.B 64 at page 71***, it was stated that for taxing acts, one has to look merely at what is clearly said. Further, in the case of ***Bank of Baroda Ltd v The Commissioner General***,

Uganda Revenue Authority, it was held concerning the golden rule of interpretation that in interpreting a statute, the courts must adhere to the grammatical and ordinary sense of the words unless that adherence would lead to some manifest absurdity.

31. The Respondent submitted that Section 78(d)(ii) of the ITA is a precise and rational provision that ensures Uganda retains taxing rights over income economically sourced within its borders. It is not absurd, ambiguous, or overreaching but rather, a necessary tool for protecting Uganda's tax base in a globalized economy.

Inability to withhold

32. Concerning the Applicant's submission that it was practically impossible for them to withhold tax from the brokerage fees and commissions, the Respondent submitted that the structure of the transaction, where brokers retain their commission at source, was contractually agreed and within the Applicant's control.
33. The Respondent stated that the Applicant had the legal capacity to negotiate terms that would allow for withholding, such as gross remittance followed by deduction or separate invoicing. Therefore, the absence of physical custody of the funds does not absolve the Applicant of its statutory obligation to withhold tax on Uganda-source income. Furthermore, the Respondent stated that withholding tax applies to any payment for services where the payer is obligated to deduct and remit tax. The principle, therefore, is the effective control or direction over the payment, not the physical possession of the funds.
34. The Respondent concluded their submissions by stating that the Applicant has failed to discharge the burden of proof and the Tribunal should find them liable to pay the assessed tax.

VII. The determination of the Tribunal

35. Having listened to the submissions of the parties, this is the decision of the Tribunal.

36. The Applicant challenges the Respondent's imposition of withholding tax on brokerage and commission fees paid by the Applicants to brokers in Kenya. The Applicant is a producer and exporter of tea. The tea is sold at the Mombasa auction and the Applicant participates in the auction through brokers and trade associations, who charge the Applicant a commission/brokerage fees for the teas that are sold. It is these very fees that are at the centre of the dispute.

The taxation of non-resident persons

37. Section 4 of the ITA, read together with sections 15 and 17 (2) (b) of the ITA imposes tax on every non-resident person who derives income from sources in Uganda.
38. The sourcing rules, which determine when a non-resident person is deemed by the ITA to have derived income from sources in Uganda, are contained in Part IX of the ITA, which deals with international taxation.
39. For purposes of this dispute, we shall focus on sections 84 and 78 of the ITA.
40. Section 84 of the ITA imposes withholding tax on every non-resident person deriving income under a Ugandan source services contract.
41. Two conditions must be met for a non-resident person to be taxable under section 84:
- (i) There must be a non-resident person;
 - (ii) Who derives income under a Uganda-sourced services contract.

The first condition is satisfied as the recipients of the brokerage and commission fees are persons who are resident and operating in Kenya. The second condition is whether the income is derived under a Ugandan source services contract.

42. A Ugandan source services contract is defined by section 84 (4) to mean a contract, other than an employment contract whose principal purpose of the contract is the performance of services which gives rise to income sourced in Uganda. This means that there must be:
- (i) A contract

- (ii) whose principal purpose/ aim/ objective is the performance of services, and
 - (iii) The contract must give rise to income sourced in Uganda.
43. In the present case, while both parties allude to a contract between the Applicant and the non-resident persons, none was adduced in evidence before the Tribunal. However, the Applicant does not dispute the existence of brokerage services between them and the non-resident persons. A contract need not be in writing – it can be implied from the conduct of the parties. Therefore, in the present case, it is reasonable to conclude that there is a contract that exists between the Applicant and the non-resident brokers/trade associations.
44. The other condition is that the contract must give rise to income sourced in Uganda. Section 78 of the ITA lists scenarios under which a non-resident person will be deemed to have sourced income from Uganda. One of these is contained in section 78 (d) (ii), which provides that 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.
45. The above provision applies to scenarios where a resident person, such as the Applicant, pays a fee to a non-resident person for the provision of services.
46. In the present case, the Applicant paid brokerage and commission fees to non-resident persons for brokerage services rendered in Kenya. Therefore, the payments that the Applicant made fall squarely within section 78 (d) (ii) as they constitute income, in the hands of the non-resident persons, that they derived from the sources in Uganda.
47. The Applicant has made several arguments challenging the scope and legality of section 78 (d) (ii), which we address below.

A literal reading of section 78 (d)(ii) creates an absurdity that could never have been the intention of the Legislature

48. The Applicant has asked the Tribunal to apply the golden rule of interpretation and disregard the literal rule. The Applicant argues that the scope of section 78 (d) (ii) is so wide that applying the literal interpretation would lead to the

taxation of all kinds of income that were never contemplated by the Legislature. An example that has been cited by the Applicant is payments for accommodation incurred by Ugandans who have travelled abroad.

49. First, it should be emphasised that in matters concerning taxation, the literal rule is of paramount importance as has been held in several cases (*see Cape Brandy Syndicate, Supra*). This is because when the Parliament legislates for taxation, the intention is to raise and collect revenue. After all, the primary goal of taxation is to fund government expenditure. Therefore, the default position is that if the wording of a provision gives rise to a tax, however unfair, regressive, or bad the tax is, the understanding is that the Legislature intended for the provision to raise taxes.
50. This point is even brought home by the history section 78 (d) (ii). The section was introduced by the Income Tax (Amendment) Act, 2015, which repealed the previous provision – section 78 (c). The repealed provision stated:

“Income is derived from sources in Uganda to the extent to which it is...derived from any employment exercised or services rendered in Uganda.”
51. Therefore, the repealed section 78 (c) was narrower in scope than the current section 78 (d) (ii), as only income that arose from services rendered in Uganda was taxable on the non-resident person. Therefore, unlike the current section 78 (d) (ii), the provision would not apply where the services were rendered or performed abroad. Had this dispute related to brokerage fees paid in periods earlier than 2015, the fees would not have fallen within the source rules as they stood then.
52. However, in 2015, the Legislature considered it necessary to widen the scope of section 78 by repealing subsection (c) and replacing it with a catch-all provision. Under the new provision, section 78 (d) (11), it does not matter where the services are rendered. As long as a payment originates from Uganda and it is to a non-resident person for services rendered wherever, the Ugandan resident person is required to withhold.

53. The Tribunal cannot depart from the literal rule of interpretation in favour of the golden rule when there is a clear intention of the Legislature to depart from the very position that the Applicant would like us to adopt.
54. In fact, the long title of the Income Tax (Amendment) Act, 2015 is instructive insofar as discerning the intention of the Legislature. The case of ***Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG [1975] 591*** firmly established the principle that the long title is a valid and important internal aid for statutory interpretation. Lord Simon referred to the long title as "the plainest of all the guides to the general objectives of a statute." The Long Title of the 2015 amendment Act states:

"An act to amend the Income Tax Act, Cap. 340...to expand the scope of withholding tax..."

55. Therefore, the Long Title demonstrates a clear intention to expand the scope of withholding tax to include all payments made to non-resident persons for services rendered, irrespective of the place of performance of the services.

The services lack any territorial performance or utilisation connection to Uganda.

56. The Applicant argued that the services rendered by the non-residents in Kenya have no utilization connection to Uganda.
57. The Applicant produces and exports tea and utilize the services of brokers and trade associations in Kenya to market and promote the tea and to participate in the tea auction in Mombasa. It is our considered view that there is a direct nexus between the services performed and the Applicant's economic activities happening in Uganda. Therefore, the brokerage and commission fees paid by the Applicant facilitate the sale of Ugandan tea, and without them, the Applicant's products would not reach the export markets.
58. Consequently, the Applicant's argument that the services rendered by the non-resident brokers have no connection to Uganda is incorrect.

The impossibility of the withholding obligation

59. The Applicant submitted that it was practically impossible for them to withhold tax from the brokerage fees and commissions because they did not have control of the funds. Section 78 (d) (ii) refers to a *“fee for the provision of services paid by a resident person.”* This requires the following questions:
- Is the Applicant charged a fee for the provision of the services? Yes. They are charged brokerage and commission fees.
 - Are the fees paid by a resident person? Yes. They are paid by the Applicant, who is a resident in Uganda for tax purposes.
60. Furthermore, at the conferencing session with the parties, the Applicant confirmed that the fees are expensed in the Applicant’s financial statements. It should also be noted that while the Applicant did not have physical custody of the funds from which the brokerage fees were deducted, the funds at all material times belonged to the Applicant, who had control over them as they arose from the sale of its tea. The economic reality or true essence of a transaction is more important than its legal or superficial appearance. In other words, the Tribunal shall consider the substance of the transaction over its form. Therefore, how the Applicant chooses to settle its obligations with the brokers, whether by a direct cash payment or offset, does not dispense with its withholding tax obligations.
61. Section 137 of the ITA requires any person making a payment of the kind referred to in Section 82, 84 or 85 of the ITA to withhold from the payment the tax levied under the relevant Section. Having established that the payments fall under section 84 of the ITA, the Applicant was obliged to withhold tax and account for it. Further, section 142 of the ITA provides that a withholding agent who fails to withhold tax is personally liable to pay to the Commissioner General the amount of tax which has not been withheld. However, the withholding agent is entitled to recover this amount from the payee. In the present case, the Applicant did not withhold the tax and is therefore liable to pay the tax to the Respondent.
62. In the circumstances, the application fails and is hereby dismissed. The Tribunal makes the following orders:
- (i) The assessment of Shs. 95,007,270 is hereby maintained; and

(ii) Costs are awarded to the Respondent.

Dated at Kampala this 7th day of **November** 2025.

MS. CRYSTAL KABAJWARA

CHAIRPERSON

MS. PROSCOVIA R NAMBI

MEMBER

MS. ROSEMARY NAJJEMBA

MEMBER

RULING