TAX APPEALS TRIBUNAL

Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 229 OF 2024

SALAMA FIKIRA INTERNATIONAL (U) LIMITED ....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. KABAKUMBA MASIKO, HON. PROSCOVIA REBECCA NAMBI.

RULING

I. Introduction

1. This ruling is in respect to an application challenging additional assessments for VAT on imported services of Shs. 9,837,000.00, normal VAT of Shs.131,623,080.84 and Income tax liability of Shs. 25,646,995 issued by the Respondent.

II. Background facts

2. The Applicant, Salama Fikira International (U) Limited, is a limited liability company incorporated in Uganda and engaged in the provision of specialised logistical, risk assessment, consultancy, and security support services.

3. The Applicant entered into a contract with Total East Africa Midstream BV, also referred to in the record as Total Midstream BV, for the provision of support services to the Uganda People's Defence Forces and Uganda Police Force in relation to demining and the removal of remnants of war within the East African Crude Oil Pipeline corridor. Under that contract, the

Applicant was required to provide the services of qualified and internationally recognised Explosive Ordnance Disposal experts to deliver training and technical support in the removal of remnants of war. To perform those obligations, the Applicant engaged two non-resident individuals, Mr. Martin Bowler and Mr. Philipp Steyn. Mr. Steyn was also a director of the Applicant. The two individuals were paid a total of Shs. 984,885,551 for services rendered in connection with the EACOP project.

4. The Respondent conducted an audit of the Applicant's tax affairs covering the period from 1 July 2018 to 30 June 2021. The audit considered, among other matters, the Applicant's VAT and income tax positions, including variances between income tax sales and VAT sales, and payments made to the non-resident service providers.

5. On 30 April 2024, the Respondent issued a VAT Notice of Assessment, reference number 159436, in respect of the audit period 1 July 2018 to 30 June 2021. The notice described the assessment as an Administrative Additional Assessment under section 32 of the VAT Act. It reflected total additional VAT payable of Shs. 167,246,246.82, with the annexure showing period-by-period computations. The annexure further reflected declared or assessed VAT liability of Shs. 178,251,682, tax liability as per audit of Shs. 319,711,763, and additional liability of Shs. 141,460,080.84 for the period computations shown.

6. The record shows that the Respondent further issued a Tax Audit Management Letter dated 6 May 2024, reference number 159436. In that letter, the Respondent communicated additional liabilities including income tax of Shs. 25,646,995, VAT on imported services of Shs. 9,837,000, and domestic VAT of Shs. 131,623,080.84.

7. The Applicant objected to the VAT assessments by notices of objection dated 10 May 2024. Its objection was principally that the domestic VAT under its contract with Total Midstream BV had already been declared and remitted, and that this had been independently verified by the Respondent

during a VAT refund audit relating to Total Midstream BV's input VAT claim. The Applicant further contended that the Respondent could not subsequently assess additional domestic VAT on the same supplies without identifying omitted taxable supplies or a lawful basis for reopening the verified VAT position.

8. On 24 July 2024, the Respondent issued objection decisions maintaining the assessments. The reasons given were that the services relating to training support for the removal of remnants of war were not listed among exempt or zero-rated supplies under the VAT Act, and that the Applicant ought to have accounted for VAT on imported services.

9. The Applicant thereafter filed this application before the Tribunal he Tribunal challenging the Respondent's VAT assessment, particularly the additional VAT reflected in the assessment notice, and seeking declarations that all VAT assessed by the Respondent was duly paid, that the services rendered by Mr. Philipp Steyn and Mr. Martin Bowler were not imported services and therefore did not give rise to further VAT on imported services, and that the disputed VAT assessment be vacated.

III. Issues

10. The issues for the Tribunal to determine are
    i. Whether the Applicant is liable to pay the tax assessed.
    ii. Whether there are any remedies available to the parties.

IV. Representation and evidence

11. Mr. Edward Mugumya represented the Applicant, while Mr. Simon Peter Orishaba represented the Respondent.

12. The Applicant called one witness, Mr. Golooba Rodney, an employee of the Applicant company. In his witness statement, he stated that the Applicant is a limited liability company incorporated in Uganda and engaged in the provision of logistical, risk assessment and consultancy services.

13. He stated that, at the time of incorporation, the Applicant's directors included Mr. Phillip Herman Steyn, Mr. Dylan Evans Andrew and Mr. Conrad Steyn. The Applicant is wholly owned by Salama Fikira International. Mr. Golooba further stated that the Applicant entered into a contract with Total Midstream BV to provide support services to the UPDF/UPF Explosive Ordnance Disposal team in respect of the demining programme within the EACOP work zone in Uganda.

14. He testified that the Respondent's Natural Resources Unit conducted a VAT refund audit to verify the input VAT claimed by Total Midstream BV against the output VAT declared and remitted by the Applicant. According to him, the audit confirmed that all output VAT under the contract had been declared and remitted, after which the VAT refund audit was concluded.

15. He further stated that the Respondent subsequently initiated another audit covering income tax and VAT for the same period, June 2019 to December 2020. Following several reconciliation meetings, the Respondent issued additional assessments, which the Applicant objected to on the ground that no VAT was due since the VAT under the contract had already been remitted and Total Midstream BV had received its VAT refund following the earlier audit.

16. Mr. Ntambi Brian, an officer in the Respondent's Domestic taxes Department, was the Respondent's sole witness. He stated in his witness statement that on 22 August, 2022, the Respondent issued the Applicant with administrative additional VAT assessments amounting to Shs. 177,279,399 for the period June 2019 to December 2020 on the basis of undeclared VAT on imported services worth Shs. 984,885,551 to which the Applicant objected to.

17. Upon review of the Applicant's objections, the Respondent established that the Services related to training support for the removal of remnants of war are not exempt or zero-rated supplies, but rather standard rated subject to VAT. The contract for service existed between the Applicant and the service

providers/contractors, Mr. Martin Bowler and Mr. Philipp Steyn who were nonresidents at the time these servicers were provided.

18. Additionally, on 24 July, 2024, the Respondent issued its objection decisions maintaining the assessments on grounds that the services to offer training support in the removal of remnants of war are not exempt or zero-rated supplies and the Applicant ought to have charged VAT on these imported services. Therefore, the VAT amounting to UGX 177,279,399 is lawful, due and payable by the Applicant.

V. Submissions of the Applicant

19. Counsel for the Applicant submitted that the principle that "tax is a creature of statute" is fundamental to tax law. The Applicant argued that no tax may be imposed unless there is clear and express statutory authority. Counsel relied on Article 152 of the Constitution, which provides that no tax shall be imposed except under the authority of an Act of Parliament.

20. The Applicant relied on the Supreme Court case in ***Uganda Revenue Authority v. Stanbic Bank (U) Ltd*** **UGSC 21** wherein it was reaffirmed that;

> *"A taxpayer's liability must arise strictly within the four corners of the relevant taxing statute and that URA has no residual or equitable power to impose tax outside the express procedures laid down by law."*

21. On that basis, the Applicant submitted that an assessment is a jurisdictional act and must strictly comply with the statute.

22. The Applicant referred to **Section 4 of the Value Added Tax Act** which provides that 'for a tax to be known as Value Added Tax, it should be charged on:

    (i) "Every taxable supply in Uganda made by a taxable person;

    (ii) Every import of goods other than an exempt import; and

    (iii) The supply of any imported services by any person."

23. The Applicant also relied on **Section 25(6) of the Tax Procedures Code Act, Cap 343** provides that;

"Where the Commissioner General has made an additional assessment under this section, the Commissioner General shall serve the taxpayer with notice, in writing, of the additional assessment specifying;
(a) the amount assessed as tax, assessed loss, or excess input tax credit, as the case may be;
(b) the amount of penal tax and interest, if any, payable in respect of the amount assessed as a result of subsection (2)(a);
(c)the tax period to which the assessment relates;
the date for payment of any tax, penal tax and interest being a date that is not less than forty-five days from the date of service of the notice; and
(e) the manner of objecting to the assessment."

24. The Applicant further cited ***BAT (U) Ltd v. Uganda Revenue Authority UGCA 4***, wherein, the Court of Appeal held that;

"Where the law prescribes a particular manner for making and communicating an assessment, any deviation renders the assessment legally defective."

25. The Applicant submitted that on 6 May 2024, by management letter reference number 159436, the Respondent issued an assessment to the Applicant through its official email address for communicating assessments to taxpayers, namely ura@ura.go.ug. According to the Applicant, the management letter notified it of VAT on imported services of Shs. 9,837,000, normal VAT of Shs. 131,623,080.84 and income tax liability of Shs. 25,646,995.

26. Counsel for the Applicant argued that the Respondent's witness could not lawfully introduce, through testimony and audit workings, a purported VAT liability of Shs. 177,279,399. The Applicant relied on ***URA v MTN Uganda Ltd (TAT Application No. 04 of 2018)***, where the Tribunal held that:

"Witness testimony cannot cure defects in an assessment and that an assessment must speak for itself through a valid statutory notice. Internal

workings, assumptions, or reconstructions cannot amount to an assessment in law."

27. The Applicant further submitted that the VAT Act creates distinct and mutually exclusive tax heads, namely normal VAT on taxable supplies made in Uganda, import VAT on imported goods, and VAT on imported services. Counsel argued that these categories are not interchangeable. The Applicant relied on Tullow Uganda Operations Pty Ltd v URA (TAT Application No. 02 of 2015), where the Tribunal held that:

    "VAT is transaction-specific and tax-head specific, and that URA must clearly identify the nature of the taxable transaction before liability can arise. Any attempt to collapse or aggregate distinct VAT categories without statutory authority is unlawful."

28. The Applicant also challenged the figure of Shs. 177,279,399 on the basis that it does not correspond to any combination of the amounts set out in the management letter. Counsel submitted that the figure has no statutory or factual basis and is therefore not merely erroneous, but jurisdictionally void.

29. The Applicant therefore prayed that the Tribunal finds that the true and only assessment issued to the Applicant was the assessment communicated by the management letter dated 6 May 2024, under which the amount assessed as import VAT was Shs. 9,837,000, the amount assessed as normal VAT was Shs. 131,623,080.84, and the amount assessed as income tax was Shs. 25,646,995.

<u>VAT of Shs. 131,623,080.84</u>

30. Counsel for the Applicant submitted that section 24(2) of the VAT Act is instructive on the calculation of tax on a taxable transaction for purposes of normal VAT. Counsel stated that the tax payable is arrived at using the formula set out in paragraph 1(a) of the Fourth Schedule, which provides that for purposes of section 28(9)(b), the following formula applies:

"A x B/C where—A is the total amount of input tax for the period; B is the total amount of taxable supplies made by the taxable person during the period; and C is the total amount of all supplies made by the taxable person during the period other than an exempt supply under clause 1(k) of the Second Schedule".

31. Counsel submitted that VAT payable is determined by the difference between output tax, being the tax charged on taxable supplies made by a taxpayer, and input tax, being the tax incurred on goods and services supplied to the taxpayer. Where output tax exceeds input tax, the taxpayer is in a VAT payable position. Where input tax exceeds output tax, the taxpayer is in a VAT refund position. Counsel described this as the VAT mechanism and the basis upon which VAT operates as a self-accounting tax.

32. The Applicant submitted that it provided services to Total Midstream BV under contract which services were standard rated and therefore Vatable and for which Total midstream was charged VAT which amounted to Shs. 211,738,030 which was paid as follows:

Invoice Date	Invoice number	Amount	VAT paid	Return Number
11/23/2020	237	8,140,000	1,465,200	CR01214555020
1/1/2020	3	554,846,563	83,148,102.9	CR0122003753829
6/25/2019	183	10,572,988.49	1,903,123.59	CR01200324782
6/25/2019	184	70,196,824.88	12,635,438.27	CR01200324782
6/25/2019	185	1,030,055.31	185,396.37	CR01200324782

6/25/2019	194	73,871,513.77	13,296,889.07	CR01200324782
6/25/2019	195	179,088,710.2	32,235,969.01	CR01200324782
7/25/2019	209	207,054,107.8	37,269,739.4	CR01200905986
—	—	—	29,598,171	CR012200367457
TOTAL	—	—	211,738,030	—

33. The Applicant submitted that the output VAT of Shs. 211,738,030 was the subject of a VAT refund audit conducted by the Respondent. The Applicant argued that the Respondent confirmed that the VAT had been remitted and thereafter processed Total Midstream BV's VAT refund. According to the Applicant, its output VAT was Total Midstream BV's input VAT claim, and the Respondent could not have processed the refund without first satisfying itself that the corresponding output VAT under the contract had been accounted for by the Applicant.

34. The Applicant relied on ***Total E&P Uganda B.V. v. URA (TAT Application No. 29 of 2016)***, wherein the Tribunal held that;

> *"Once URA conducts a VAT refund audit and approves a refund, it necessarily confirms that the corresponding output VAT was properly accounted for by the supplier. The Tribunal described VAT as a closed-loop system and held that URA cannot subsequently allege non-remittance of the same VAT absent fraud or misrepresentation."*

35. The Applicant also relied on ***CNOOC Uganda Ltd v. URA (TAT Application No. 08 of*** 2017**)**, the Tribunal held that;

"URA cannot approbate and reprobate by approving a VAT refund on one hand and later assessing additional VAT on the same transaction on the other."

36. In conclusion on this issue, the Applicant submitted that all VAT due under its contract with Total Midstream BV was duly accounted for and remitted to the Respondent. Counsel therefore argued that the additional normal VAT assessment of Shs. 131,623,080.84, as set out in the management letter dated 6 May 2024, cannot stand.

Remedies

37. The Applicant submitted that it had demonstrated that all normal VAT due under its contract with Total Midstream BV was remitted to the Respondent. It further argued that the Respondent's processing of Total Midstream BV's VAT refund confirmed that no further VAT was due from the Applicant in respect of the same contract. Counsel submitted that an assessment is a question of law and not opinion.

38. The Applicant further submitted that the Tribunal cannot treat Mr. Brian Ntambi's workings or assumptions on tax payable as an assessment, given the clear statutory requirements on what constitutes an assessment and how it must be communicated. Counsel argued that, in the absence of a duly issued management letter accompanied by a formal assessment, whether transmitted through the Respondent's official communication channels or served physically, the assertion that a VAT assessment of Shs. 177,279,399 exists is unsupported by evidence and cannot be sustained.

39. The Applicant therefore contended that the alleged assessment of Shs. 177,279,399 is speculative, unsubstantiated, and devoid of any legal or factual foundation. Counsel further submitted that it is inconceivable that the Applicant could import services from itself or its members.

VI. Submissions of the Respondent

40. The Respondent submitted that the Applicant's case is that the assessments comprised VAT on imported services of Shs. 9,837,000 and domestic VAT of Shs. 131,623,080, to which the Applicant objected. The Respondent, however, argued that the objection decisions relied upon by the Applicant relate entirely to VAT on imported services. In those decisions, the Respondent disallowed the objections on the ground that the services for training support in the removal of remnants of war were not listed as exempt or zero-rated supplies under the VAT Act, and that the Applicant ought to have accounted for VAT on imported services.

41. The Respondent further submitted that the objection decisions total Shs. 140,939,912, which is above the Shs. 9,837,000 that the Applicant contends was the assessed VAT on imported services.

42. The Respondent contended that the Applicant received notices of the assessments, objected to them, and received objection decisions, which are the subject of this application. The Respondent also relied on the evidence of RW1, Mr. Ntambi Brian, who stated during cross-examination that the audit report was shared through e-Tax, while the management letter was sent by post to the Applicant's registered address at Sal Building, Nkrumah Road. The Respondent argued that the only inference to be drawn in respect of the domestic VAT of Shs. 131,623,080 is that the Applicant did not formally object to that assessment, since no objection decision relating to it was adduced before the Tribunal. On that basis, the Respondent submitted that the domestic VAT assessment is payable.

VAT on imported services

43. The Respondent relied on **Section 4 of the Value Added Tax Act Cap 344 (VAT Act)** which imposes VAT. It provides that;

    "A tax, to be known as a value added tax, shall be charged in accordance with this Act on, the supply of imported services, other than an exempt service, by any person"

44. The Respondent submitted that, although the VAT Act does not define imported services, guidance may be drawn from case law. In ***Africa Broadcasting (U) Limited v Uganda Revenue Authority, TAT Application No. 44 of 2018***, the Tribunal stated that three requirements must be met for a service to fall within the scope of imported services under the VAT Act:

> *'The services must be rendered by a supplier who is outside Uganda, the recipients of the services must be in Uganda and the services must be utilized or consumed in Uganda and are taxable".*

45. The Respondent submitted that it is not in contention that the Applicant engaged non-resident individuals to provide support services towards its contract with Total that is Mr. Phillip Steyn who provided management services, and Mr. Martin Bowler as the technical advisor. During cross-examination, AW1 Mr. Golooba Rodney stated that indeed the Applicant hired the services of experts including Mr. Martin Bowler and that he is not a Ugandan resident. it is clear that the services rendered were imported services as the services were rendered by persons outside Uganda, and the recipient of these services was the Applicant in execution of its contractual obligations and the said services were performed at EACOP sites in Uganda.

46. The Respondent submitted that the obligation to account for VAT on the imported services lay with the Applicant. It relied on section 5(c) of the VAT Act, which provides that, in the case of a supply of imported services, the person liable to pay the tax is the person receiving the supply.

47. The Respondent also relied on regulation 13(1) of the VAT Regulations, 1996, which provides that:

> *"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."

48. Counsel for the Respondent submitted that, upon reviewing the Applicant's objection and engaging with the Applicant, the Respondent established that the Applicant had entered into a contract with Total East Africa Midstream BV to provide support services to the Uganda Peoples' Defence Forces and Uganda Police Force in relation to demining and removal of remnants of war along the EACOP pipeline corridor.

49. The Respondent further submitted that the Applicant was contractually required to provide the services of a qualified and internationally recognised Explosive Ordnance Disposal expert to train the UPDF in the removal of remnants of war. To perform this obligation, the Applicant contracted Mr. Martin Bowler and Mr. Philipp Steyn, both of whom were non-residents at the time the services were provided. The Respondent stated that the two individuals were paid Shs. 984,885,551 for services rendered on the EACOP project, but the Applicant did not declare VAT on those payments.

50. The Respondent argued that Total Midstream BV and the UPDF were third parties to the arrangement between the Applicant and the non-resident trainers and had no obligation to account for the VAT on the imported services. The Respondent further submitted that the training support services for the removal of remnants of war were not exempt or zero-rated under the Third and Fourth Schedules to the VAT Act. Accordingly, the services were standard-rated and subject to VAT.

51. The Respondent relied on the evidence of AW1, Mr. Golooba Rodney, who stated during cross-examination that he did not know how much VAT the Applicant paid in respect of those services. The Respondent submitted that this confirmed that no VAT was charged or remitted on the services rendered by the non-resident technical personnel. RW1, Mr. Ntambi Brian, also stated during cross-examination that the Shs. 9,837,000 referred to by the Applicant as the assessed VAT on imported services formed part of the total VAT liability of Shs. 177,279,399. The Respondent therefore submitted

that the outstanding VAT liability of Shs. 167,442,399 remains due and payable by the Applicant.

<u>Domestic VAT of Shs. 131,623,080</u>

52. The Respondent relied on **Section 14 (1) of the Tax Appeals Tribunal Act Cap 341**, which provides that;

> *"A person aggrieved with the decision made under a taxing act by the Uganda Revenue Authority may apply to the tribunal for review of the decision"*.

53. The Respondent submitted that the procedure and timelines for objecting to an assessment are set out under section 26(1) of the Tax Procedures Code Act, Cap 343, which requires a taxpayer to lodge an objection within 45 days of receiving notice of the decision. In the present case, the Respondent argued that the Applicant adduced no objection decision in respect of the domestic VAT assessment of Shs. 131,623,080. The Respondent submitted that this shows that the Applicant did not object to that assessment, rendering its application for review of the domestic VAT assessment premature. The Respondent therefore prayed that the application in respect of that assessment be dismissed with costs.

VII. The Determination

54. Having considered the pleadings, witness statements, exhibits, oral evidence, statutory provisions and submissions of both parties, the Tribunal now determines the application.

55. The parties are agreed that the Respondent conducted an audit of the Applicant's tax affairs. They are also agreed that the audit concerned, among other matters, VAT and income tax for the relevant audit period. The point of disagreement is the legal effect of the documents generated from that audit.

56. The Applicant contends that the only liabilities properly communicated to it were those contained in the Tax Audit Management Letter, namely VAT on imported services of Shs. 9,837,000, domestic VAT of Shs. 131,623,080.84, and income tax of Shs. 25,646,995. The Applicant argues that the later figure of Shs. 177,279,399 was introduced through witness testimony and audit workings, and cannot constitute an assessment in law.

57. The Respondent, on the other hand, contends that the dispute properly before the Tribunal concerns VAT on imported services arising from payments of Shs. 984,885,551 made by the Applicant to two non-resident service providers, Mr. Martin Bowler and Mr. Philipp Steyn. The Respondent submits that the applicable VAT at 18% on that consideration is Shs. 177,279,399 and that the Applicant's payment of Shs. 9,837,000 was only part payment of the imported-services VAT liability.

58. Clearly, the dispute raises a key question of tax administration. It is not merely whether VAT on imported services may, in principle, arise under the Value Added Tax Act. It is also whether the liability maintained by the Respondent was properly assessed, communicated, objected to, and placed before the Tribunal through valid objection decisions. The Tribunal must therefore deal with both the substantive tax issue and the procedural dispute concerning the scope and effect of the assessments and objection decisions.

59. The Tribunal begins with first principles. Article 152 of the Constitution provides that no tax shall be imposed except under the authority of an Act of Parliament. Tax is therefore a creature of statute. The Respondent may only assess and collect tax in the manner authorised by law. Equally, a taxpayer who challenges an assessment must do so within the statutory objection and review framework.

60. Section 14(1) of the Tax Appeals Tribunals Act permits a person aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority to apply to the Tribunal for review of that decision. Section 14(2) gives the Tribunal power to review any taxation decision in respect of which an

application is properly made. Section 16 requires an application for review to be made in writing, to include reasons, and to be lodged within the prescribed time after service of the decision. Where the application relates to an objection decision, the applicant is generally limited to the grounds stated in the objection to which the decision relates.

61. The Tribunal's jurisdiction is therefore not an invitation to conduct a fresh audit. The Tribunal reviews the taxation decision properly brought before it. In an assessment dispute, that requires attention to the assessment, the objection, the objection decision, and the evidence explaining the basis upon which the liability was maintained.

62. Section 25 of the Tax Procedures Code Act empowers the Commissioner General to issue an additional assessment to ensure that the taxpayer is liable for the correct amount of tax payable for the relevant period. However, where an additional assessment is made, the Commissioner General must serve the taxpayer with a written notice specifying the amount assessed, the tax period, the date for payment, and the manner of objecting. Section 26(1) then allows a person dissatisfied with a tax decision to lodge an objection within forty-five days after receiving notice of that decision.

63. These provisions serve an important purpose. A taxpayer must know the tax head, the period, the amount assessed, and the basis of the assessment. Without that clarity, a taxpayer cannot meaningfully exercise the right of objection. At the same time, where the taxpayer has received the relevant assessment, objected to it, received an objection decision, and the dispute has been canvassed before the Tribunal, the Tribunal must look at the substance of the objection decision and the tax head actually maintained, not merely at isolated descriptions in one document.

64. The burden of proof remains on the Applicant. Section 19 of the Tax Appeals Tribunals Act places on the taxpayer the burden of proving that the taxation decision is excessive or should not have been made. That burden, however, does not excuse the Respondent from identifying a valid tax head and a reviewable taxation decision. The taxpayer bears the burden of

disproving the assessment, but there must first be an assessment or objection decision capable of review.

Scope and effect of the assessments and objection decisions

65. The evidence shows that the Respondent issued a VAT Notice of Assessment dated 30 April 2024, reference number 159436, described as an Administrative Additional Assessment under section 32 of the VAT Act. The notice related to the audit period 1 July 2018 to 30 June 2021 and reflected VAT assessed under the Respondent's audit. The annexures to that notice set out period-by-period VAT computations. The Applicant also relied on the Tax Audit Management Letter, which itemised VAT on imported services of Shs. 9,837,000, domestic VAT of Shs. 131,623,080.84, and income tax of Shs. 25,646,995.

66. The Tribunal accepts that the record contains some difficulty in the way the figures were presented. The management letter itemised one figure for VAT on imported services, while the Respondent's witness and submissions referred to a higher imported-services VAT liability of Shs. 177,279,399 arising from payments of Shs. 984,885,551 to non-resident service providers. This required the Tribunal to examine whether the higher figure was a new liability introduced at the hearing, or whether it was sufficiently connected to the assessments and objection decisions before the Tribunal.

67. The objection decisions issued on 24 July 2024 offer some significant guidance. Their reasons did not concern ordinary domestic output VAT on the Applicant's supply to Total Midstream BV. They concerned the Respondent's position that training support services for the removal of remnants of war were not exempt or zero-rated and that the Applicant ought to have accounted for VAT on imported services. The objection decisions therefore identified the tax head maintained by the Respondent as VAT on imported services.

68. The Tribunal is therefore not persuaded that the imported-services issue was introduced for the first time through the oral testimony of RW1. The

objection decisions themselves show that the Respondent maintained the assessment on the basis that the Applicant had received taxable imported services. The real question is whether the amount of Shs. 177,279,399 is supported by the factual and statutory basis of that imported-services assessment.

69. The Respondent's position is that the Applicant paid Shs. 984,885,551 to Mr. Bowler and Mr. Steyn for services rendered in connection with the EACOP project. The Applicant did not dispute that payments were made to the two individuals, although it disputed the legal character and tax consequences of those payments. Applying the VAT rate of 18% to Shs. 984,885,551 gives Shs. 177,279,399.18. The figure of Shs. 177,279,399 is therefore arithmetically traceable to the taxable value relied on by the Respondent.

70. The Tribunal nonetheless emphasizes that arithmetic alone does not create an assessment. A tax liability must arise from statute and must be communicated through a process recognised by law. In this case, however, the Tribunal is satisfied that the imported-services VAT issue was the subject of the objection decisions and that the Applicant had notice of the Respondent's factual case, namely that payments made to non-resident service providers for EACOP-related training support gave rise to VAT on imported services. The Applicant challenged that characterisation in its objection, evidence and submissions. The Tribunal therefore treats the imported-services VAT dispute as properly before it.

71. The domestic VAT assessment stands on a different footing. The Applicant placed considerable reliance on the VAT refund audit concerning Total Midstream BV and contended that all output VAT under the Total Midstream BV contract had been declared and remitted. That argument may be relevant to domestic VAT on the Applicant's supplies to Total Midstream BV. It does not, without more, answer the separate imported-services VAT question concerning services received by the Applicant from non-resident service providers.

72. The Respondent argued that no objection decision in respect of domestic VAT was placed before the Tribunal, and that the objection decisions produced relate to VAT on imported services. The Tribunal has reviewed the record and agrees that the reasons in the objection decisions were directed at imported services, not at a separate domestic VAT assessment founded on omitted local supplies, output VAT variances, or undeclared taxable supplies made by the Applicant in Uganda.

73. The consequence is that the Tribunal will determine the imported-services VAT issue on the merits. The Tribunal will not determine the substantive correctness of the domestic VAT assessment in the absence of an objection decision on that distinct tax head properly before it. That finding is procedural. It is not a determination that the domestic VAT assessment was substantively correct. It only means that the domestic VAT issue has not been properly presented for merits determination in this application.

74. The same applies to income tax. The income tax figure of Shs. 25,646,995 appears in the management letter, but no objection decision relating to income tax was placed before the Tribunal. An objection to VAT does not automatically amount to an objection to income tax. Each tax head must be challenged through the statutory objection and review procedure. The Tribunal therefore has no proper basis to determine the income tax assessment on the merits.

Whether the services supplied by Mr. Bowler and Mr. Steyn were imported services

75. Section 4 of the VAT Act charges VAT on every taxable supply in Uganda made by a taxable person, every import of goods other than an exempt import, and the supply of any imported services by any person. Section 5(c) places liability, in the case of imported services, on the person receiving the supply.

76. Regulation 13(1) of the VAT Regulations provides that a person who receives imported services, other than exempt services, shall account for

tax due on the supply when performance of the service is completed, when payment is made, or when the invoice is received from the foreign supplier, whichever is earliest. The Regulations further provide that the taxable person receiving the services applies the tax rate to the taxable value and enters both the value and the tax calculated in the tax return.

77. The VAT Act does not exhaustively define "imported services". In ***Africa Broadcasting (U) Limited v Uganda Revenue Authority, TAT Application No. 44 of 2018***, the Tribunal stated that imported services require three elements: the services must be rendered by a supplier outside Uganda; the recipient must be in Uganda; and the services must be utilised or consumed in Uganda and be taxable. That test is consistent with the destination principle of VAT, under which tax is imposed where consumption occurs.

78. The evidence shows that the Applicant contracted with Total East Africa Midstream BV to provide support services to UPDF and UPF in relation to demining and removal of remnants of war along the EACOP corridor. To perform that obligation, the Applicant engaged Mr. Bowler and Mr. Steyn to provide training and technical support. The Respondent's evidence was that both individuals were non-residents at the time the services were supplied, and the Applicant's witness confirmed that Mr. Bowler was not resident in Uganda.

79. The services were received by the Applicant and utilised in Uganda in the performance of the Applicant's contractual obligations under the EACOP project. On those facts, the three elements in Africa Broadcasting are satisfied. The supplier was outside Uganda or non-resident, the recipient was the Applicant in Uganda, and the services were consumed or utilised in Uganda.

80. The Applicant argued that Mr. Steyn was a director of the Applicant and that the Applicant could not import services from itself or from its member. The Tribunal does not accept that argument in the broad form in which it was presented. A company is a legal person distinct from its directors and

shareholders. A director may act as an officer of the company, as an employee, or as an independent service provider. The tax treatment depends on the capacity in which the services were rendered and the payment was made.

81. Where a director performs ordinary board functions, different tax consequences may follow. But where a director is separately remunerated for technical, management, consultancy or advisory services supplied to the company, the fact of directorship does not by itself prevent a taxable supply from arising. The decisive issue is not the title held by Mr. Steyn, but whether the payment was made for identifiable services supplied to the Applicant.

82. On the evidence before the Tribunal, the payments to Mr. Steyn were not shown to be ordinary director's fees, board remuneration, employment income subjected to the relevant employment tax regime, or reimbursements outside VAT. They were treated as consideration for services connected with the EACOP project. The Applicant did not discharge the burden of proving that the payments were outside the imported-services VAT framework.

83. The Applicant also argued that the services were exempt. Exemptions from tax must be found in the statute. They cannot be inferred from the public-interest nature of the project, the involvement of UPDF or UPF, or the strategic importance of EACOP. The Applicant did not identify a specific exemption in the VAT Act or its schedules covering explosive ordnance disposal training, technical advisory, management or logistical support services supplied by non-residents to the Applicant.

84. The Tribunal therefore finds that the services supplied by Mr. Bowler and Mr. Steyn constituted imported services for purposes of the VAT Act, and that the Applicant, as recipient, was required to account for VAT on those services.

Effect of the VAT refund audit

85. The Applicant relied heavily on the VAT refund audit relating to Total Midstream BV. The Tribunal accepts that a refund audit may be important evidence in a domestic VAT dispute. Where URA has verified a purchaser's input VAT claim by checking the supplier's output VAT, that verification may support the conclusion that output VAT on that transaction was declared and remitted.

86. However, the VAT refund audit concerning Total Midstream BV addressed a different VAT chain. It concerned VAT charged by the Applicant on its outward supply to Total Midstream BV. The imported-services VAT issue concerns an inward supply to the Applicant by non-resident service providers. These are separate taxable transactions.

87. The Applicant's output VAT to Total Midstream BV may have been properly declared and remitted. That does not prove that the Applicant accounted for VAT on imported services received from Mr. Bowler and Mr. Steyn. The refund audit therefore does not dispose of the imported-services VAT assessment.

88. The Tribunal accordingly rejects the Applicant's argument that the Respondent's processing of Total Midstream BV's VAT refund conclusively extinguished any VAT liability on the separate imported services received by the Applicant.

Determination on the amount payable

89. The taxable value relied on by the Respondent for the imported services is Shs. 984,885,551. At the statutory rate of 18%, the VAT on that value is Shs. 177,279,399.18. The Tribunal adopts Shs. 177,279,399 as the gross VAT arising on the imported services, subject to credit for any amount already paid by the Applicant.

90. The evidence shows that the Applicant paid Shs. 9,837,000 in respect of VAT on imported services. The Tribunal treats that payment as a payment towards the imported-services VAT liability. The outstanding balance is therefore Shs. 167,442,399.

91. For avoidance of doubt, the Tribunal does not make this finding merely on the basis of witness testimony. It makes the finding because the objection decisions maintained VAT on imported services, the taxable value of Shs. 984,885,551 was the factual basis advanced for that tax head, the computation is arithmetically traceable to the statutory VAT rate, and the Applicant had an opportunity to contest both the characterisation and computation of the imported-services VAT liability.

92. The Tribunal also finds that the domestic VAT assessment of Shs. 131,623,080.84 is not determined on the merits in this ruling, as no separate objection decision on that tax head was properly placed before the Tribunal. The same applies to the income tax amount of Shs. 25,646,995. These findings are procedural only and do not constitute a merits determination in favour of either party on those two tax heads.

Orders

93. The Tribunal makes the following orders:

i) The services supplied by Mr. Martin Bowler and Mr. Philipp Steyn to the Applicant constituted imported services for purposes of the VAT Act.

ii) The Applicant, as recipient of the imported services, was liable to account for VAT on those services under section 5(c) of the VAT Act and regulation 13(1) of the VAT Regulations, 1996.

iii) The gross VAT chargeable on the imported services, computed at 18% of Shs. 984,885,551 is Shs. 177,279,399.

iv) The sum of Shs. 9,837,000 having been paid towards that liability, the outstanding balance of VAT on imported services is Shs. 167,442,399, subject to any lawful adjustments, payments, interest or penalties under the applicable taxing statute.

v) The application in respect of domestic VAT of Shs. 131,623,080.84 is dismissed as premature, there being no objection decision on that distinct tax head properly before the Tribunal. This is not a determination on the substantive correctness of that domestic VAT assessment.

vi) The application in respect of income tax of Shs. 25,646,995 is likewise dismissed as premature, there being no objection decision on that distinct tax head properly before the Tribunal. This is not a determination on the substantive correctness of the income tax assessment.

vii) Given the manner in which the figures and tax heads were prosecuted, the mixed procedural and substantive issues raised, each party shall bear its own costs.

It is so ordered.

Dated at Kampala this **28th** day of **May** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. PROSCOVIA REBECCA NAMBI
MEMBER

HON. KABAKUMBA MASIKO
MEMBER