



THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 258 OF 2022

STANDARD CHARTERED BANK LTDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, HON. KABAKUMBA MASIKO

RULING

I. Introduction

1. This ruling is in respect of an application challenging an Administrative Additional Withholding Tax Assessment of **Shs. 1,107,188,917**. The Assessment arises out of a dispute, relating *inter alia* to whether the Applicant was liable to withhold *nostro* Account transaction and maintenance fees, in respect of *nostro* accounts held by it with various foreign correspondent banks.

II. Background facts

2. The Applicant is a licensed financial institution carrying out financial institution business in Uganda.

3. The Applicant holds *nostro* Accounts with certain foreign correspondent banks which facilitate transactions of its customers in foreign currency. The *nostro* Accounts are used to effect settlements of trade and foreign exchange transactions for customers of the account holder.
4. Following a request for a refund of overpaid income tax, lodged by the Applicant in the year 2019, the Respondent's Large Tax Payer's Office, carried out a refund audit on the Applicant for the period 2016 – 2021. On 28th June 2022, the Respondent issued to the Applicant a Tax Audit Management letter, with an assessment of Shs. 1,107,188,918 for the period June 2016 to 2019, in respect of withholding tax under **S. 85** of the **Income Tax Act (ITA)**, on fees/charges purportedly paid by the Applicant to various foreign correspondent banks.
5. On 25 August 2022, the Applicant objected to the assessments on the grounds that the transaction fees charged by the correspondent banks did not comprise a payment for services for which the Applicant had a withholding tax obligation; the account maintenance fees on the *nostro* accounts comprise interest which is exempt from income tax under **S. 83(5)** of the ITA; the Respondent did not properly apply the Uganda-UK Double Tax Agreement; and that the Tax periods from January 2016 to May 2019, are statutorily time barred.
6. On 8 November 2022, the Respondent issued an objection decision disallowing the Applicant's objections and maintaining the assessments on the ground that the Applicant had failed to provide evidence in support of its objections.

III. Issues for Determination

7. The following issues were set down for determination.
 1. Whether the applicant is liable to pay the taxes assessed?
 2. What remedies are available to the parties?

IV. Representation

8. The applicant was represented by Mr. Bruce Musinguzi, Mr. Thomas Katto and Mr. Ferdinand Tumuhaise while the Respondent was represented by Ms. Gloria Twinomugisha and Mr. Rodney Amanyamba Mishambi.

V. Submission of the Applicant

9. The Applicant's first witness, Ms. Viola Agaba, was employed with the Applicant at its Cash Management Operations.
10. The witness testified that the withholding tax in question was imposed by the Respondent under **S. 85 (now S.84)** of the ITA on fees/charges of various foreign corresponding banks for the period January 2016 to December 2021. The witness stated that these charges are debited to the *nostro* Accounts held by the Applicant with the corresponding bank in the respective currency/domicile countries.
11. The witness explained that a *nostro* account, is an account which the Applicant holds with a foreign correspondent bank in a foreign currency, ordinarily in the currency where the bank is located. The purpose of the Applicant holding a *nostro* account is to facilitate foreign exchange and trade transactions on behalf of the customer.
12. The witness stated that the Applicant holds *nostro* accounts with affiliate banks in countries such as the United States of America, Germany, Finland, Canada, the United Kingdom and Switzerland. The Applicant has clearing contracts with the said banks through which the Applicant and the said banks agree on fees payable for maintaining the *nostro* accounts as well as transaction handling fees. The witness stated that the Applicant's customers are then charged transactional fees for using the *nostro* account for their various transactions. The witness explained that it is these fees paid by the customers for their transactions that are in contention in the instant case.

13. The witness set out the following steps involving a transaction facilitated through a *nostro* account;

i. **Step 1:**

A client instructs the bank electronically or manually to send money abroad in any of the currencies.

ii. **Step 2:**

The instructions are processed by the bank. In the instructions, the client has the option of choosing the party that bears the cost of the remittance of the funds. In case the cost of the remittance of the funds is to be borne by the client, the bank will debit the charges due to the correspondent bank upfront. Where the cost of the remittance is to be shared between the client and the beneficiary of the funds, the client will only pay the cost of the remitting bank, while the beneficiary will bear the cost of remittance of all the other banks involved in the remittance, namely, the intermediary bank in which the *nostro* account is held and the beneficiary bank. Where the cost of remittance is to be borne by the beneficiary, the beneficiary bears all the charges of the banks engaged in the remittance. The remitter/client only pays the remittance amount from which all remittance charges are deducted. The beneficiary therefore receives the remittance less all the remittance charges.

iii. **Step 3.**

Where the remitter/client bears all the remittance charges, the Applicant will debit the remitter's account for the transaction amount, processing fees, which include Overseas fees.

iv. **Step 4.**

The Applicant will credit its Standard Chartered Bank US *nostro* account with the transaction amount on the day of the transaction and credit P&L Commission account with the transactional fees.

- v. **Step 5.**

Standard Chartered Bank US where the Applicant has a *nostro* account debits the Applicant's *nostro* account and remits the funds to the beneficiary bank.
 - vi. **Step 6.**

Standard Chartered Bank US debits the Applicant's *nostro* account with the transactional fees related to the transaction processed. The debit may happen days after the transaction date.
 - vii. **Step 7.**

The Applicant debits the P&L Commission account with the equivalent of the charge debited by Standard Chartered Bank US from the Applicant's *nostro* and credits the Applicant's *nostro* with this amount to net off the debit.
- 14. The Applicant's second witness was Ms. Dorothy Olwit Tinkamanyire, the Applicant's Head of Cash Management Operations.
 - 15. The witness testified that *nostro* account bank charges do not constitute income from a Uganda Source Service contract. The witness stated that it holds *nostro* accounts with affiliate banks in countries such as the United States of America with its New York branch, Germany with its SCB Germany branch, Nordea Bank in Finland, the Royal Bank of Canada in Canada, SCB London in the United Kingdom and Credit Suisse Bank in Zurich, Switzerland. The witness stated that the *nostro* accounts, whether held with related or unrelated parties, are held at arm's length.
 - 16. The witness testified that the Applicant's *nostro* accounts held with the said foreign correspondent banks are governed by clearing contracts with the said banks, under the terms and conditions of which, the foreign correspondent bank levies two types of charges via the *nostro* account, namely: the periodic account maintenance fees for operating the account and the transaction fees for specific customer transactions.
 - 17. The witness explained that the Maintenance fees for maintaining the *nostro* account are periodic fees for maintaining the *nostro* account and related

services and can be regarded as a payment for services rendered by the correspondent bank to the Applicant. The maintenance fees are a cost borne by the bank and reflected as an expense in its general ledger. These charges are essentially an account maintenance fee. The witness explained that these fees are paid/incurred by the Applicant and recognized as an expense in its ledger. The witness explained further that these fees comprise interest which is exempt from income tax under **S. 83(5)** of the ITA and that these fees are not liable to income or withholding tax.

18. The witness stated that the Respondent failed to distinguish between maintenance fees and transaction fees thereby levying WHT on the entire sum yet interest paid to foreign correspondent banks are exempt.
19. The witness testified that the transaction fees for specific customer transactions are transaction specific charges that the foreign correspondent bank charges in respect of specific transactions executed for the benefit of the Applicant's customers. The witness testified that these charges are not recorded as an expense of the Applicant in its general ledger but is passed on to the customer by way of an up-front deduction from the transaction value. The witness explained that these fees are more correctly characterized as; a service provided by the correspondent bank to the customer; and a cost borne and paid for by the customer.
20. The witness testified that for most correspondent banks, the transaction fees and account maintenance charges are debited separately however the Applicant's correspondent bank in New York accumulates both fees and debits them from the Applicant's *nostro* account in one lump sum on a monthly basis. The witness explained that this lump sum amount has been erroneously included in the charges in the Respondent's assessment workings. The witness stated that for the period 2017 to 2021, the billing statements which the Applicant previously provided to the Respondent as appendix A to the objection, shows that 83% of the SCB New York charges were transaction fees while 16.7% comprised of account maintenance fees due from the bank. The witness explained that that meant that the total SCB New York charges of USD 890,000

- were transaction fees for which the bank was not liable to deduct withholding tax. The witness explained that it was therefore erroneous for the Respondent to charge the entire amount as lump sum without aggregating the different charges.
21. The witness testified further that besides the transaction fees charged by the foreign correspondent bank on the customer, the Applicant also charges the customer a separate fee to facilitate the transaction and contribute to the fees charged to the client as maintenance fees for the *nostro*. The witness stated that these fees are usually brought to the attention of the customers and is publicly accessible on the Applicant's website. The witness stated that as per the current tariff of the Applicant, the fees charged by the Applicant in respect of a transaction, the charges of which are to be borne solely by the customer, is USD 30 or the equivalent of this sum in the respective foreign currencies and applies to all correspondent banks irrespective of the transaction amount. The witness testified further that a transaction charge is also applied depending on the client; for instance Corporate and Institutional Banking Clients, are charged Shs. 150,000 for manual transfers and Shs. 60,000 for online transfers while Wealth and Retail banking clients pay Shs. 75,000 for manual transfers and Shs. 40,000 for online transfers.
22. The witness stated that once a customer has decided how the transaction fees will be paid, the *nostro* account is automatically debited through the SWIFT International payment processing platform and the transaction amount is remitted to the beneficiary. The witness explained that the system automatically charges a fixed rate against the *nostro* account based on the number of clearing transactions that operated through the SWIFT system. The witness stated that the payment processing platforms charge the related account directly from that transaction by debiting the account without raising an invoice. The witness stated that the charges by the foreign correspondent banks are usually in line with the requirements of the regulatory authorities in which they are domiciled. The witness explained that after debiting the *nostro* account, the foreign correspondent bank immediately remits the sum debited to the beneficiary, after

which, the Applicant also credits its P&L account with the sending fees and regularizes the transaction.

23. The witness testified that the transaction fees entail a service provided by the correspondent bank to the customer for which the payment is made directly by the customer through his own bank account and merely facilitated through the *nostro* account. Accordingly, it is the customer and not the bank that is making a payment to the foreign correspondent bank.
24. The witness explained that the transaction fees are charged outside Uganda in an account held outside Uganda and the Applicant does not pay the transaction fees on behalf of the customer as the service is rendered directly to the customer whose account is electronically debited without any control from the Applicant.
25. The witness stated that it is therefore virtually impossible for the Applicant to withhold tax on the *nostro* charges because these charges are normally debited directly and remotely by the foreign correspondent bank, where the Applicant has no possession of the respective payments at any point in time and thus has no control of the payment process.
26. The witness explained that a parallel can be drawn between the above and a customer paying a foreign supplier. The witness stated that in the case where a customer is paying a foreign supplier, the payment is regarded as being made by the customer and not the bank, despite the fact that the payment is facilitated through the bank's *nostro* account. The witness explained that for the bank, the payment amount is a balance sheet transaction and not one reflected in its income statement. The witness stated that this position is no different with the correspondent bank transaction fees.
27. The witness stated further that the transaction fees charged on the customer can also be equated to the fees paid by customers of local banks for services rendered and charges levied for maintaining an account with the local bank. The witness explained that in the same way, the foreign correspondent bank charges such as transaction fees in its jurisdiction for facilitating payments to beneficiaries.

28. The witness stated that therefore, the debits to the *nostro* accounts represented money earned by the foreign bank in a foreign country. The witness stated that for this reason the Applicant cannot even expense such an amount in its income statement because the said amount is electronically and automatically deducted by the foreign correspondent bank on receipt of a customer's instructions.
29. The witness testified further that the Additional Assessments of 29th June 2022, issued against the Applicant were issued more than three years after the Applicant's impugned WHT returns for the impugned tax periods from January 2016 to May 2019, were furnished. The witness stated that these Additional assessments were made outside the time within which additional assessments should be furnished. The witness stated that the Additional Assessments are based on existing information which was readily available to the Respondent through the Bank's filed returns, financial statements and company records. The witness stated that it was plainly evident and within commercial knowledge that the bank or its customers would incur fees on *nostro* accounts. Accordingly there was no basis or new information to warrant the Additional Assessments related to the tax periods up to May 2019.
30. The witness testified further that the Additional Assessments for the 54 tax periods from January 2016 up to June 2020, were arbitrarily assessed in the four tax periods of June 2016, June 2017, June 2018 and June 2020. The witness stated that by contrast the amounts from July 2020 onwards were assessed on a monthly basis. The witness explained that the tax period for withholding tax purposes is the calendar month and the withholding tax under S. 85 is due for the month in which the relevant Ugandan-source services payment was made. The liable payments up to June 2020 were therefore assessed in the wrong tax periods. The witness stated that accordingly the Additional Assessments issued against the Applicant for the periods in question were erroneously issued and ought to be set aside.
31. The Respondent's sole witness was Ms. Racheal Katende, an officer in the Respondent's Domestic Taxes Department.

32. The witness testified that the Respondent conducted a refund audit on the Applicant and issued the Applicant with an Additional Assessment of Shs. 1,107,188,917 for the period 1st June 2016 to 1st December 2021. The witness explained that the assessment arose as a result of the Applicant's failure to declare withholding tax on transaction fees charged by foreign correspondent banks.
33. The witness testified that on 11 August 2022, the Applicant objected to the assessment on the grounds that foreign banks source income in Uganda through the charging of fees on Nostro accounts whose expense is not borne by the bank but is passed on to the local customer through a direct debit of the customer's account, therefore shifting the obligation to withhold tax on the customer.
34. The witness stated that the Respondent did not agree with the Applicant's explanation above for the reason that, in the Respondent's view the customer does not have any relationship with the foreign correspondent bank since it is the Applicant which requires the services of the foreign correspondent bank to complete its customers transaction.
35. The witness testified that on 25 August 2022, the Applicant's tax advisors, PricewaterhouseCoopers, submitted a letter in which they set out the following other grounds of objection;
 - a) Account maintenance fees on *nostro* accounts comprise of interest which is exempt from income tax under S. 83(5) of the ITA.
 - b) The failure to apply the Uganda-UK Double tax Agreement.
 - c) Tax periods from January 2016 to May 2019 are statutorily time-barred.
 - d) Tax was assessed in the wrong tax periods.
36. The witness stated that on 26 October, 2022, the Respondent held an online meeting with the Applicant and its tax agent and the grounds of the Applicant's objection were discussed at length and the Respondent's response on each of the grounds was also given.
37. The witness testified that on 8 November 2022, the Respondent issued an objection decision disallowing the objection and upholding the Additional

- Assessments on the grounds that the Applicant did not organize the end to end walk through demo of their customer's transactions.
38. The Applicant submitted that the gist of this application is whether withholding tax applies to maintenance and transaction fees charged on the *nostro* accounts held with foreign correspondent banks for the purpose of facilitating offshore transactions for the Applicant's customers.
 39. The Applicant submitted that charges on its *nostro* accounts with foreign correspondent banks do not attract withholding tax either under S. 83 or S. 85 of the ITA. Relying on Ss. 83, 84, 85 and 120 of the ITA, the Applicant submitted that the tax incidence under Ss. 83 and 85 fall on the person making payment to the non-resident. The Applicant submitted that the critical question to be resolved by the tribunal is who makes the payments that are charged by the correspondent bank?
 40. Relying on the evidence of AW1 and AW2, the Applicant submitted that there are two separate charges made by foreign correspondent banks on *nostro* accounts, namely; maintenance fees and transaction fees. The Applicant submitted that by the very nature of these charges, it has no obligation to withhold tax on either the maintenance fees or the transaction fees.
 41. The Applicant took the above argument further and submitted that transaction fees on *nostro* accounts are paid by the customers directly and the Applicant has no obligation to withhold payment since the Applicant is not the payer. The Applicant submitted further that the burden of withholding tax under Ss. 83 and 85 of the ITA falls on the person who makes the payment to the non-resident. In support of its argument, the Applicant relied on the decision in ***Multi-Choice (U) Ltd vs. Uganda Revenue Authority TAT Application No. 1 of 2000***, where the tribunal held that the persons liable to pay withholding tax on the payments of subscriptions were the subscribers in Uganda because the person making the payment is the subscriber.
 42. The Applicant submitted that it objected to the WHT assessment on transaction fees on the ground that the payment to the non-resident is made by the customer and not the Applicant. The Applicant submitted further that it pointed

out to the Respondent that 83% of the total fees assessed by the Respondent were transaction fees. Relying on the testimony of AW1 and AW2, the Applicant submitted that the transactions in question were largely between the customers and the foreign correspondent banks over which the Applicant had no control. The Applicant submitted that the evidence adduced by both A1 and AW2 were unchallenged by the Respondent during cross-examination. The Applicant submitted further that the Respondent also failed to give any explanation in its statement of reasons or in the testimony of its witness contradicting the evidence of AW1 and AW2, to the effect that the transaction fees are paid by the Applicant's customers and not the Applicant.

43. The Applicant submitted further that no WHT on the transaction fees are due for the reason that these fees were charged outside Uganda on a *nostro* account held outside Uganda for services provided outside Uganda. In support of this argument the Applicant relied on the testimony of AW2. The Applicant also relied on the decision of the Kenyan Tax Appeals Tribunal in ***Diamond Trust Bank Kenya Ltd vs. Commissioner of Domestic Taxes Tax Appeals Tribunal Appeal No. 54 of 2016***, where it was held that the incidence of withholding tax did not arise in respect of charges levied by foreign banks because the income in respect of which the charges were levied were earned outside Kenya.
44. Relying on the above decision and on the testimony of AW2, the Applicant submitted that transaction fees on *nostro* charges did not amount to income sourced in Uganda since the service offered by the foreign correspondent bank takes place abroad, the *nostro* account is kept abroad and the recipient of the service is abroad.
45. The Applicant submitted that maintenance fees on *nostro* accounts are in the nature of interest and thus do not attract withholding taxes per S. 82(5) of the ITA and are therefore exempt from withholding tax. The Applicant submitted that S. 119 of the ITA provides that any person making a payment of the kind referred to in S, 83, 85 or 86 of the ITA shall withhold from the payment the tax levied under the relevant section. The Applicant submitted that the above provision does not apply where the payment is exempt from tax.

46. Relying on Ss. 2(k), 2(r) and 2(s) of the ITA for the definitions of the terms `interest`, `debenture` and `debt obligation`, the Applicant submitted that a *nostro* account is clearly a debt obligation which can be regarded as a loan and therefore also as a debenture. The Applicant submitted that the *nostro* account maintenance fees paid by the Applicant comprise `interest` which is exempt under S. 83(5) of the ITA. The Applicant submitted that the wording of the above provision does not specifically require the loan to be made to the resident company or by the resident company. The Applicant submitted further that the nature of the *nostro* account means that the balance may either be positive in funds or negative at a particular point. The Applicant submitted that the transactions relating to *nostro* accounts all take place abroad and thus maintenance charges levied on *nostro* accounts also take place abroad which means that the income is not sourced from Uganda since the service is performed abroad. In support of this argument the Applicant relied on the decisions in ***Income Tax Officer (IT) v. The Hong Kong & Shanghai Banking Corporation Ltd, ITA No. 2191/MUM/2022, Oman International Bank SAOG v. Dy. Director of Income Tax (International Taxation) ITA No. 6800/Mum/2010Diamond Trust Bank Kenya Ltd vs. Commissioner of Domestic Taxes.*** The Applicant submitted on the authority of the above submissions that the deductions made on a *nostro* account by a foreign correspondent bank take place abroad in consideration of the services rendered abroad and thus WHT does not arise since the service is not performed in Uganda.
47. The Applicant submitted further that according to the Respondent's Management letter admitted in evidence as exhibit REX3, the Respondent stated that adjustments were made for payments to correspondent banks in jurisdictions where Uganda has existing Double Taxation Agreements in determining applicable WHT rates. According to the Respondent, it applied reduced withholding tax rates of 10% on the fees charged by correspondent banks resident in South Africa and Denmark based on Article 13 of the respective Double Taxation Agreements (DTA). The Applicant explained that

Article 13 of the South African DTA provides for WHT on technical fees whereas Article 13 of the Denmark-Uganda DTA provides for Administration and Management fees.

48. The Applicant submitted that it also ascertained that the Respondent applied a WHT rate of 10% on the *nostro* fees charged by the correspondent banks resident in the United Kingdom amounting to GBP 12,763 charged by SCB London, on the basis of the DTA between Uganda and the United Kingdom. The Applicant submitted that it was also able to ascertain that the Respondent applied Article 13 of the DTA between Uganda and the United Kingdom to assess WHT on purported technical fees.
49. The Applicant submitted that the *nostro* charges imposed by the correspondent banks resident in Denmark, the United Kingdom and South Africa, do not comprise payments for a service of a technical, managerial or consultancy nature and therefore do not fall within Article 13, as a technical fee but rather falls under Article 7 as business profits of the respective DTA's.
50. Relying on Article 7 of the Uganda-UK DTA, Article 7 of the South Africa-Uganda DTA and Article 7 of the Denmark-Uganda DTA, the Applicant submitted that none of the correspondent banks in either of the above countries have permanent establishments in Uganda and as such, all charges imposed by the said correspondent banks are only taxable in the countries in which the correspondent banks are resident namely; the United Kingdom, South Africa and Denmark.
51. In support of the above argument the Applicant cited the decision in ***McKinsey & Company Inc. Africa Propriety Ltd vs. Commissioner of Legal Services and Board Coordination Appeal No. 199 of 2020***, where the Tax Appeals Tribunal of Kenya held that professional fees paid by a Kenyan entity to a service provider fell within Article 7 of the DTA and that the Kenya Revenue Authority had no right to withhold taxes on the payment of the fees. The Tribunal, defined business profits under Kenyan law as including " *Any trade, profession or vocation and every manufacture, adventure and concern in the nature of trade but does not include employment*".

52. The Applicant submitted that the DTA between Uganda, Denmark and South Africa does not define the term `Business`. Article 3(2) of all the above DTA`s provides that where any term is not define din the DTA, such term shall have the meaning under which is has at that time under the laws of that State concerning the taxes which are the subject of the DTA.
53. The Applicant submitted therefore that relying on the definition of the term business under the Income Tax Act of Uganda, the *nostro* charges fall under Article 7 of the United Kingdom-Uganda DTA. The Applicant submitted therefore that the charges imposed by the correspondent banks in the said countries were not liable for WHT.
54. The Applicant submitted that the tribunal in ***Translink Uganda Ltd v. Uganda Revenue Authority TAT No. 107 of 2023***, defined technical services as meaning services that involved a transfer of knowledge, skills or know-how to the Applicant. The Applicant submitted that in light of the decision in ***Translink Uganda Ltd v. Uganda Revenue Authority*** above, it cannot be said that the charges for the *nostro* account imposed by the correspondent banks constituted a technical fee for technical, managerial or consultancy services under Article 13 of the Uganda – United Kingdom DTA or the South Africa – Uganda DTA.
55. The Applicant submitted therefore that the WHT imposed on the Applicant under technical fees paid to the correspondent bank was erroneous and ought to be set aside as the same constituted business profits earned by the non-resident correspondent banks in respect of which no WHT is payable.
56. The Applicant submitted further that the Additional Assessments are time barred and were issued contrary to the law.
57. The Applicant submitted that the Tax Procedures Code Act (TPCA) requires Additional Assessments to be raised by the Respondent within a period of 3 years after the furnishing of a self-assessment return or when the Commissioner General serves a notice of the original assessment on the taxpayer. The Applicant submitted that although the Respondent can raise additional assessments beyond the period of three years under S. 25(2) of the TPCA, it must prove fraud committed by the taxpayer, gross or wilful neglect committed

by the taxpayer or the discovery of new information in relation to the tax payable by the taxpayer. The Applicant cited the decision in ***Kampala Hospitality Development Limited v. Uganda Revenue Authority TAT No, 69 of 2023.***

58. The Applicant submitted that the Additional Assessments issued by the Respondent on 29 June 2022, were issued more than three years after the Applicant's impugned WHT returns for the tax periods from January 2016 to May 2019 were furnished. The Applicant submitted that the said Additional Assessments had been issued outside the statutory limitation period for the issuance of Additional Assessments.
59. The Applicant submitted that the Additional Assessments were based on existing information that was readily available to the Respondent through the Applicant's tax returns, financial statements and company records. The Applicant submitted that it was within reasonable commercial knowledge that the bank or its customers would incur fees on *nostro* accounts or transaction fees debited through such accounts. The Applicant submitted that accordingly, there was no basis or new information to warrant the issuance of Additional Assessments for the tax periods up to May 2019.
60. The Applicant submitted that the Additional Assessments for the years 2016-2019 are time barred and that the Respondent has not given any justification as to why it issued the assessments beyond the three year period. The Applicant submitted that the Respondent has not adduced any evidence to show that the Applicant committed fraud or an indication of gross or wilful neglect or that there was the discovery of new information that was not already available. The Applicant submitted that in the absence of these exceptional circumstances, the Respondent's said Additional Assessments are time barred.
61. The Applicant submitted further that the Additional Assessments for the 54 tax periods from January 2016 to June 2020, were arbitrarily assessed in the four tax periods of June 2016, June 2017, June 2018 and June 2020. However, the amounts from July 2020 onward have been assessed on a monthly basis. The Applicant submitted that the tax period for withholding tax purposes is a calendar month and that the withholding tax under S. 85 of the ITA is due for the month

in which the relevant Ugandan-source services payment was made. The Applicant submitted that accordingly, the payments up to June 2020 were assessed in the wrong periods. The Applicant submitted that the said Additional Assessments are accordingly wrongful, erroneous and should be vacated.

62. The Applicant prayed for the following orders;
- i. An Order that the Applicant is not liable for the Additional withholding tax assessment of Shs. 1,107,188,918 for the period 2016 to 2019 and the same ought to be set aside.
 - ii. The Respondent is ordered to refund 30% of the tax paid by the Applicant.
 - iii. The Respondent pays the costs of the Application to the Applicant.

VI. Submissions of the Respondent

63. The Respondent submitted on the authority of the decision in ***ABSA Bank Uganda Ltd v. URA TAT 57 of 2020***, that it is settled law that the transaction fees paid by the Applicant's customers for the foreign transactions through the correspondent banks create an obligation to withhold tax by the Applicant.
64. The Respondent submitted that the Applicant is an agent of its customers and is therefore the link between the customer and the correspondent bank. The Respondent submitted that it is immaterial that the Applicant pays the transaction fees on behalf of its customers, as **Ss. 82(1) and 84(1)** of the ITA only require that income be sourced from Uganda. In support of this argument, the Respondent relied on the decision in ***Intertek Testing Services International Ltd vs. URA HC Civil Appeal No. 5 of 2002***.
65. Relying on **Ss. 78, 84(1) and 120** of the ITA, the Respondent submitted that the Applicant is liable to pay the assessed tax. The Respondent submitted that the resolution of this application hinges on determining whether the *nostro* accounts held by the Applicant in foreign correspondent banks constitute a Ugandan source services contract for which WHT ought to be accounted for on the fees paid, on the basis that it constitutes income sourced from Uganda.

66. Relying on **S. 84(4) (a)** of the ITA, the Respondent submitted that a `Ugandan Source Services Contract means a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which give rise to income sourced in Uganda.
67. The Respondent submitted that the question for the determination of the tribunal is whether the *nostro* account agreements are Ugandan Source Services contracts. Relying on the decision in ***Intertek Testing Services International Ltd vs. URA (supra)***, the Respondent submitted that it is the substance of a transaction that must be looked at in order to determine the true legal rights and obligations of the parties and 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.
68. The Respondent submitted that the fees paid to maintain the *nostro* account is merely consideration for the service rendered to the Applicant by the foreign correspondent banks, arising from the *nostro* agreements. The Respondent submitted that there is no debt obligation to warrant classification of payment of interest as alleged by the Applicant. The Respondent submitted that the sole purpose of the *nostro* account agreements are to enable the foreign correspondent banks render settlement services to the Applicant, for which valuable consideration in the form of maintenance fees are paid. The Respondent submitted that these maintenance fees are obtained by the Applicant from its income which is sourced in Uganda.
69. With respect to whether payments are made overseas and therefore exempt from income tax, the Respondent submitted that the key determinant is where the funds on the *nostro* accounts are sourced from. The Respondent submitted that the Applicant funds the *nostro* accounts using its personal funds from its income earned from its business operations in Uganda. Relying on the decision in ***Esri Eastern Africa Ltd vs. URA TAT 41 of 2023***.
70. Relying on the evidence adduced by the Applicant's witnesses and the law, the Respondent submitted that the account maintenance fees are sourced solely from Uganda and paid to the foreign correspondent banks pursuant to the *nostro*

- agreement. The Respondent invited the tribunal to declare that the *nostro* agreement is a Ugandan Source Services Agreement.
71. The Respondent submitted that **S. 78(r)** of the ITA provides that income is derived from sources in Uganda to the extent to which it is a management charge paid by a resident person. The Respondent submitted that the term 'Management charge' under S. 77 of the ITA means any payment made to a person, other than a payment of employment income, as a consideration for any management services, however calculated. The Respondent submitted further that S. 82 of the ITA imposes WHT on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda.
 72. The Respondent submitted that the Applicant holds accounts in foreign banks, which it opened up in order to facilitate transactions in different currencies. The Respondent submitted on the authority of the testimony of its witness Ms. Rachael Katende and from the evidence on record that foreign banks charge the Applicant according to the volume of the transactions carried out by the Applicant and that the Applicant's customers do not have any agreement or relationship with the foreign banks. The Respondent submitted that the agreement between the Applicant and the foreign banks is for the purposes of the management of the *nostro* accounts through which settlements of the Applicant's customers payment instructions are completed.
 73. The Respondent submitted that the term 'customer' relates to a person who purchases goods or services from a business. The Respondent submitted that in the instant case, the customer has an ascertained consideration to pay to the foreign bank for the cash management services as seen under exhibit AEX7 at page 33 of the Applicant's trial bundle. The Respondent submitted that it was therefore clear that the Applicant and the foreign bank had a contractual relationship for a consideration.
 74. The Respondent submitted that for income to qualify as having been sourced in Uganda, it must have been made by a person resident in Uganda to a non-resident person. Relying on **S. 2** of the ITA, the Respondent defined a resident

person as 'a resident individual, resident company, resident partnership, resident trust, resident retirement fund, the Government of Uganda or a political sub-division of the Government of Uganda'. The Respondent cited **S. 10** of the ITA which defines a resident company for a year of income, as a company duly incorporated or formed under the laws of Uganda.

75. The Respondent submitted that the Applicant is a resident person by virtue of S. 10 of the ITA. The Respondent submitted further that the management charge as defined under S. 77 of the ITA refers to any payment made to a person other than a payment of employment income, as a consideration for any management services, however calculated. The Respondent submitted that the Applicant made a payment for the provision of the management services. The Respondent submitted on the authority of the decision in ***Standard Chartered Bank Zimbabwe Ltd v. Zimbabwe Revenue Authority (Judgment No. 23/18 Civil Appeal No. SC 145/15)*** that *nostro* charges constitute payment for the use of management services provided by a foreign bank.
76. The Respondent submitted that the Applicant was taxed pursuant to **Ss. 77, 78, 82 and 137** of the ITA. **S. 82(1)** imposes tax on every non-resident person who derives any management charge from sources in Uganda. The Respondent submitted on the authority of **S. 140** of the ITA that failure to withhold tax creates liability on the withholding agent to pay the amount that ought to have been withheld. The Respondent submitted that in the instant case the Applicant was the payer of the amounts in question and was therefore under a duty to withhold the said amounts.
77. The Respondent submitted that the assessments for the period 2016 to 2019 are not time barred as they arose out of the discovery of new information. The Respondent submitted that the new information was discovered pursuant to a refund audit conducted by the Respondent. In support of this contention the Respondent cited **Ss. 25(1) (c) and 25(2)(a)** of the **Tax Procedures Code Act (TPCA)**. The Respondent submitted on the authority of the above provisions that the inquiry into the reliability of the refundable position constitutes the discovery of new information which can only be verified through an audit. The

Respondent relied on the decision in *Uniworks Transporters & Logistics Limited v. URA TAT Application No. 62 of 2018*. The Respondent submitted that where a taxpayer's financial statements, returns and other documents are suspicious, it is prudent to conduct a comprehensive audit to establish the actual errors, misstatements, fraud and or satisfy the Authority that the financial statements are factual, or to establish that there is new information to support additional assessments. The Respondent also relied on the decision in *UETCL Co. Ltd v. URA HCCS No. 423 of 2010*, where it was held that information discovered through an audit can qualify as new information.

78. Relying on the above authorities, the Respondent submitted that the refund audit established that the Applicant's returns were not accurate to the extent that the Applicant did not account for WHT on the *nostro* account charges paid to the foreign correspondent banks. The Respondent submitted that this information which was established through an audit, constituted the discovery of new information.
79. The Respondent submitted that the question relating to the application of the Uganda-UK Double Taxation Agreement can be determined by answering the question as to whether the Applicant received technical fees within the meaning of the Uganda-UK DTA. The Respondent submitted that technical fees are defined by **Article 13(3)** of the Uganda-UK DTA as payments of any kind, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
80. The Respondent submitted that the application of the above article is qualified by **Article 13(4)** of the Uganda-UK DTA, which provides that paragraphs 1 and 1 of Article 13 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base, in which case, the provisions of Article 7 or Article 15 as the case may be shall apply.

81. The Respondent submitted that for Article 13 to apply to any cross-border transaction between Uganda and the United Kingdom, the transaction must fit within the confines of Article 13(4). The Respondent submitted that Article 7 of the said DTA provides that the profits of an enterprise of a contracting State shall be taxable only in that State unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein.
82. The Respondent submitted that from the evidence before the tribunal, the foreign correspondent banks do not have a permanent establishment in Uganda. The Respondent invited the tribunal to uphold the position that Article 13 of the DTA is applicable over Article 7.
83. In respect of the submissions by the Applicant relating to the argument that the tax in question was assessed in the wrong periods, the Respondent submitted that S. 40C of the ITA waived only interest and penalties that was outstanding as at 30th June 2020. The Respondent submitted that the assessments raised after 30th June 2020 would attract interest irrespective of whether they relate to periods prior to the Assessments.
84. The Respondent prayed that the Application be dismissed with costs.

VII. Submission of the Applicant in Rejoinder

85. In rejoinder, the Applicant reiterated the contents of its submissions and rejoined that the decision in the **ABSA Uganda case** is distinguishable from the facts at hand. The Applicant submitted that in the **ABSA case**, the Applicant used to make all the payments directly on behalf of its customers and used to recognize the bank charges it deducted from its customers for the purpose of facilitating the international payments as income. The Applicant submitted that in the case at hand, the Applicant did not pay the transaction fees on the *nostro* accounts on behalf of its customers and the fees were not even recorded as an expense in the Applicant's general ledger.

86. The Applicant rejoined that the question that ought to be answered is whether management services were provided by the correspondent banks to justify receipt of management charges. The Applicant stated that the correspondent banks in which the *nostro* account is held do not provide management services to the Applicant. The Applicant cited the decision in ***Goal Relief Development Organization v. URA TAT 77 of 2021***.
87. The Applicant rejoined that it had justified the charges as interest based on the substance in which they were paid. The Applicant relied on the decision in ***Kenya Commercial Bank Ltd vs. Kenya Revenue Authority (2016) KECA 220 (KLR)*** where the Court of Appeal of Kenya stated that whatever is charged by foreign banks on *nostro* Accounts falls within the meaning of interest. The charges also fall within the ambit of interest since they are levied in connection with credit advanced to the banks. The Applicant submitted that in the above case, the Kenyan Court of Appeal found that the interest debited by the correspondent banks on the *nostro* Accounts were subject to WHT under S. 2 of the Kenyan Income Tax, on the basis that it came from the Applicant, notwithstanding that it was deducted or paid outside Kenya. The Applicant submitted that while it agrees that the charge to the Applicant is within the meaning of interest under the Ugandan Income Tax Act, it falls squarely within interest under **S. 83(5)** of the ITA since the interest was paid outside Uganda and was therefore exempt from WHT.
88. The Applicant reiterated its submissions that the tax assessed on the Applicant was based on S. 85(1) (now S. 84 under the Revised Laws), which deals with a tax imposed on non-residents deriving income under Ugandan-source services contracts. The Applicant stated that, according to the Objection decision, the Respondent maintained its objection by stating that the objection was disallowed for failure to provide evidence. The Applicant rejoined that by seeking to rely on provisions other than S. 85 as it did in the assessment and in the Objection decision, the Respondent is raising new grounds for which the Applicant had no opportunity to respond. In support of this argument, the

Applicant cited the decision in *Steel Corporation of East Africa Ltd vs. Uganda Revenue Authority Civil Appeal No. 0 of 2010*.

89. The Applicant rejoined that the Respondent has convoluted the payments made on the *nostro* accounts and limited them to Management fees under **S. 78** and **S. 82** of the ITA. The Applicant rejoined that by seeking to rely on Ss. 78 and 82, the Respondent is raising new issues which were not brought to the attention of the Applicant. The Applicant rejoined that it is procedurally unfair for the Respondent to provide a new statutory basis to justify its assessment for WHT after the Objections process has been conducted. The Applicant requested the tribunal to disregard the submissions of the Respondent on Management fees at pages 9 to 16 of the Respondent's submissions.
90. The Applicant rejoined that the fees for the operation of the *nostro* accounts are two-fold, namely, transaction fees and maintenance fees. The Applicant rejoined that it pays fees to maintain the accounts, while the Applicant's customers pay the transactional fees whenever they make any overseas transactions. The Applicant reiterated that it does not pay transaction fees from its own money.
91. The Applicant rejoined that it was common ground that the Respondent issued the Additional Assessments on 29th June 2022, for the tax periods, January 2016 to May 2019, well outside the statutory period of three years. The Applicant rejoined further that it was common ground that the Additional Assessments arose from an audit covering the information already supplied for the period in question. The Applicant stated that the following questions need to be answered in respect of this issue;
- a) What amounts to new information for the purposes of levying Additional Assessments by the Respondent?
 - b) Was there any new information that was not readily available to the Respondent by the time of making the initial assessment?
92. The Applicant reiterated that the Respondent did not discover any new information which can be relied on to escape the statutory limit. The Applicant rejoined that the Respondent merely examined returns, financial statements and

- company records that had already been filed by the Applicant for the tax periods in question. The Applicant rejoined that these returns had been in the Respondent's possession from 2016 to May 2019.
93. The Applicant rejoined that the Respondent did not obtain any other information outside of what was already in its possession before making the Additional Assessment. The Applicant rejoined that there was no fraud or wilful neglect on its part since it fully disclosed all the transactions in question in the honest belief that no WHT was due. The Applicant stated that this fact was corroborated by the Respondent's witness, Racheal Katende, when she admitted under re-examination that the Applicant charges only local transaction fees and not WHT when funds are remitted abroad because the Applicant is unaware that the charges for funds remitted is income sourced in Uganda by the foreign corresponding bank and liable to WHT. The Applicant rejoined that it was incumbent upon the Respondent to examine the Applicant's tax returns when they were filed to ascertain the correct tax position as the Respondent deemed fit. The Applicant rejoined that the failure to examine the Applicant's returns when they were filed could only be excused if the subsequent examination of the records were done within the confines of the law.
94. The Applicant rejoined that the new information envisaged under the law must be information that was not in the possession of the Respondent during the period in question, as in the *UETCL* case. The Applicant rejoined that it must be information that came to the Respondent's possession after the returns were filed. The Applicant further rejoined that it is the duty of the Respondent to examine the returns filed by the taxpayers during the period they were filed. The Applicant rejoined that the law gives the Respondent the power to remedy any failure to perform this duty within three years. The Applicant rejoined that information that is in the possession of the Respondent for years cannot be said to be newly discovered information. The Applicant stated that the audit was simply undertaken by the Respondent to defeat the Applicant's refund claim and the Respondent cannot purport to have discovered anything new. The Applicant

- reiterated that all the Additional Assessments between the years 2016 to 2019 are time barred.
95. The Applicant rejoined that the *nostro* charges imposed by the correspondent banks resident in Denmark, UK and South Africa do not fall under payments for services of a technical, managerial or consultancy nature, as such the said charges do not qualify as technical fees under Article 13 of the various DTA`s. The Applicant rejoined that these charges are purely business profits earned by the corresponding banks under Article 7 of the respective DTA`s. The Applicant rejoined that its submissions rest on the tribunal`s own definitions in ***Translink Uganda Limited v. Uganda Revenue Authority TAT No. 107 of 2023***, where technical fees were defined as the transfer of knowledge, skills or know-how while managerial services were defined as services relating to the management of the business of the Applicant and consultancy services were defined as services constituting the provision of advice by professionals.
96. The Applicant rejoined that none of the above definitions can by any stretch of the imagination, be construed to apply to the *nostro* accounts owned by the Applicant in the corresponding banks. The Applicant rejoined that the money earned by the corresponding banks do not fall under technical or managerial fees but rather profits under Article 7. The Applicant rejoined that if the corresponding banks make any profits from the money they earn on the *nostro* accounts, the said profits are only taxable in the countries where they are resident and not in Uganda, where they do not have any permanent establishment. The Applicant rejoined that both Articles 7 and 13 of the DTA`s support its positions.
97. The Applicant rejoined that by submitting that S. 40C of the ITA waived only interest and penalties which were outstanding as at 30th June 2020, and that the assessments raised after 30th June 2020 would attract interest irrespective of whether they relate to prior periods, the Respondent has not only skirted around the Applicant's contention but out-rightly failed to respond to the same. The Applicant submitted that it adduced evidence showing that the Additional Assessments for the 54 periods from January 2016 to June 2020, had been

arbitrarily raised in four tax periods of June 2016, June 2017, June 2018 and June 2020. The Applicant rejoined that this was not only irregular but also illegal since WHT assessments follow calendar months and not years. The Applicant rejoined that convoluting the Additional Assessments under years as opposed to months makes it difficult for the Applicant to understand that exact amount applicable to a particular period. The Applicant stated that the said Additional Assessments are for the above reasons wrongful, erroneous and should be vacated.

VIII. The determination of the Tribunal

98. Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.
99. This dispute can be divided into the following five broad sub-issues;
 1. Whether the *nostro* Account Transaction fees constitute income derived from sources in Uganda?
 2. Whether the *nostro* Account Maintenance fees constitute interest and are therefore exempt from income tax under S. 82(5) of the ITA?
 3. Whether the Respondent failed to apply the Double Taxation Agreements between Uganda-Denmark, Uganda-South Africa and Uganda-UK to the *nostro* charges?
 4. Whether the Additional Assessments for the tax periods January 2016 to May 2019 are time barred?
 5. Whether the Additional tax assessed was assessed in the wrong periods and should therefore be vacated for being wrongful and erroneous?
100. We will proceed to resolve each of the above sub-issues in turn.

Whether the *nostro* Account Transaction fees constitute income derived from sources in Uganda?

101. *nostro* accounts are essential tools in International banking, allowing domestic banks to hold accounts in foreign currencies in other countries. *nostro* accounts ease foreign exchange and trade transactions by providing a more straightforward conversion and settlement process.
102. The Additional Assessments in question were issued by the Respondent under **S. 84** of the ITA, which provides as follows;

84. Tax on Payments to Non-Resident Contractors or Professionals

- (1) Subject to this Act, a tax is imposed on every non-resident person deriving income under a Ugandan-source services contract.
 - (2) The tax payable by a non-resident person under this Section is calculated by applying the rate prescribed in Part V of Schedule 4 to this Act to the gross amount of any payment to a non-resident under a Ugandan-source services contract.
 - (3) Subsection (1) does not apply to a royalty or management charge charged to tax under Section 82.
103. A "Ugandan-source services contract" has been defined under **S. 84(4)** of the ITA as a contract other than an employment contract, under which-
- a) The principal purpose of the contract is the performance of services which give rise to income sourced in Uganda; and
 - b) Any goods supplied are only incidental to that purpose.
104. **S. 137(1)** of the ITA provides that any person making a payment of the kind referred to in **Ss. 82, 84** or **85** shall withhold from the payment the tax levied under the relevant section.
105. For the Applicant to be liable for the tax levied under **S. 84(1)** above, the following conditions must obtain;
- i. There must be a non-resident person;
 - ii. Who derives income under a Ugandan-source services Contract.

- iii. From a resident person.
 - iv. The resident person makes payment of the income to the non-resident person.
106. It is common ground that the correspondent banks to whom payment of *nostro* account transaction fees were paid were non-resident. The testimony of AW2, Dorothy Olwit Tinkamanyire, shows that the Applicant held *nostro* accounts in the United States with the Applicant's New York Branch, in Germany with SCB Germany, in the United Kingdom with SCB London, among others.
107. **S. 78(r)** of the ITA provides that income is derived from sources in Uganda to the extent to which it is a management charge paid by a resident person. In order to determine whether the *nostro* transaction fees paid to the correspondent banks constituted income under a Ugandan-source services contract we must determine whether these payments constituted a management charge.
108. A management charge has been defined under **S.77** of the ITA, as any payment made to any person other than a payment of employment income, as consideration for any managerial services, however calculated.
109. Did the *nostro* transaction fees constitute consideration for the provision of managerial services by the correspondent banks? In order to answer this question we must determine what amounts to managerial services.
110. In the decision of the Supreme Court of Zimbabwe, in ***Standard Chartered Bank Zimbabwe Limited vs. Zimbabwe Revenue Authority (Judgment No. 23/18 Civil Appeal No. SC 145.15)***, the Appellant, Standard Chartered Bank Zimbabwe Ltd, held *nostro* accounts, with certain foreign banks. The Appellant was charged fees for particular transactions which went through the *nostro* accounts and it was conceded for the Appellant that the debit of these fees to the *nostro* accounts represented money earned by the foreign bank. The Respondent, the Zimbabwe Revenue Authority, took the view that the *nostro* charges whether stated as service charges or transaction related charges, were subject to non-resident tax on fees, as they fell under the definition of "fees" as

defined in **S. 30** of the **Income Tax Act of Zimbabwe**, as read with the **17th Schedule** to the said Act.

S. 30 of the **Income Tax Act of Zimbabwe** provided as follows;

“ 30. Non-residents` tax on fees

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund, a non-residents` tax on fees in accordance with the provisions of the 17th Schedule at the rate fixed from time to time in the charging Act”

111. **Paragraph 1** of the **17th Schedule** to the Act, provided as follows;

“fees” means any amount from a source within Zimbabwe payable in respect of any services of a technical, managerial, administrative or consultative nature....”

112. The Court found as follows;

“The fees and charges in issue were raised by the banks holding the nostro accounts in respect of transactions undertaken by them on behalf of the Appellant which issues instructions on behalf of its clients in Zimbabwe and pays on behalf of those clients using its nostro accounts. These transactions clearly amount to services of a managerial or administrative nature within the meaning of Paragraph 1(1) of the 17th Schedule”

113. It will be observed that the provisions of **S.30** and **paragraph 1** of the **17th Schedule** of the **Income Tax Act of Zimbabwe**, cited above, are *in pari materia* with the provisions of **S. 84(1)** of our own income tax Act.

114. Relying on the decision in **Standard Chartered Bank Zimbabwe Ltd** above, we find that *nostro* account transaction fees paid to the said correspondent banks constituted consideration for the provision of managerial services by the correspondent banks.

115. It is vital to determine, for the purposes of **S. 78(r)**, that the income in question was paid by a resident person. The Applicant has submitted that the transaction fees are paid in respect of a service provided by the correspondent bank to the customer, for which payment is made directly by the customer through his own

bank account and merely facilitated through the Nostro account. Accordingly, it is the customer and not the bank that makes payment to the foreign correspondent bank.

116. It was also the Applicant's case that the transaction fees are charged outside Uganda in an account held outside Uganda and the Applicant does not pay the transaction fees on behalf of the customer as the service is rendered directly to the customer whose account is electronically debited without any control from the Applicant. The Applicant submitted that it is therefore virtually impossible for the Applicant to withhold tax on the *nostro* charges because these charges are normally debited directly and remotely by the foreign correspondent bank, where the Applicant has no possession of the respective payments at any point in time and thus has no control of the payment process.

117. The following is an excerpt from the witness statement of Agaba Viola, who testified on behalf of the Applicant as AW1.

"6. To illustrate how a Nostro account works, I will provide the steps involved in a transaction facilitated through a Nostro account. The Steps are as follows;

*i. **Step 1:***

A client instructs the bank electronically or manually to send money abroad in any of the currencies.

*ii. **Step 2:***

The instructions are processed by the bank. In the instructions, the client has the option of choosing the party that bears the cost of the remittance of the funds. In case the cost of the remittance of the funds is to be borne by the client, the bank will debit the charges due to the correspondent bank upfront. Where the cost of the remittance is to be shared between the client and the beneficiary of the funds, the client will only pay the cost of the remitting bank while the beneficiary will bear the cost of remittance of all the other banks involved in the remittance, namely; the intermediary bank in which the Nostro account is held and the beneficiary bank. Where the cost of remittance is to be borne by the beneficiary, the beneficiary bears all the charges of the banks engaged

in the remittance. The remitter/client only pays the remittance amount from which all remittance charges are deducted. The beneficiary therefore receives the remittance less all the remittance charges.

iii. **Step 3.**

Where the remitter/client bears all the remittance charges, the Applicant will debit the remitter's account for the transaction amount, processing fees, which include Overseas fees.

iv. **Step 4.**

The Applicant will credit its Standard Chartered Bank US Nostro account with the transaction amount on the day of the transaction and credits P&L Commission account with the transactional fees.

v. **Step 5.**

Standard Chartered Bank US, where the Applicant has a Nostro account, debits the Applicant's Nostro account and remits the funds to the beneficiary bank.

vi. **Step 6.** *Standard Chartered Bank US debits the Applicant's Nostro account with the transactional fees related to the transaction processed. The debit may happen days after the transaction date.*

vii. **Step 7.**

The Applicant debits the P&L Commission account with the equivalent of the charge debited by Standard Chartered Bank US from the Applicant's Nostro and credits the Applicant's Nostro with this amount to net off the debit".

118. Step 3, above, shows that the Applicant debits the client's account for the transaction amount and the processing fees which include the Overseas fees. The processing fees and the Overseas fees constitute the transactional fees. Step 3 also shows that the Applicant has control over how much money to debit from the client's account. Step 7 shows that the Applicant has control over how much money to remit to its *nostro* account for the purpose of paying off the transactional fees charged by the correspondent bank. It is clear from the above

that the person making the payment of the transactional fees for the purposes of **S. 137(1)** of the ITA, is the Applicant and not the client.

119. It therefore follows that the said *nostro* account transaction fees, constituted management charges, paid by the Applicant to the said correspondent banks. We accordingly find that the *nostro* account transaction fees constituted income derived from sources in Uganda, in respect of which, the Applicant ought to have withheld tax, under the provisions of **S. 84(1)** and **137(1)** above.

Whether the *nostro* Account Maintenance fees constitute interest and are therefore exempt from income tax under S. 82(5) of the ITA?

120. It is the Applicant's case that the *nostro* account management fees constitute interest and are therefore exempt from income tax under **S. 82(5)** of the ITA.

121. **S. 82(5)** provides as follows;

- (5) Interest paid by a resident company in respect of debentures is exempt from tax under this Act where the following conditions are satisfied:
- a) The debentures were issued by the company outside Uganda for the purpose of raising a loan outside Uganda.
 - b) The debentures were widely issued for the purpose of raising funds for use by the company in a business carried on in Uganda or the interest is paid to a bank or a financial institution of a public character; and
 - c) The interest is paid outside Uganda.

122. The term interest has been defined under **S. 2** of the ITA as including;

- a) Any payment, including a discount or premium, made under a debt obligation which is not a return of capital;
- b) Any swap or other payments functionally equivalent to interest;
- c) Any commitment, guarantee, or service fee paid in respect of a debt obligation or swap agreement; or
- d) A distribution by a building society;
- e) Any payment, including a discount or premium, made under sale-based financing or lease-based financing under Islamic financial business.

- f) Any payment as the excess of the total amount paid by a bond issuer over and above the amount received from a bond holder under Islamic financial business for each payment period calculated at a rate not exceeding the rate determined by the Bank of Uganda and does not include dividends; or
 - g) A partner's share of partnership income derived from a partnership arrangement under Islamic financial business.
123. The term "debt obligation" has been defined under S. 2 of the ITA as an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange and bonds.
124. The term "debenture" has been defined under S. 2 of the ITA as including any debenture stock, mortgage, mortgage stock, loan, loan stock or any similar instrument acknowledging indebtedness, whether secured or unsecured.
125. For the Applicant to succeed under this head it must prove the following;
- a) The maintenance fees paid to the correspondent banks constituted interest paid by it in respect of debentures.
 - b) The debentures were issued by the Applicant outside Uganda for the purpose of raising a loan outside Uganda;
 - c) The debentures were widely issued for the purpose of raising funds for use by the company in a business carried on in Uganda or the interest is paid to a bank or a financial institution of a public character; and the interest is paid outside Uganda.
126. The following excerpt from the testimony of Dorothy Olwit Tinkamanyire, who testified on behalf of the Applicant, as AW2, explains what constitutes the *nostro* account maintenance fees.

"The Maintenance fees for maintaining the Nostro account are periodic fees for maintaining the Nostro account and related services and can be regarded as a payment for services rendered by the correspondent bank to the Applicant. The maintenance fees are a cost borne by the bank and reflected as an expense in its general ledger. These charges are essentially an account maintenance fee. The witness explained that these fees are paid/incurred by the Applicant and recognized as an expense in its

ledger. The witness explained further that these fees comprise interest which is exempt from income tax under S. 83(5) of the ITA and that these fees are not liable to income or withholding tax”.

127. It is clear from the above testimony, that the maintenance fees in question, constitute consideration paid by the Applicant to the said correspondent banks for maintaining the Applicant's *nostro* account in those banks. How such fees metamorphosed into interest has not been explained by the Applicant.
128. What constitutes interest, is as much a question of fact, as it is of law. The Applicant has failed to adduce any factual evidence to support the assertion that the maintenance fees constituted interest. It is not sufficient to merely cite the provisions of the law relating to interest, debt obligations or debentures and to then conclude, without any factual evidence, that the said fees constitute interest.
129. The Applicant ought to have adduced cogent documentary evidence to prove how the maintenance fees became interest. The Applicant ought to have adduced the existence of a contract, between it and the correspondent banks, setting out a debt obligation and the requisite interest due. The sample contracts adduced by the Applicant at pages 32-110 of the Applicant's trial bundle do not show the existence of such a contract. The Applicant ought to have shown for the purposes of **S. 82(5)** that the amount claimed as interest was paid by the Applicant in respect of a debenture which was issued by it outside Uganda, for the purpose of raising a loan, outside Uganda. The Applicant ought to have adduced copies of the debentures issued by it, outside Uganda and the dates of their registrations.
130. In the absence of such evidence, the Applicant's argument falls flat on its face. We accordingly find that the maintenance fees did not constitute nor comprise, interest, for the purposes of **S. 82(5)** of the ITA. The maintenance fees constituted income derived from a Ugandan-source services contract in respect of which the Applicant ought to have withheld tax under **S. 84(1)** of the ITA.

Whether the Respondent failed to apply the Double Taxation Agreements between Uganda-Denmark, Uganda-South Africa and Uganda-UK to the *nostro* charges?

131. It is the Applicant's case that the *nostro* charges imposed by the correspondent banks resident in Denmark, UK and South Africa do not constitute payments for services of a technical, managerial or consultancy nature, as such the said charges do not qualify as technical fees under Article 13 of the various DTA's. The position of the Applicant is that these charges are purely business profits earned by the corresponding banks under Article 7 of the respective DTA's and are only taxable in the countries where the said correspondent banks are resident and not in Uganda, where they do not have any permanent establishment.
132. The Respondent, on the other hand, is of the view that the said charges *nostro* charges constitute payments for services of a technical, managerial or consultancy nature.
133. It is clear from the above submissions that the resolution of this sub-issue, turns on whether the *nostro* charges imposed by the correspondent banks resident in Denmark, UK and South Africa, constituted payments for services of a technical, managerial or consultancy nature, under Article 13 of the Double Taxation Agreements or whether they constitute business profits earned by the correspondent banks under Article 7 of the respective Double Taxation Agreements.
134. **Articles 13 and 7 of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains between the United Kingdom of Great Britain and Northern Ireland and Uganda** provide as follows;

**ARTICLE 13
TECHNICAL FEES**

- (1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
- (2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but where the beneficial owner of such technical fees is a resident of the other Contracting State the tax so charged shall not exceed 15 per cent of the gross amount of the technical fees.
- (3) The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
- (4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State, in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
- (5) If a resident of one of the Contracting States, who derives and beneficially owns technical fees which arise in the other Contracting State, so elects for any year of assessment, financial year or year of income, the tax chargeable in respect of those technical fees in the Contracting State in which they arise shall be calculated as if he had a permanent establishment or a fixed base in the last-mentioned Contracting State and as if those technical fees were taxable in accordance with Article 7 or

15, as the case may be, as profits attributable to that permanent establishment or fixed base.

- (6) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- (7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 7

Business Profits

- (1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise

may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

- (2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
- (3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including an allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the State in which the permanent establishment is situated or otherwise.
- (4) In so far as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
- (5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for that enterprise.

- (6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
- (7) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
135. Under **Paragraph 1 of Article 13** above, technical fees arising in one country and paid to a resident of the other country may be taxed by the country in which the recipient of the technical fees resides.
136. Under **Paragraph 2 of Article 13**, technical fees arising in one country and paid to a resident of the other country may be taxed by the country where the technical fees arose in accordance with their domestic law. However, the agreement caps the tax rate that the source country can charge to 15% of the gross amount of the technical fees.
137. Paragraph 4 of Article 13 provides that if the recipient of the technical fees has a permanent establishment or a fixed base in the source country and the permanent establishment and the fixed base are effectively connected to that base, the provisions of Articles 7 or 15, apply instead of paragraphs 1 and 2 of Article 13.
138. Both parties are in agreement that the recipient of the technical fees does not have either a permanent establishment or a fixed base in Uganda. Accordingly, the provisions of Paragraph 4 of Article 13 do not apply to the instant case.
139. The Respondent's argument is that it applied the provisions of Paragraph 2 of Article 13 to tax the non-resident recipient of the technical services. The Applicant's argument is that the Respondent could not apply the provisions of Paragraph 2 because the *nostro* charges in question did not constitute payments for technical fees.

140. In order to determine whether the Respondent applied the Double Taxation Agreement to the *nostro* charges we must resolve whether the said *nostro* charges constituted payment for technical services.
141. **Paragraph 3 of Article 13**, defines “technical fees” as payments of any kind to any person other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
142. In order to determine whether the *nostro* charges constituted technical fees we must first determine what is meant by services of a technical, managerial or consultancy nature.
143. In *Standard Chartered Bank Zimbabwe Ltd v. Zimbabwe Revenue Authority (supra)* **S. 30** of the **Income Tax Act of Zimbabwe** charged a non-resident tax on fees, the definition, of which, was set out in **Paragraph 1** of the **17th Schedule** to the said Act, as any amount from a source within Zimbabwe payable in respect of any services of a technical, managerial, administrative or consultative nature. The court found that transactions in respect of which *nostro* transaction fees were charged by certain foreign correspondent banks amounted to services of a managerial or administrative nature within the meaning of **Paragraph 1(1)** of the **17th Schedule** of the **Income Tax Act of Zimbabwe**.
144. We agree with the above decision that transactions in respect of which *nostro* transaction fees were charged by foreign correspondent banks amounted to services of a managerial or administrative nature. We accordingly find that the said payments constituted consideration for technical services within the meaning of Paragraph 3 of Article 13 of the UK-Uganda Double Taxation Agreement and the Respondent was well within its rights to apply the provisions of Paragraph 2 of Article 13.
145. We find that the Respondent properly applied the respective Double Taxation Agreements to the *nostro* charges paid to the correspondent banks.

Whether the Additional Assessments for the tax periods January 2016 to May 2019 are time barred?

146. The Applicant has submitted that the Tax Procedures Code Act (TPCA) requires Additional Assessments to be raised by the Respondent within a period of 3 years after the furnishing of a self-assessment return or when the Commissioner General serves a notice of the original assessment on the tax payer. The Applicant submitted that although the Respondent can raise additional assessments beyond the period of three years under **S. 25(2)** of the TPCA, it must prove fraud committed by the taxpayer, gross or wilful neglect committed by the taxpayer or the discovery of new information in relation to the tax payable by the taxpayer. The Applicant cited the decision in *Kampala Hospitality Development Limited v. Uganda Revenue Authority TAT No, 69 of 2023*.
147. It was the Applicant's case that the Additional Assessments issued by the Respondent on 29th June 2022, were issued more than three years after the Applicant's impugned WHT returns for the tax periods from January 2016 to May 2019 were furnished. The Applicant submitted that the said Additional Assessments had been issued outside the statutory limitation period for the issuance of Additional Assessments.
148. The Applicant submitted that the Additional Assessments were based on existing information that was readily available to the Respondent through the Applicant's tax returns, financial statements and company records. The Applicant submitted that it was within reasonable commercial knowledge that the bank or its customers would incur fees on *nostro* accounts or transaction fees debited through such accounts. The Applicant submitted that accordingly, there was no basis or new information to warrant the issuance of Additional Assessments for the tax periods up to May 2019.
149. The Applicant accordingly submitted that the Additional Assessments for the years 2016-2019 are time barred and that the Respondent has not given any justification as to why it issued the assessments beyond the three-year period.
150. The position of the Respondent is that the assessments for the period 2016 to 2019 are not time barred as they arose out of the discovery of new information.

The Respondent submitted that the new information was discovered pursuant to a refund audit conducted by the Respondent. In support of this contention the Respondent cited **Ss. 25(1) (c) and 25(2)(a)** of the TPCA. The Respondent submitted on the authority of the above provisions that the inquiry into the reliability of the refundable position constitutes the discovery of new information which can only be verified through an audit. The Respondent relied on the decision in ***Uniworks Transporters & Logistics Limited v. URA TAT Application No. 62 of 2018***. The Respondent submitted that where a taxpayer's financial statements, returns and other documents are suspicious, it is prudent to conduct a comprehensive audit to establish the actual errors, misstatements, fraud and or satisfy the Authority that the financial statements are factual, or to establish that there is new information to support additional assessments. The Respondent also relied on the decision in ***UETCL Co. Ltd v. URA HCCS No. 423 of 2010***, where it was held that information discovered through an audit can qualify as new information.

151. Relying on the above authorities, the Respondent submitted that the refund audit established that the Applicant's returns were not accurate to the extent that the Applicant did not account for WHT on the *nostro* account charges paid to the foreign correspondent banks. The Respondent submitted that this information which was established through an audit, constituted the discovery of new information.
152. Additional Assessments, which have been provided for under **S. 25** of the **Tax Procedures Code Act (TPCA)**, state as follows;

25. Additional Assessment

- (1) The Commissioner General may make an additional assessment amending a tax assessment made for a tax period to ensure that:
 - a) For an assessed loss under the Income Tax Act, the taxpayer is assessed in respect of the correct amount of the assessed loss for the period;

- b) For an excess input tax credit under the Value Added Tax Act, the taxpayer is assessed in respect of the correct amount of the excess input tax credit for the period;
 - c) In any other case, the taxpayer is liable for the correct amount of tax payable in respect of the period.
- (2) An additional assessment under subsection (1) may be made:
- a) At any time, if fraud or any gross or wilful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period;
 - b) In the case of an additional assessment, within three years from the date of service of the notice of the additional assessment; or
 - c) In any other case, within three years after the date:
 - i. The taxpayer furnished the self-assessment return to which the original assessment relates; or
 - ii. The Commissioner General served notice of the original assessment on the taxpayer.
153. The primary objective of **S. 25(2) (a)** of the TPCA is to prevent the loss of tax revenue through inaccurate self-assessments, whether through fraud, gross or willful neglect or an honest misapprehension of the law.
154. In ***UETCL vs. Commissioner General, Uganda Revenue Authority, HCCS. 423 of 2010***, the plaintiff filed self-assessed tax returns for the period 2001-2004, and duly effected payment in respect of the said returns. More than five years later, on 18th August 2010, the defendant issued additional assessments against the plaintiff, on the ground that the defendant had discovered new information through an audit of the plaintiff, which showed that the plaintiff's earlier assessment was inaccurate. The defendant specifically alleged that the sum of Shs. 40bn, which was reflected in the plaintiff's self-assessment returns, as loss carried forward from Uganda Electricity Board, was erroneously used in computing the plaintiff's taxable income, as a loss carried forward, when in actual fact, no loss had been carried forward from Uganda Electricity Board. The

- plaintiff contended that the alleged new information relied on by the defendant did not amount to new information within the meaning of **S. 97(2)** because at all material times, the information was available to the defendant or ought to have been upon the exercise of reasonable diligence. The new information, which neither the plaintiff nor the defendant had, at the time, the plaintiff provided the self-assessment tax returns, was the Allocation of tax written-down values of Uganda Electricity Board to successor companies, and that information was only confirmed to the defendant in 2010 during the audit.
155. **Madrama. J.**, (as he then was), observed that any information that showed, that returns filed by a taxpayer, for any year of income was false or misleading, could be termed a “discovery of new information”, because previously the Commissioner was presumed or deemed to be satisfied by the returns and did not have any suspicions that the taxpayer’s returns did not contain accurate information.
156. His Lordship went on to hold, as follows, at page 50;
157. “Furthermore, the information would be new information simply because the defendant was satisfied with the tax returns of the plaintiff for the years of income 2001. However, the audit conducted by the defendant linked the information that no losses were brought forward from Uganda Electricity Board in the 2001 self-assessment. This revealed that the self-assessments were misleading for containing information that losses were carried forward. The Commissioner had not reconciled the information available by August 2006 to the self-assessment returns until after the defendant carried out an audit in 2009-2010. Consequently, the reconciliation of the information and the result of the reconciliation that the plaintiff was in a taxable position in the year of income 2001, is new information within the meaning of section 97(2) of the Income Tax Act and the assessments issued in August 2010 are not time barred”.
158. In the instant case, the Applicant filed self-assessed returns, on the basis that the transaction fees charged by the correspondent banks in question did not comprise payment for services for which the Applicant had a withholding tax

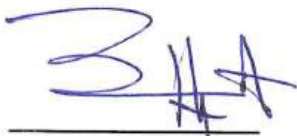
- obligation and that the account maintenance fees on the *nostro* accounts comprised interest which was exempt from income tax under **S. 83(5)** of the ITA.
159. The Respondent was only able to form the opinion that the Applicant had misconstrued the provisions of **Ss. 83(5) and 84** of the ITA, when it carried out the refund audit mentioned above. On the basis of this audit, the Respondent formed the opinion that the self-assessed returns filed by the Applicant were inaccurate and had led to an insufficiency of tax. Prior to the receipt of the audit finding above, the Respondent was satisfied in the belief that the Applicant's returns were accurate.
160. Having ourselves arrived at the conclusion, that the Applicant ought to have accounted for the WHT on the *nostro* account charges, it is clear that the Applicant filed an inaccurate self-assessment, upon a mistaken view of the law, that the *nostro* account charges were not liable to WHT.
161. Relying on the **UETCL** decision above, we find that this audit finding, amounted to a discovery of new information within the meaning of **S. 25(2) (a)** of the TPCA.
162. We accordingly find that the Additional Assessments for the years 2016-2019 are not time barred.

Whether the Additional tax was assessed in the wrong periods and should therefore be vacated for being wrongful and erroneous?

163. The Applicant submitted that the liable payments up to June 2020 were assessed in the wrong tax periods and ought to be vacated for being wrongful and erroneous. The Applicant submitted that the Additional Assessments for the 54 tax periods from January 2016 up to June 2020 were arbitrarily assessed in the four tax periods of June 2016, June 2017, June 2018 and June 2020. By contrast the amounts from July 2020 onwards have been assessed on a monthly basis. The Applicant submitted that the tax period for withholding tax purposes is the calendar month and the withholding tax under section 85 is due for the month in which the relevant Ugandan-source services payment was made.

164. In response to the above submissions, the Respondent submitted that S. 40C of the TPCA waived only interest and penalties that were outstanding as at 30th June 2020 and that therefore the assessments raised after 30th June 2020 would attract interest irrespective of whether they relate to any prior periods. With respect, the reply by the Respondent does not constitute an adequate response to the submission made by the Applicant.
165. Be that as it may, we believe that the above constitutes an omission by the Respondent which is cured by the provisions of **S. 86** of the TPCA. **S. 86** of the TPCA provides as follows;
166. "The validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a tax law is not-
- (a) Affected by reason that any of the provisions of the tax law under which it is made have not been complied with;
 - (b) Quashed or deemed to be void or voidable for want of form; or
 - (c) Affected by reason of any mistake, defect, omission or commission in it.
167. For the reasons above, we accordingly find that the Respondent was justified in issuing the assessment of **Shs. 1,107,188,917**. This Application is dismissed with costs.


Dated at Kampala this.....15th.....day of.....May.....2026.



MR. SIRAJ ALI
CHAIRMAN



MS. CHRISTINE KATWE
MEMBER



HON. KABAKUMBA MASIKO
MEMBER