

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 48 OF 2023

TATA (U) LTD .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY .....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MRS. STELLA NYAPENDI CHOMBO  
MS. CHRISTINE KATWE

RULING

This ruling is in respect of an income tax assessment of **Shs. 5,134,372,701** comprising Value Added Tax and Withholding Tax on transactions between the Applicant and two other companies.

**1. Background facts**

The Applicant, TATA (U) Limited is a company involved in the importation and assembling of motor vehicles.

The case arises from a Customs Post Clearance Audit conducted by the Respondent, covering the period July 2018 to March 2022. The audit initially suggested a refund for the Applicant, but the Respondent subsequently raised additional assessments.

The total disputed tax amounts to Shs. 5,134,372,701, related to Value Added Tax (VAT) and Withholding Tax (WHT) on imported services. This amount includes assessments on:

- (i) VAT and WHT on transactions between the Applicant and AC BUS SPV Limited; and

- (ii) VAT and WHT on transactions between the Applicant and ILSA Shipping and Logistics PVT Limited (ILSA).

The Applicant objected to these findings, arguing that the transactions with ILSA and AC Bus SPV did not constitute imported services and therefore did not attract WHT and VAT. However, the Respondent disallowed the Applicant's objections. The Applicant then applied for a review, which was also disallowed by the Respondent, who maintained their demand for the assessed taxes.

Dissatisfied with the Respondent's decisions, the Applicant lodged this application with the Tax Appeals Tribunal for determination. During mediation, the Applicant partially conceded to some revised customs duty amounts, but the VAT and WHT issues on the ILSA and AC Bus transactions remained in dispute before the Tribunal.

## **2. Issues for determination**

The following issues were framed for determination:

- (i) Whether the Applicant is liable to pay the tax assessed by the Respondent?
- (ii) What remedies are available to the parties?

## **3. Representation**

At the hearing of this Application, Ms. Linda Mugisha, Mr. Cephass Birungyi and Mr. Patrick Kabagambe appeared for the Applicant while Ms. Eseza Victoria Ssendenge appeared for the Respondent.

Mr. Devdatta Chitale, the Head of the Auto Department at the Applicant company was the Applicant's first witness. He stated in his witness statement that the Applicant is engaged in the importation and distribution of motor vehicles and spare parts. He also stated that the Applicant applied to the Respondent for a refund of Shs. 1,692,691,621 following which the Respondent initiated a customs post clearance audit. The Respondent subsequently issued several assessments to the Applicant attributed to VAT and withholding tax on transactions between the Applicant and ISLA Shipping & Logistics Pvt Limited.

He also stated that the Respondent contended that the contract between the Applicant and ISLA included management services to the Applicant and was therefore subject to VAT and Withholding tax.

He further testified that the income derived by ILSA was not derived from Uganda source services contract and that the tasks carried by ILSA are integral to the transportation process itself and cannot be categorized as management services.

Mr. David Wazemba an Officer in the Respondent's Customs Department was the Respondent's sole witness. He stated in his witness statement that he was part of the team that conducted the audit. He also stated that the Applicant's transactions relating to AC Bus SPV Limited and ICICI Bank Ltd were an assignment of receivables by the Applicant and as a result, the Respondent treated the transaction as an importation of debt factoring services which attract VAT and withholding tax.

He further testified that the Respondent analyzed the Applicant's import purchase ledgers specifically for motor vehicles and identified transactions to non resident companies specifically DFS and ILSA. He stated that the Respondent treated the payment for logistics services by the Applicant to the foreign companies as a management fee which attracts VAT and withholding tax.

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

Regarding the issue of whether the Applicant is liable to pay the tax assessed, the Applicant made submissions concerning two sets of transactions:

- a) Transactions between the Applicant and ILSA Shipping and Logistics PVT Limited (ILSA)

The Applicant submitted that the transactions with ILSA pertained to international transport, which is exempt from Withholding Tax (WHT) under Section 85 of the Income Tax Act (ITA) and zero-rated under Schedule 4 of the VAT Act.

They argued that the services provided by ILSA, such as customs clearance, cargo tracking, and document processing, were simply incidental and ancillary to the core international transportation service.

The Applicant cited Section 85 and Section 84(5) of the ITA, arguing that income derived from the carriage of passengers or cargo not embarked or mailed in Uganda is not income derived from a Ugandan-source service contract and is thus not subject to WHT.

They also cited Schedule 4 to the VAT Act, Paragraph 1(b), which provides a zero rate for the supply of international transport of goods or passengers.

The Applicant contended that the Respondent erroneously assessed WHT and VAT on the full amount paid to ILSA without distinguishing the portion attributable to the exempt/zero-rated international transport services.

They highlighted that the Respondent's own witness admitted that international transport services are exempt/zero-rated, and that the Respondent did not apportion the tax during computation, leading to assessments on income that is not taxable.

The Applicant argued that they had discharged the burden of proof demonstrating the assessments were erroneous and unfounded. They submitted that the WHT and VAT assessments amounting to UGX 4,393,858,212 arising from these transactions were unlawfully imposed and should be set aside.

#### **b) Transactions between the Applicant and AC BUS SPV Limited**

The Applicant submitted that their transaction with AC Bus SPV Limited was a financial arrangement involving the provision of a financing facility and the sale/transfer of receivables, and not debt factoring as characterized by the Respondent.

They argued that this transaction falls under the category of financial services, which are listed as exempt supplies under Paragraph 1(c) and defined under Paragraph 2(b) of the 2nd Schedule to the VAT Act, including negotiating and dealing with loans and transfers. Therefore, they are not liable to pay VAT on this transaction.

Regarding WHT, the Applicant submitted that the Respondent's assessment of Shs. 740,514,489 on the total interest was erroneous and unjust because it was based on a projected interest amount (USD 182,876) rather than the actual interest paid (USD 63,167.78).

They provided evidence of payments between themselves and AC Bus demonstrating that early interest repayments reduced the actual interest liability.

The Applicant argued that the Respondent erroneously rejected their request to consider the actual interest paid.

The Applicant invited the Tribunal to find that the VAT amount Shs. 740,514,489 was illegally assessed and should be set aside.

They also prayed that the Respondent be ordered to refund the 30% deposit paid by the Applicant with interest from the day it was paid and that the Applicant be awarded costs of the Application.

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

The Respondent also divided issue one into the two transactions as addressed by the Applicant.

### **a) Transactions between the Applicant and ILSA Shipping and Logistics PVT Limited (ILSA)**

The Respondent submitted that ILSA provided logistics services or management services to the Applicant, not solely international transport. They contended that the transport component was only *part* of a broader logistics contract, meaning the overall services provided were a management charge that attracted WHT and VAT.

The Respondent cited Sections 78(r), 77, 82, and 137 of the Income Tax Act (ITA), arguing that these provisions impose tax on management charges derived from Uganda sources and required withholding tax by the payer in Uganda. They submitted that the Applicant paid ILSA for these management services and was therefore liable to withhold tax at 10%.

Concerning VAT, the Respondent submitted that the services provided by ILSA were imported services. They referred to Sections 4(c) and 5(1)(c) of the VAT Act, which imposed VAT on the supply of imported services and the liability to collect it. The Respondent argued that the Applicant was liable to pay VAT at 18% on these imported services.

The Respondent submitted that they rejected the Applicant's argument concerning the non-apportionment of payments, asserting that it was the Applicant's responsibility to distinguish between payments for international transport—which the Respondent acknowledged were exempt from Withholding Tax and zero-rated for VAT for international carriers—and those for the purported management or logistics services. However, the Applicant failed to demonstrate how this apportionment was effected. They noted evidence suggesting the Applicant had conceded to making payments to ILSA for logistics services.

b) Transactions between the Applicant and AC BUS SPV Limited

The Respondent submitted that this transaction constituted debt factoring, which they contended was not an exempt service under the VAT Act. They further argued that this transaction was a management service attracting WHT under Sections 77, 78, and 137 of the Income Tax Act.

The Respondent described the arrangement as a financial transaction where AC Bus disbursed funds against the Applicant's unpaid invoices and agreed to purchase certain receivables, characterizing this as a management service provided by AC Bus to the Applicant.

Regarding WHT, the Respondent claimed they correctly assessed WHT at 15% amounting to Shs. 336,597,495 on the total anticipated interest/charges for the period of the facility, based on the definition of "payment" in the Income Tax Act. However, the Respondent also noted that they had "erroneously rejected the Applicant's request to consider the actual interest paid".

For VAT, the Respondent reiterated that the debt factoring and debt collection services, as provided by AC Bus, were not listed as exempt supplies under Schedule 3 of the VAT Act. They cited the agreement terms as evidence of debt factoring and collection services, arguing these were excluded from the definition of "financial service" in the VAT Act. They cited case law emphasizing the strict interpretation of tax exemptions. The Respondent assessed VAT at 18% amounting to Shs. 403,916,994 on the charges, fees, and commissions totaling USD 667,648 incurred by the Applicant.

Regarding the Burden of Proof, the Respondent submitted that the Applicant had failed to discharge the burden of proof to demonstrate that the tax assessments were erroneous. They cited Sections 26 of the Tax Procedures Code Act and 18 of the Tax Appeals Tribunal Act, stating that the onus in tax disputes is on the taxpayer or Applicant.

In conclusion, the Respondent reiterated their arguments and prayed that the Tribunal should dismiss the Application, find the assessments for WHT and VAT justified and upheld, declare the Applicant liable to pay the total assessed taxes of UGX 5,134,372,701, and award costs of the Application to the Respondent.

## **6. Submissions of the Applicant in rejoinder**

The Applicant reiterated their first submissions entirely and made responses to the Respondent's submissions.

Concerning the Transactions between the Applicant and ILSA Shipping and Logistics PVT Limited (ILSA), the Applicant reiterated that ILSA provided international transport services, and the services categorized by the Respondent as management services were merely incidental and ancillary to the provision of international transportation.

They cited *Diamond Shipping Company V URA (TAT No. 21 of 2008)*, which held that the supply of international transportation is a business activity involving players like brokers, porters, and transporters, not solely about ownership of modes of transport. The tribunal agreed that the Applicant plays a vital role in facilitating the transportation of goods, and the Act does not distinguish roles in international transport.

The Applicant submitted that the successful movement of goods involved processes like customs clearance, documentation, and border control, which are integral to international transportation and should not be considered distinct management services. They distinguished their case from *Goal Relief Development Organisation vs URA*, arguing that the facts were different as there was no related party connection like in Goal Relief, and ILSA simply supplied international transport services.

The Applicant maintained that Sections 77, 78, 82, and 137 of the Income Tax Act relate to taxes on management services, and the services provided by ILSA were international transport services. They cited Sections 84 and 85 of the Income Tax Act, arguing that income derived from carriage of passengers or cargo not embarked or mailed in Uganda is not Uganda source income and is exempt from Withholding Tax (WHT). Since their goods were not embarked in Uganda, payments to ILSA were not liable to WHT.

Regarding Value Added Tax (VAT), the Applicant reiterated that the services provided by ILSA constituted international transportation of goods, which were zero-rated under Schedule 4 to the VAT Act. They argued that while Sections 4(c) and 5(1)(c) impose VAT on imported services, the services in question were zero-rated international transport.

The Applicant submitted that the Respondent erroneously computed tax on the full amount paid to ILSA without isolating the portion attributable to international transport services, which are exempt from WHT and zero-rated for VAT. They noted that the Respondent's witness admitted during cross-examination that international transport services are exempt/zero-rated and admitted that the Respondent had not apportioned the amount during the computation. The Applicant contended that this admission showed the assessments were erroneous and not taxable. The Applicant argued that the Respondent could not claim to have properly assessed the tax when they made no effort to exclude non-taxable income from the assessment.

Regarding non-apportionment, the Applicant submitted that the burden was on the Respondent to demonstrate which payments were for transport and which were for other services, as they had provided evidence of international transport services which were

exempt/zero-rated. They argued the evidential burden had shifted to the Respondent to prove the tax was not levied on international transport.

#### Transactions between the Applicant and AC BUS SPV Limited

The Applicant reiterated that the transaction with AC Bus was a financial transaction involving the provision of a financing facility (loan) and the sale and transfer of receivables. They maintained it was not debt factoring or a management service as characterized by the Respondent.

They submitted that this transaction falls under paragraph 2(b)(i) and (ii) of the 3rd Schedule to the VAT Act, defining financial services which are exempt from tax.

The Applicant provided documentary evidence regarding payments between itself and AC Bus and an official reconciliation showing early repayments, which reduced the overall interest liability.

With respect to WHT, the Applicant submitted that they only paid interest amounting to USD 63,167.78, contrary to the Respondent's assessment based on a projected interest of USD 182,876. They contended that the Respondent's computation of WHT on interest was erroneous as it was based on estimated interest that was never paid due to early repayment. They also stated the Respondent erroneously rejected their request to consider the actual interest paid.

For VAT, the Applicant reiterated that they did not pay AC Bus any management fees but rather sold and transferred their receivables to AC Bus. They stated that during the audit, they had recognized these receivables and reported them off their balance sheet under trade receivables, consistent with a sale and transfer.

Therefore, the Applicant submitted that they were not liable to pay VAT because the transaction involved financial services (loan and transfer of receivables) which are exempt from tax under the VAT Act.

#### **7. The determination of the Tribunal**

Having read the submissions of the parties, this is the decision of the Tribunal.

We shall analyse the two categories of transactions.

(i) Transactions with ILSA Shipping

The Applicant is engaged in the importation and assembly of motor vehicles.

On 14 January 2014, the Applicant entered into a contract with ILSA Shipping and Logistics PVT limited, a company that is registered in India to provide:

*“logistics services for purposes of transporting unpacked vehicles and containers consigned to TUL and discharged at the port of Mombasa by road and / or car carrier to the nominated warehouses in Kampala. for international transport wherein ILSA was responsible for transportation of the Applicant’s vehicle and containers from Mombasa to Kampala.”*

ILSA’s scope of work as shown in the agreement included the following:

*“Customs clearance*

*Documentation processing with KPA, KRA and URA*

*Transportation to Uganda a- Kenya border then to nominated warehouses in Kampala*

*Border clearance, among others.”*

The Respondent assessed withholding tax and VAT on payments by the Applicant to ILSA on the grounds that the services are management services. The Applicant contends that the services are international transportation services, which are exempt from withholding tax and zero rated for VAT purposes.

We now consider the tax implications of the above services.

Withholding tax

Section 85 of the Income Tax Act imposes withholding tax on every non-resident person who derives income from the carriage of passengers who embark or cargo or mail that is embarked in Uganda. However, Section 84(5) of the ITA provides that income derived from the carriage of passengers who do not embark or cargo or mail that is not embarked in Uganda is not income derived from a Ugandan-source service contract.

In the present case, the services provided by ILSA concern the transportation of cargo that embarks in Mombasa, Kenya. The cargo, which consists of vehicles is transported to warehouses in Kampala. The goods were not embarked from Uganda.

Further, as part of the cross-border transportation, ILSA performs activities such as customs clearance, border clearance, document processing, all related to international transportation.

In the case of *Diamond Shipping v Company V URA (TAT No. 21 of 2008)*, the Tribunal stated:

*"... international transport of goods" is not about ownership of modes of transport. It is not about the physical driving of cargo trucks, or piloting of ships and airlines. It is a business activity that involves a number of players beginning from the managers down to the brokers, porters, transporters etc."*

The invoices from ILSA to the Applicant clearly indicate that the invoiced amounts were in respect to:

*"Vehicles driven and delivered from Mombasa to Kampala and border tracking devices".*

Therefore, we find that the services provided by ILSA were international transportation services and therefore, the payments are not subject to withholding tax in line with section 84 (5) of the ITA.

In addition, based on the above, there is no need for apportionment as the entire package of services comprise of international transportation and related services.

The Applicant's argument that the services are managerial in nature, taxable under Section 82 (1) does not hold.

In *Translink Uganda Limited v URA TAT Application no. 107 of 2023*, the term managerial services was defined to mean:

*"Services rendered in performing management functions...and the term management functions should receive its normal business meaning."*

The term “management” is defined by the Black’s Law Dictionary, 9th edition to mean:

*“The people in an organisation who are vested with a certain amount of discretion and independent judgement in managing its affairs.”*

There is no evidence that ILSA is involved in the management of the Applicant’s affairs. Therefore, the idea that ILSA is a provider of management services is a fallacy.

#### Value added tax

Section 4 of the VAT Act imposes VAT on imported services and Section 5 (1) (c) states that VAT on imported services is to be paid by the recipient of the imported services.

However, Section 24(4) of the VAT Act provides that the rate of tax imposed on taxable supplies specified in the Third Schedule is zero.

The Third Schedule (cl.1(b) of VAT Act defines international transport to mean:

*“Any carriage by road/rail/water/air that either (i) moves goods/passengers from outside Uganda to outside Uganda (even if passing through Uganda), or (ii) from outside Uganda to Uganda, or (iii) from Uganda to outside Uganda.”*

In ***Diamond Shipping Co. Ltd v URA (supra)*** the Tribunal similarly found that an agent’s overseas shipping arrangement did not give rise to a taxable supply in Uganda. Based on the evidence provided such as (bills of lading, contracts, etc.), the Tribunal is satisfied that ILSA’s work was principally international freight and not local managerial services.

Therefore, the services provided by ILSA are not subject to VAT at the standard rate. They are subject to VAT at the zero rate. As a result, the Respondent’s assessment was erroneous.

#### (ii) Transactions between the Applicant and AC Bus SPV Limited

By an agreement 22 March 2019 and another dated 26 March 2021, AC Bus SPV Ltd and the Applicant entered in an arrangement whereby AC Bus SPV agreed to purchase the Applicant’s receivables. The consideration was a purchase price, payable in US

Dollars provided that the AC Bus SPV received from the Applicant the following documents:

- a) Details of invoices as per sales ledger with a declaration that the same has been accepted by the debtors
- b) The original of an assignment agreement in respect of the receivable
- c) Evidence of delivery of the notice of assignment duly executed by the Applicant as the seller
- d) A schedule in the form acceptable to AC Bus SPV setting out in relation to each seller the details of the debtors and the corresponding monthly receivables with the details of the maturity of the receivables
- e) Any authorisations or other documents which AC Bus SPV considers to be necessary or desirable in connection with the purchase of the relevant receivables.

Further, the agreement gave AC Bus SPV the primary right to collect and enforce payment of any receivable in whatever manner the AC Bus SPV chooses.

#### Value Added Tax

The Applicant argued that the above services are financial services within the meaning of the VAT Act and are therefore exempt from VAT. The Respondent's position is that the services are debt factoring services which are standard rated for VAT purposes.

The issue therefore is whether the services are financial services for purposes of the VAT Act or not.

#### What are financial services?

Section 19 of the VAT Act provides that:

*"A supply of goods or services is an exempt supply if it is specified in the Second Schedule."*

Paragraph 1(c) of the Second Schedule of the VAT Act exempts *"the supply of financial services"*.

The Act's definition of "financial services" includes granting, negotiating and dealing with loans, credit and guarantees (including management of loans/credit by the grantor). Crucially, however, the definition explicitly excludes "*debt collection and factoring*".

The VAT Act does not define the term "debt factoring". Therefore, we shall defer to its ordinary meaning.

Investopedia, a comprehensive online resource focused on financial education and investing defines a factor to mean:

*"...an intermediary agent that provides cash or financing to companies by purchasing their accounts receivables. In short, a factor is a funding source; the factor agrees to pay the company the value of an invoice—less a discount for commission and fees."*

The term "receivable" refers to an "*amount owed, especially by a business customer.*"

The agreement between the Applicant and AC Bus SPV provides:

- (i) For the sale of the Applicant's receivables;
- (ii) The payment of certain fees, costs and expenses by the Applicant (clause 8) incurred in relation to the collection of the receivables; and
- (iii) A comprehensive list of the Applicant's debtors and the receivable amounts.

All the above point to a factoring arrangement and we are convinced that the services provided by AC Bus SPV do not fall within the realm of financial services within the meaning of the VAT Act. Therefore, the Applicant is liable to VAT.

#### Withholding tax

The Applicant submitted that it entered into a financing arrangement with ICIC Bank through AC Bus Limited under which AC Bus disbursed a facility for a period of 4 years equivalent to specified unpaid invoices owed to the Applicant. Under the agreement, AC Bus also agreed to purchase certain receivables owned by the Applicant.

The financing agreement, which is dated 22 March 2019 is exhibited at page 14 of the joint trial bundle. The Applicant contends that the Respondent imposed withholding tax

on the total interest that would have accrued over the entire term of the facility as opposed to interest that had been paid.

Whereas the facts relating to this transaction are a bit blurred, what can be ascertained is that:

- (i) There are sums that were paid to AC Bus for the purchase of receivables; and
- (ii) Interest payments made to ICIC Bank via AC Bus SPV in respect of the loan.

From a withholding tax perspective, items falling under (i) would be taxable under Section 4 of the ITA read together with Sections 15, 17 (2) (b), 84 and 78 (c) (ii) of the ITA to the effect that AC Bus SPV derived income from sources in Uganda comprising of a fee for the provision of services rendered to and paid for by the Applicant, a resident person.

Regarding item (ii), the transaction would be taxable under section 4 of the ITA read together with Sections 15, 17 (2) (b) and 82 (1) of the ITA which impose tax on every non-resident person deriving any interest from sources in Uganda.

However, with regard to interest, the withholding tax should be imposed on the payment and not on estimates or projections. This is because the interest as per section 82 (1) must be derived.

The term "derive" is defined by the Cambridge Online Dictionary (<https://dictionary.cambridge.org/dictionary/english/derive>) to mean:

*"to get or obtain something"*

Therefore, an estimate does not amount to a payment and as such should not form the basis for withholding tax.

We do not agree with the Respondent that any of the above services are management services or the payments, management fees.

Based on the definition of "managerial services" as explained above, there is no evidence that AC Bus SPV was involved in the management of the Applicant.

Therefore, based on our analysis, it is important that:

- (i) The parties reconcile the amounts by delineating debt factoring fees from the interest payments so that debt factoring fees / charges are taxed accordingly; and
- (ii) For the interest payments, ensuring that only the interest payments are subjected to withholding tax.

Therefore, the matter concerning withholding tax on payment to AC Bus SPV is remitted to the Respondent for reconciliation.

In the premises, the Tribunal makes the following orders:

- (i) The withholding tax and VAT assessments amounting to Shs. 4,393,853,212 in respect of the services provided by ILSA are hereby set aside;
- (ii) The VAT assessment regarding the sale of receivables is hereby maintained on account of the services being debt factoring services;
- (iii) The matter concerning withholding tax on payments to AC Bus SPV is hereby remitted to the Respondent for reconciliation in line with the guidance above. This should be concluded by 7 July 2025.
- (iv) Each party should bear their own costs.

Dated at Kampala this <sup>25<sup>th</sup></sup> day of June 2025.

**MS. CRYSTAL KABAJWARA**  
**CHAIRPERSON**

**MRS. STELLA NYAPENDI CHOMBO**  
**MEMBER**

**MS. CHRISTINE KATWE**  
**MEMBER**