



**THE REPUBLIC OF UGANDA**

**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**TAT APPLICATION NO. 94 OF 2025**

**TEZAMO & CO CERTIFIED PUBLIC ACCOUNTANTS.....APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: HON. KABAKUMBA MASIKO, HON. WILLY NANGOSYAH,  
HON. ROSEMARY NAJJEMBA**

**RULING**

**I. Introduction**

1. This ruling is in respect of an application challenging an assessment of Shs. 21,256,343 being VAT on audit services by the Applicant to a donor-funded project brought under Section 40A (1) of the Tax Procedure Code Act.

**II. Background Facts**

2. The Applicant is engaged in the business of auditing and accounting services. On 4 November 2014, 4 September 2015 and 26 May 2016, the Applicant was appointed by the Auditor General to conduct audits of Makerere University's support to research activities, a project funded by SIDA (Swedish International Development Cooperation Agency) and implemented by the University.

3. On 16 May 2018, the Applicant was issued with an audit management letter for the period July 2014 to June 2016 wherein the Applicant was assessed Value Added Tax (VAT) of Shs. 25,622,088 comprised of principle tax of Shs.25,422,088 and a penalty of 200,000 on the basis of a variance between Income Tax and VAT turnover declarations of Shs.48,931,278 and Shs.69,159,528 for the period 2014/15 and 2015/16 respectively.
4. The Applicant objected to the assessment to the tune of Shs. 21,256,343 on the grounds that, as per the funding agreement between the Government of Uganda and the Swedish Government, the taxes were payable by the Government of Uganda, and that Makerere University had not paid the Applicant the VAT invoiced for the audit services provided.

### **III. Issues for determination**

5. The issue to be determined is whether the Applicant is liable to pay the assessed taxes and whether any remedies are available to the parties.

### **IV. Representation and evidence**

6. Mr. Tusiimire Gad Zikehemura represented the Applicant while Mr. Simon Peter Orishaba and Ms. Doreen Amutuhaire represented the Respondent.

### **V. Submissions of the Applicant**

7. The Applicant submitted that it was appointed by the Auditor General to undertake audit work on a donor-funded project. Under the funding arrangement, the Government of Uganda expressly accepted responsibility for any taxes arising from the project.
8. The Applicant relied on Article 5 of the Agreement between the Government of Uganda and the Government of Sweden, which states that;

*"...No customs duties, VAT or related fees shall be charged to Sweden by Uganda on the goods or other resources provided or financed by Sweden if such fees or costs are demanded, they shall be paid by Uganda"*

9. The Applicant further submitted that under Article 152 of the Constitution of Uganda, the authority to impose, vary or waive taxes is placed on the Parliament of Uganda. In 2019, Parliament exercised that authority by enacting Section 40A (1) of the Tax Procedures Code (Amendment) Act, which provides as follows:

**40A. Tax due and payable by the government.**

*(1) The Minister shall pay any tax due and payable by the Government, arising from a commitment made by the Government to pay tax on behalf of a person or owing from the Government as counterpart funding for aid-funded projects.*

10. The Applicant submitted that the provision directly applies to the Applicant's case in the sense that the tax arose from an aid-funded project and the Government had expressly committed to pay any taxes arising from that project.
11. The Applicant further contended that by statute, Parliament transferred liability for such taxes to the Government of Uganda. Once Section 40A (1) came into force, the Applicant ceased to be a liable taxpayer in respect of the assessed VAT.
12. The Applicant argued that the Respondent's continued assessment and enforcement of VAT against the Applicant contradicts an express Act of Parliament by imposing a tax burden on a person who, by operation of law, is not liable. The Applicant submitted that such an assessment is illegal, irrational, and ultra vires, as it disregards Parliament's clear allocation of tax liability to the Government.

## VI. Submission of the Respondent

13. The Respondent submitted that it is established law that the burden of proof is on the Applicant to prove that the assessments that were raised by the Respondent were incorrect or erroneous and that the Applicant is not liable to pay the tax or that the taxation decision should not have been made or should have been made differently.
14. The Respondent submitted that Section 19 of the Tax Appeals Tribunal Act, read together with Section 28 of the Tax Procedures Code Act, Cap. 343 provides that the Applicant has the burden of proving, where the taxation decision is an objection decision in relation to an assessment, that the assessment is excessive, and in any other case, that the taxation decision should not have been made or should have been made differently.
15. The Respondent relied on the position fortified in ***Williamson Diamonds Ltd VS. Commissioner General 4 TTLR 167***, where the Tax Revenue Appeals Tribunal of Tanzania held that:

*"...the burden of proving that the assessment issued by the respondent is excessive or erroneous lies on the taxpayer (appellant) and in no way may it be shifted to the respondent..."*
16. The Respondent submitted that **Section 4 (a) of The Value Added Tax Act** provides for VAT to be charged on every taxable supply made by a taxable person.
17. The Respondent further submitted that a taxable supply is defined under **Section 18(1) of the Value Added Tax Act** to mean a supply of goods and services other than exempt supplies made in Uganda by a taxable person for consideration of his or her business activities.

18. The Respondent contended that exempt supplies are provided for under **Schedule 3 to the VAT Act**, and the provision of audit services is not among the exempt supplies. The Respondent submitted that the services were rendered to an aid-funded project, which is deemed to have been paid by the Government under **Section 24(7) of The VAT Act Cap 344**.
19. The Respondent argued that the audit services were provided by the Applicant for the period 2014, 2015, and 2016, as corroborated by the Appointment letters and the fee notes attached to the main Application.
20. The Respondent submitted that the law on deemed VAT came into force in July 2017 vide **Section 2 of The Value Added Tax (Amendment) Act, 2017**. This then deems the said section inapplicable to the Applicant as it is trite law that the law doesn't act retrospectively as per **Article 92 of the 1995 Constitution of the Republic of Uganda**.
21. The Respondent further relied on the case of **Lukwago & 13 Others v Electoral Commission & 2 Others (MISCELLANEOUS CAUSE NO. 431 OF 2019)**, which highlights the above principle and Justice Ssekaana Musa opined that,
- "The ordinary rule of interpretation of Statute is that an enactment or a rule having a force of law is not to be taken retrospectively, unless such intention appears clearly from the language of the enactment or the rule.*
- It is a fundamental rule of interpretation that a statute other than one dealing with procedure shall not be construed so as to have retrospective effect unless the intention of the legislature that it should have such effect appears in clear terms and or by necessary implication."*
22. The Respondent submitted that the Applicant, in its submissions, relied on **Section 40A (1) of the Tax Procedures Code (Amendment) Act of 2019**, which provides that:

*“The Minister shall pay any tax due and payable by Government, arising from a commitment made by Government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects”.*

23. The Respondent further submitted that in spite of the above cited provision, the same is still inapplicable to the Applicant as it came into force in 2019.
24. The Respondent in conclusion submitted that the Applicant is liable to pay the assessed VAT of Shs. 21,256,343 owing to its failure to charge and remit VAT on the audit services rendered on the SIDA project.

#### VII. Applicant’s Submission in Rejoinder

25. The Applicant reiterates all its arguments. Specifically, it submitted that the continued enforcement of VAT against the it contradicts an express Act of Parliament. The facts of this case fall squarely within **Section 40A of the 2019 Amendment to the Tax Procedures Code Act**. By operation of that law, the liability became that of Government.
26. The Applicant further submitted that the Respondent's argument on timing is without merit. Section 40A (1) transfers liability for such taxes to Government. Section 40A (2) writes off all unpaid taxes as at 30 June 2019. This assessment arose in 2015 and 2016. It was therefore among the very liabilities Parliament intended to address.
27. The Applicant submitted that the burden of proof is not a static concept in tax litigation. The law is clear that once a taxpayer presents credible evidence to rebut an assessment, the burden shifts to the Commissioner. This principle was affirmed in **Commissioner of Domestic Taxes V Bosky Industries Ltd [2025] KEHC 7965 (KLR)** at page 8. Where a taxpayer establishes a prima facie case, the revenue authority must rebut it. Unchallenged evidence demolishes the Commissioner's assumptions. [See: **Hickman Motors Ltd vs Canada 1977 CanLII**

**357(SCC), quoted with approval in Commissioner of Domestic Taxes V Bosky Industries Ltd [2025] KEHC 7965 (KLR) at page 8.**

28. The Applicant has further submitted that it has shown the liability was assumed by Government under statute. The burden therefore shifted to the Respondent to prove otherwise. The Respondent has failed to do so.

### VIII. The Determination of the Applicant

29. Having read submissions of both parties, and carefully considered the evidence on record, this is the decision of the Tribunal.
30. The disputed VAT assessment arose from works carried out by the Applicant for the period of July 2014 to June 2016. These works were performed under an aid-funded project governed by a 2010 funding agreement between the Government of Uganda and the government of Sweden. Crucially, the 2010 agreement contained an undertaking by the Government of Uganda not to charge any taxes or to pay any taxes arising from the project.
31. The general principle of law is that statutes are presumed to operate prospectively and not retrospectively, unless a clear intention to the contrary is shown. The question therefore, is whether Section 40A demonstrates such an intention.
32. Section 40A Tax Procedure Code Act 2014 states that;
  - (1) *The Minister shall pay any tax due and payable by Government arising from a commitment made by Government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects.*
  - (2) *Notwithstanding subsection (1), all unpaid taxes by Government as at 30<sup>th</sup> June 2019 are written off.*

(3) *The Minister shall publish in the Gazette, a list of all taxes waived under subsection (2)*

33. The Respondent's argument, which focuses solely on the date of the law's enactment, is a literal interpretation that we find to be without merit. It ignores the substance, clear intention of the provision and the agreement between the parties. **Article 5 of the Undertaking by the parties, paragraph 3**, clearly states:

*"No customs duties, VAT or related fees shall be charged to Sweden by Uganda on goods or other resources provided or financed by Sweden. If such fees or costs are demanded they shall be paid by Uganda".*

34. This clearly shows what the parties Sweden (Swedish International Development Cooperation Agency (SIDA) and Government of Uganda (Ministry of Finance, Planning and Economic Development) had agreed to the terms in the agreement and are bound by them. To an extent that even if the law had not been made the Applicant would still not be liable to make the paid taxes
35. Section 40A (1) does not create a new tax liability for future projects only. Instead, it transfers legal responsibility to the Minister of Finance for specific categories of existing liabilities those arising from a government commitment to pay tax on behalf of a person. The Applicant has demonstrated and the Respondent has not contested that the Government of Uganda made such a commitment in the 2010 agreement with Sweden.
36. Even more compelling is Section 40A (2), which unequivocally writes off "*all unpaid taxes owed by Government as at 30th June 2019.*" The word write off is defined **by Article 12 of Non-Performing Assets and write off Central Bank of UAE** to mean;

*“an accounting action reducing an asset's value to zero, or removing it entirely from financial records, typically due to loss of economic value, obsolescence, or uncollectibility.”*

37. The tax in dispute was assessed for works performed in 2014 and 2016. It was by definition, an unpaid tax as of 30 June 2019 and it falls under the category of taxes the government had committed to pay. It is therefore, among the very liabilities Parliament explicitly intended to extinguish.
38. To accept the Respondent's interpretation would render Section 40A (2) meaningless. The write-off provision was clearly designed to address and settle past, unresolved tax obligations arising from government commitments, like the one at hand. A law can have retrospective effect, especially when it is curative or beneficial in nature, as is the case here. It clarifies the government's pre-existing obligation and provides a mechanism for its discharge.
39. Regarding the burden of proof, in tax disputes, the burden of proof lies with the Applicant to prove that a tax assessment or any other tax decision is incorrect, as reiterated by the Respondent. However, the Applicant has presented a prima facie case by establishing a direct link between the VAT assessments, the 2010 aid agreement where the government undertook to pay taxes and the clear wording of Section 40A.
40. Besides, the appointment letter by the Auditor General of 26 May, 2016 clearly indicated that the audit fees of Shs. 14,940,000 was tax exclusive. Indeed, the fee note ADT/06/02 of 2 June 2016 and Fee Note FN-16-08 of 8 July 2016 indicated nil VAT. While the appointment letters by the Auditor General indicated tax inclusive, that is the note of 4 November 2014 and that of 4 September 2015, the Applicant issued fee notes/invoices dated 2/12/2014, 25 September, 2015, and 23 February 2016, indicating VAT payable. But even then the Applicant stated that he never received the indicated VAT, a position the Respondent never rebutted.

41. As affirmed in the *Commissioner of Domestic Taxes V Bosky Industries Ltd [2025] KEHC 7965 (KLR)*, once a taxpayer presents credible evidence, the burden shifts to the Commissioner. The Respondent failed to rebut this evidence with any substantial argument, relying instead on a technicality and in our view, incorrect interpretation of the law. The unchallenged evidence presented by the Applicant demonstrates that the liability was statutorily assumed by the Government.
42. Consequently, the Tribunal finds that the assessed VAT is, by operation of law, a liability of the Government of Uganda and not of the Applicant.
43. The Tribunal orders as follows:
- i. This Application is accordingly allowed.
  - ii. The VAT assessment of Shs. 21,256,343 is hereby set aside.
  - iii. Costs of this application are awarded to the Applicant.

Dated at Kampala this 13<sup>th</sup> day of May 2026.

HON. PRINCESS KABAKUMBA MASIKO  
CHAIRPERSON

HON. WILLY NANGOSYAH  
MEMBER

HON. NAJJEMBA ROSEMARY  
MEMBER