TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 128 OF 2025

THE REGISTERED TRUSTEES OF ENTEBBE GOLF CLUB.....APPLICANT

VERSUS

UGANDA REVENUEAUTHORITY.....RESPONDENT

BEFORE:

HON. CRYSTAL KABAJWARA. HON. PROSCOVIA REBECCA NAMBI

HON. STELLA NYAPENDI CHOMBO

RULING

I. Introduction

1. This ruling is in respect of an application challenging VAT assessments on subscription and membership fees paid by the Applicant's members in the periods 2019 to 2024.

II. Background Facts

2. The Applicant is the legal custodian of a members-only sports club established in 1901. The Club operates as a non-profit amateur sports institution that promotes and develops recreational and sporting activities, including golf, cricket, basketball, tennis, netball, and swimming, for both its members and, on occasion, the general public. The Club's operations are funded primarily through membership and subscription fees. It also accounts for VAT on other transactions such as food and beverage sales.

3. Between 4 February 2025 and 6 March 2025, the Respondent assessed VAT on subscription and membership fees collected from members for the period 2019 to 2024 on the basis that such fees constitute consideration for

taxable supplies. The Applicant objected, contending that the subscription fees do not constitute taxable supplies and there was no sales basis for the VAT assessed. The Respondent disallowed the objections. Hence, this Application.

III. Issues

4. The issues for determination are:
   (i) Whether the Applicant is liable to pay the tax assessed?
   (ii) What remedies are available to the parties?

IV. Representation and evidence

5. The Applicant was represented by Mr. Ian Mutiibwa and Mr. Rollant Kule. The Respondent was represented by Mr. Nuwaha Barnabas and Ms. Babirye Hellena.

6. The Applicant's evidence was presented primarily by affidavit of Engineer Jacob Byamukama, sworn on 13 October 2025, with annexures. The Respondent did not file an affidavit in reply nor seek to cross-examine the deponent. The Tribunal therefore treats the material factual averments in the affidavit as uncontroverted.

V. Submissions of the Applicant

The Respondent's assessments are illegal

7. The Applicant submitted that the Respondent's assessments are unlawful because they were founded on ***Kampala Club Limited v Uganda Revenue Authority, TAT Application No. 256 of 2022***, a decision which was subsequently set aside by the ***High Court in HCCA No. 115 of 2023; Kampala Club Limited v Uganda Revenue Authority.*** The Applicant referred us to the objection decisions, and quoted the narration therein if the Respondent's reasons for decision as:

"To *maintain VAT charged on subscription for members and other incomes for which no VAT had been charged. This was in respect to TAT ruling between URA and Kampala Club."*

8. The Applicant cited ***Beatrice Odongo v Tamp Engineering Consultants Limited, Andrew Tadhuba and Bwenge & Associated Advocates, HCMA No. 129 of 2023***, where the High Court held:

> *"The legal effect of setting aside a Court decree is that all that was done pursuant to the decree becomes non est as against the parties and therefore it can no longer bind them. It basically means that it no longer exists and cannot be enforceable. When a judgment or order is set aside, any enforcement of the judgment or orders arising therefrom ceases to have effect unless the Court otherwise orders."*

9. The Applicant further argued that in ***HCCA No. 115 of 2023 (Kampala Club)***, the High Court held:

> *"...the Tribunal erred in concluding that the subscription and membership fees payable by the Appellant's members constitute payments for services..."* The Court then ordered that:
>
> *"(a) the appeal is allowed, (b) the decision of the Tax Appeals Tribunal dated 31 October 2023 is set aside..."*

10. The Applicant further cited ***MacFoy v United Africa Co. Ltd 3 All ER 1169***, where Lord Denning stated:

> *"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."*

11. The Applicant further submitted that the Respondent's basis for raising and upholding the assessments in this Application is a ruling that has since been set aside and declared null and void. The Applicant argued that, should this Honourable Tribunal uphold the impugned assessments, it would effectively be endorsing an illegality, as doing so would amount to enforcing a decision already found to be void. Accordingly, the Applicant submitted

that the Respondent's assessments ought to be set aside on that ground alone.

Nature of the subscription fees

12. The Applicants submitted that the Club is a non-profit, member-based organisation and that subscription fees are not payments for specific goods or services in a commercial sense. Rather, they constitute collective contributions toward the maintenance and operation of the Club's facilities. They made reference to Clauses 8.3.3, 10.7 and 11.2 of the Club's constitution, which, according to the Applicants, demonstrate that subscription fees grant participatory rights in governance rather than entitlements to discrete services.

No taxable supply made by the Club

13. The Applicants relied on **Sections 1 and 18 of the VAT Act**, Cap 344, which define a "taxable supply" as a supply of goods or services made by a taxable person for consideration in the course of a business. They submitted that the Club's subscription fees do not fall within the scope of this definition because the Club does not operate as a business and the subscription fees only represent cost-sharing within a mutual association rather than consideration for a supply.

14. The Applicant cited ***Customs and Excise Commissioners v Lord Fisher [1981] STC 238***, for the proposition that

> *"The sharing of costs of a sporting or other pleasure activity does not by itself turn an activity of pleasure and social enjoyment into a business."*

15. The Applicant further relied on ***Kampala Club Limited v Uganda Revenue Authority (HCCA No. 115 of 2024)***, where it was held that:

> *"subscription fee functions as a condition precedent to enjoyment of membership rights rather than consideration for a discrete service."*

16. The Applicant submitted that the proper characterisation of the subscription fees arises from the Club's essential nature as a non-profit entity, in which such fees constitute collective contributions to a common fund rather than payments for individualised or commercial services. As a mutual association, members combine their resources to pursue a shared objective namely, the upkeep of sports facilities and the promotion of recreational sporting activities, including golf without any intention of making a profit or engaging in an external supply relationship. This, the Applicant argued, distinguishes the Club's subscription fees from taxable transactions, where a supplier provides goods or services to a consumer for consideration within a market-based framework.

17. The Applicant further emphasized that the Club complies with its tax obligations and, in fact, properly accounts for VAT on other transactions, such as the sale of food and beverages, where there is a clear exchange of goods or services for consideration. However, subscription fees do not involve a supply of services in exchange for payment, and thus, no VAT is applicable.

Application of the mutuality principle

18. The Applicants invoked the principle of mutuality, arguing that a club and its members constitute a single entity incapable of making a taxable supply to itself. They cited comparative jurisprudence, including ***State of West Bengal v. Calcutta Club Ltd. [(2019) 70 GST 121 (SC)]***, where the Supreme Court ruled that *"clubs and their members are not separate legal persons."* This was reaffirmed in ***Ranchi Club Ltd. v. Chief Commissioner [(2012) SCC Online SC 306],*** where the Court stated as follows:

> *"Both 'sale' and 'service' require two distinct parties, a condition absent in club-member transactions due to their unified identity. The Court noted that services provided by a club to its members do not constitute a service from one entity to another, as the foundational requirement of two legal entities is missing."*

19. They also cited ***Indian Medical Association v. Union of India [(2023) 67 GST 456 (Del HC)]***, where the Indian High Court stated that while "goods" may exist independently, "supply" and "service" necessitate a plurality of persons. The court held:

"The basic feature common in sales and services is the existence of two parties... a club, being a self-serving institution, cannot engage in a 'sale' or 'service' with its members."

20. The Applicant submitted that subscription fees lack the necessary supplier-recipient relationship required for VAT to arise.

No value addition and absence of profit motive

21. The Applicant argued that VAT liability depends on the commercial character of the transaction. They cited ***Customs and Excise Commissioners v Lord Fisher*** **(supra)**, where it was emphasized that VAT hinges on commercial character rather than on the mere exchange of money. The Applicants further cited the High Court decision in ***Kampala Club Limited v URA***, where it was observed:

"The mere fact of charging subscription fees does not ipso facto equate to offering commercial supplies. It must be shown that the transaction fundamentally constitutes a business activity conducted for profit, not merely a collective or non-commercial arrangement."

22. The Court further stated:

"The Tribunal's assumption that members would not pay fees without receiving services disregards other legitimate non-commercial motivations for membership, including social, recreational, and communal benefits, which do not necessarily amount to taxable supplies. The connection between fees and maintenance costs does not automatically transform such fees into payment for services; they may constitute cost-sharing rather than direct commercial transactions."

23. The Applicants also relied on ***Apollo Hotel Corporation Ltd v URA (High Court Civil Appeal No. 13 of 2021)***, for the proposition that *"VAT is a*

destination-based consumption tax, one levied on commercial activities, not as a charge on the business but on the consumer. It is therefore a tax on activity."

Absence of a direct link between the subscription fees and services

24. The Applicants submitted that VAT requires a clear nexus between payment and supply. They relied on ***Apple and Pear Development Council v Customs and Excise Commissioners [1988] ECR 1443***, for the proposition that a fundamental feature of a transaction subject to VAT is the presence of *quid pro quo*, arguing that the payment must be made directly for the services rendered.

25. They argued that subscription fees are not tied to specific services such as individual rounds of golf or equipment hire, and therefore lack the "direct and immediate link" required to constitute consideration. They referred to Clause 5.6.2(ii) of the Club's constitution, under which even non- or late-paying members may access the premises. They emphasized that subscription does not create exclusive access and therefore cannot be characterized as consideration for services.

Erroneous application of Kampala Club v URA and computation.

26. The Applicants submitted that the Respondent's assessment methodology was flawed as the Respondent allegedly raised a blanket assessment by multiplying a standard subscription fee by the total membership count. The Applicants argued that VAT is levied on actual consideration paid for a taxable supply, not hypothetical amounts. They argued that the Respondent failed to account for defaulting members, partial payments and exempt or honorary members. Accordingly, the Applicants submitted that the assessments are erroneous both in law and computation.

The policy and practical limits of VAT

27. Furthermore, the Applicants argued that VAT is intended to tax consumption where economic value is created through commercial activity.

Accordingly, imposing VAT on the subscription fees would contravene the Act's intent, which targets value addition, not the mutual support systems of non-profit organisations. They argue that the policy underpinning VAT, both in Uganda and globally, is to tax consumption where economic value is created through commercial activity.

28. They warn that taxing subscription fees of mutual associations would produce absurd consequences by subjecting churches, cultural associations, and community groups to VAT merely because they collect dues or donations. The Applicant also cited ***Joseph O. Okija, Understanding Tax Law & Taxation in Uganda; Rules, Principles & Practice (4th Edn),*** where it was stated:

"In order for a transaction to attract VAT, a supply must be made in the course or furtherance of an economic activity or as part of a business" and that "an economic activity is basically any action that involves the production, distribution and consumption of goods and services at all levels within a society."

The Applicant therefore concluded that its subscription fees add no commercial value and merely sustain a mutual association.

Remedies sought

29. The Applicant prayed that the application be allowed, the Respondent's assessments be set aside, and costs of the application be awarded to the Applicant.

VI. Submissions of the Respondent

Burden of Proof

30. The Respondent submitted that the burden of proof lies on the Applicant to demonstrate that the additional VAT assessments raised were not due and payable. The Respondent relied on Section 19 (formerly Section 18) of the Tax Appeals Tribunal Act, which places the burden of proving that an assessment is erroneous or excessive on the Applicant.

31. Further, the Respondent relied on Section 101 of the Evidence, Cap 6, Laws of Uganda, which provides that he who alleges must prove. The Respondent submitted that this position was fortified by ***Williamson Diamonds Ltd v Commissioner General (2008) 4 TTLR 67, where*** the Tax Revenue Appeals Tribunal of Tanzania held that the burden of proving that an assessment is excessive lies on the taxpayer.

32. The Respondent therefore submitted that the Applicant has failed to discharge this statutory burden.

Whether Subscription Fees are Taxable Under the VAT Act

33. The Respondent further submitted that subscription fees paid by members of the Applicant constitute taxable consideration under the VAT Act. It was argued that the Applicant makes taxable supplies for consideration and is therefore liable to account for VAT. The Respondent cited Section 4(a) of the VAT Act, which states:

A tax, to be known as a value-added tax, shall be charged in accordance with this Act on- (a) every taxable supply in Uganda made by a taxable person.

34. The Respondent also cited Section 11(1)(b) of the VAT Act, which defines a supply of services to include *"the making available of any facility or advantage."*

35. The Respondent submitted that under Article 4 of the Applicant's Constitution, the Applicant provides services including golf, swimming pool, tennis, basketball, cricket, table tennis, snooker, squash, amenities, utilities, conveniences and other advantages to its registered members. In support of the meaning of "service," the Respondent referred to ***Metropolitan Life Limited v Commissioner for the South African Revenue Service (A 232/2007)***, where the Court defined services as including the granting or making available of facilities or advantages. The Court defined 'service' as follows:

"The Applicant's constitution, the governing document, clearly stipulates under Article 4 that the Applicant provides services including: golf, swimming pool, tennis, basketball, cricket, table tennis, snooker, squash, amenities, utilities, conveniences and advantages to its registered/subscribed members".

Elements of a Taxable Supply

36. The Respondent further relied on **Section 18 of the VAT Act,** which defines a taxable supply as *"a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities."* They argued that this section highlights the three elements that must be satisfied for a supply to be taxable as –

    (i) There must be a supply of services which is not exempt;

    (ii) The supply must be made for a consideration; and

    (iii) The supply must be made in the course of business activities.

37. On exemption, the Respondent referred to Section 19(1) of the VAT Act, which provides that a supply is exempt only if specified in the Third Schedule. The Respondent submitted that the services supplied by the Applicant are not listed as exempt, which is not in dispute, and are therefore taxable.

Whether the Applicant is Engaged in Business Activity

38. The Respondent argued that the Applicant is engaged in business activities from which it derives income. They relied on ***Esporta Limited V Commissioner Revenue & Customs BVC 28,*** where it was stated:

    "The contractual terms are the starting point and the Court has to consider whether those terms reflect the economic reality of the transaction."

39. The Respondent cited the Court's holding in ***Esporta (supra)*** that:

    "The services provided by Esporta to its members in exchange for their monthly payments are and at all times remain the right to access Esporta's facilities, as a function of the membership of the club. Members pay to be allowed access to the facilities themselves and be members themselves. But that does not mean they do not have a clear commercial understanding that such access is conditional on timely payment of the monthly instalments. The fact that

members do not pay and are excluded, does not mean that the payment has been made in return for the right to access the facilities."

40. Further reliance was placed on in ***Kennemer Golf & Country Club V Staatssecretaris van Fiancni N C-174/00 STC 502,*** where it was held: *"the club's facilities do not need to actually be used by the members for there to be a supply of services".*

41. The Respondent submitted that Articles 5.1.1, 5.6.2 and 6 of the Applicant's Constitution provide that members pay annual membership and subscription fees to gain access to the Applicant's facilities, and that only members who have paid subscriptions may access those facilities. The Respondent also referred to Article 4.1.8 of the Constitution, which states that the principal activity of the Club includes running the Club business.

42. In support of the meaning of "business," reliance was placed on ***Customs and Excise Commissioners v Morrison's Academy Boarding Houses Association [1978] STC 1***, where it was held that:

"The natural meaning of the word 'business' does not require that what is done must be done commercially or with the object of making profits."

43. The Respondent therefore contended that, in economic reality, the Applicant makes taxable supplies in the form of rights to access its facilities in exchange for subscription fees.

Consideration

44. The Respondent relied on Section 18 (4) of the VAT Act, which provides that a supply is made for consideration if the supplier directly or indirectly receives payment for the supply. They further cited Section 1(d) of the VAT Act, which defines consideration as –

" in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees and charges paid or payable on, or by reason

of, the supply other than tax, reduced by any discounts or rebates allowed and accounted for at the time of the supply."

45. The Respondent further referred to **Black's Law Dictionary** defining consideration as "*something (such as an act, forbearance, or a return promise) bargained for and received by a promisor from a promise; that which motivates a person to do something, especially to engage in legal acts".*

46. Furthermore, the Respondent submitted that the subscription fees constitute legal consideration for the taxable services the Applicant supplies to its members. They again relied on ***Kennemer Golf & Country Club V Staatssecretaris van Fiancni N (supra),*** where the Court held that annual subscription fees paid in advance were consideration for services provided, even if facilities were not used.

47. The Respondent contended that there is a direct link between the taxable service provided and the subscription fee paid by its members. Again, they relied on ***Kennemer Golf & Country Club V Staatssecretaris van Fiancni N (supra),*** where it was held:

"As the Commission argues, the fact that in the case before the national court the annual subscription fee is a fixed sum which cannot be related to each personal use of the golf course does not alter the fact that there is reciprocal performance between the members of a sports association, such as that concerned in the main proceedings and the association itself. The services provided by the association are constituted by the making available to its members, on a permanent basis, of sports facilities and the associated advantages and not by particular services provided at the members' request. There is therefore a direct link between the annual subscription fees paid by members of a sports association such as that concerned in the main proceedings and the services which it provides."

48. The Respondent submitted that the Club's financial statements show that the annual subscription forms part of its revenue and that members lose access and membership status upon non-payment. They relied on ***URA v COWI A/S HCCA No. 34 of 2020***, where the Court stated:

"Any transaction involving the supply of goods or services without consideration is not a supply, barring a few exceptions, in which a transaction is deemed to be a supply even without consideration.

Reduced Consideration and Associates

49. In the alternative, and without prejudice to the foregoing, the Respondent submitted that if the supply were found to be at reduced consideration, it would still fall within the scope of Section 18(7) of the VAT Act. The Respondent quoted Section 18 (7) of the VAT Act which states:

"A supply is made for reduced consideration if the supply is made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply.

50. The Respondent submitted that the members of the Applicant qualify as associates within the meaning of Section 3(1) of the VAT Act, which defines an associate as a person who acts or is likely to act in accordance with the directions, requests, suggestions or wishes of another. They argued that Section 3(2) of the VAT Act provides some guidance on persons that constitute associates. However, the list is not exhaustive.

51. The Respondent relied on ***Celtel Uganda Limited V Uganda Revenue Authority CA Civil Appeal 22 of 2006,*** where the Court held that;

"*Subsection (2) elaborates on what an associate is. It provides that, without limiting the generality of Subsection (1), the following are treated as an associate of a person: partners, relatives, a trustee of a trust, and any person within a company who either directly or indirectly controls more than fifty per cent of the company. I think the purpose of Section 3 (1) VAT Act is to impose VAT on supplies made by a taxable person to his or her associates at a reduced consideration or at no consideration at all. This was to ensure that no VAT is evaded. The employees do not fit under the specific examples of associates in Subsection (2); however, this list is not exhaustive. Subsection 2 is not meant to limit Section (1). The appellant provided the airtime to their employees to utilize in the scope of their employment. Any deviation therefrom or abuse of usage resulted in disciplinary*

action under the staff's cell-phone policy. Accordingly, since the employees acted in accordance with the directions of their employer, they were thus associates within the confines of the VAT Act, Section 3 (1)."

52. The Respondent submitted that Articles 10.1 and 10.2 of the Applicant's Constitution impose rules of conduct on members and provide for disciplinary sanctions in cases of breach. It was therefore contended that members act in accordance with the directions of the Applicant and are subject to sanctions, thereby satisfying the test for associates as articulated in Celtel.

53. The Respondent concluded that, whether regarded as supplies for direct consideration or, in the alternative, supplies for reduced consideration between associates, the subscription fees are subject to VAT. The Respondent maintained that the Applicant is a taxable person, the supplies in question are not exempt, and accordingly, the additional assessments were lawfully raised.

VII. Submissions of the Applicant in rejoinder

54. In rejoinder, the Applicants maintain all initial submissions challenging the Respondent's assessments.

Alleged Provision of Facilities and Advantages

55. The Applicant disputed the Respondent's submission that the Applicant provides "families and their guests" with traditional privileges, amenities, utilities and facilities for outdoor games, social and recreational activities in exchange for subscription fees. The Applicant reiterates that it is a not-for-profit amateur sports club established in 1901 to promote sports such as golf, tennis, netball, swimming, basketball and cricket for members and visitors. Its facilities are used by the general public and non-members. It maintains that this factual position has not been traversed by the Respondent.

Stare Decisis

56. The Applicant submitted that the Respondent has not addressed the effect of the High Court decision in ***Kampala Club Limited v Uganda Revenue Authority (HCCA 115 of 2024)***, which overturned the Tribunal's earlier position that subscription fees constitute consideration for services. The Applicant invited the Tribunal to follow the doctrine of stare decisis. They cited ***Paul K. Ssemogerere & Others v Attorney General, Supreme Court Constitutional Appeal No. 1 of 2002***, for the proposition that lower courts are bound to follow decisions of higher courts on questions of law. They further cited ***National Insurance Corporation Ltd v Sam Lukoya, Civil Appeal No. 029 of 2019 (Court of Appeal, October 2025),*** where it was held:

> *"...the doctrine of stare decisis is a cornerstone of our legal system, ensuring certainty and predictability. Lower courts are bound to follow the decisions of higher courts on questions of law."*

57. The Applicant submitted that the High Court in ***Kampala Club Limited v URA (HCCA 115 of 2024)*** settled the legal position on VAT on subscription fees, holding:

> *"...the subscription fee secures continued qualification for membership privileges, distinct from a service fee. Consequently, the Tribunal erred in concluding that the subscription and membership fees payable by the Appellant's members constitute payments for services..."*

58. The Applicant argued that this decision binds the Tribunal and that, since the Respondent's assessments are premised on the same principle overturned by the High Court, they collapse. They further cited ***Uganda Revenue Authority v Kansai Plascon, TAT No. 146 of 2020***, arguing that the Tribunal is bound by High Court decisions when exercising appellate jurisdiction.

Burden of Proof

59. The Applicant addresses the Respondent's argument on the burden of proof. It submits that it has discharged its burden under Section 19 of the

Tax Appeals Tribunal Act by presenting uncontroverted evidence demonstrating that it is not engaged in business; no taxable supply is made by the Club; and subscription/membership fees are not paid in exchange for services.

60. The Applicant submits that once it discharged its evidential burden, the burden shifted to the Respondent. The Applicant relied on ***Steel Corporation of East Africa v URA HCT CA 6 of 2010***, cited with approval in ***J.K. Patel v Spear Motors Ltd SCCA No. 4 of 1991,*** where it was stated:

"It was made clear that the burden of proof rests before evidence is given on the party asserting the affirmative. It then, however, shifts and rests after evidence is given on the party against whom judgment would be given if no further evidence is adduced, that is to say, the Respondent in this case."

61. The Applicant concluded that the Respondent failed to discharge the evidential burden and therefore the tax is not payable.

Business activity

62. The Applicant argued that it is a social, recreation and sporting club and is not engaged in any business or business activity whatsoever. The Applicant submitted that collecting subscription fees does not, in and of itself, imply that the Applicant is conducting business. They argued that the Income Tax Act defines business to include *"any trade, profession, vocation or adventure in the nature of trade, but does not include employment."* It further relied on Sections 1 and 18 of the VAT Act, Cap 344, which define a "taxable supply" as one made "in the course of a business."

63. The Applicant submitted that while determining when VAT should arise, the ***Court in Customs and Excise Commissioners v. Lord Fisher (1981) STC 238,*** the Court ruled:

"... this tax is to be charged only where a taxable supply is made by a taxable person in the course of a business carried on by him. By ... business "includes trade, profession or vocation".

The Court also stated that *"...the mere fact that there is payment under certain circumstances, does not necessarily make a thing a business which, if there was no payment, would not be a business..."*

64. The Applicant submitted that this position was restated by the High Court in ***Kampala Club Limited v URA***, where it was held:

"...the mere fact of charging subscription fees does not ipso facto equate to offering commercial supplies. It must be shown that the transaction fundamentally constitutes a business activity conducted for profit, not merely a collective or non-commercial arrangement..."

65. The Applicant distinguished *Esporta Limited*, submitting that in that case, the appellant (Esporta) operated several health and fitness clubs where members were required to sign up for a minimum commitment period of 12 months or longer and pay fees in advance or monthly, and non-payment resulted in automatic denial of access and the club operated as a profit-making enterprise. The question in that case was whether late paid fees for membership of a health and fitness club are properly to be regarded as the consideration for a supply of services for VAT purposes, or whether they are, instead, damages or compensation for breach of contract.

66. In contrast, the Applicant is a social club for pleasure and social enjoyment, and it does not operate for profit. It also does not confer private benefit, and it does not necessarily deny access to the premises upon non-payment, but only suspends membership rights to vote on club activities. The Applicant therefore maintains that it is not engaged in any trade, profession, vocation or adventure in the nature of trade.

Subscription Fees are Not Consideration, Reduced or Otherwise

67. The Applicant submitted that for VAT to apply under Section 18 of the VAT Act there must be a "supply of services for consideration." It stated that two elements must exist, that is, the supply of a taxable supply and consideration for that supply.

68. They relied on ***Apple and Pear Development Council v Customs and Excise Commissioners [1988] ECR 1443***, where it was held that there must be a direct and identifiable link between payment and service, involving reciprocal performance and a legal relationship. The Applicant reiterates that there is no quid pro quo; there is no corresponding service performed in exchange for subscription fees; and the Respondent has not identified any specific service rendered as a direct consequence of payment.

69. The Applicant further distinguished ***Kennemer Golf & Country Club v Staatssecretaris van Financiën (C-174/00)***, arguing that in that case members obtained access to facilities upon payment and non-members paid daily subscription fees. In the present case, subscription fees are not tied to individual rounds of golf, equipment hire or other discrete services; they are general contributions toward upkeep and no distinct benefit accrues beyond compliant membership. The Applicant reiterated that VAT liability requires a clear nexus between payment and supply and that the subscription fees lack the "direct and immediate link" necessary for taxation.

70. Regarding the interpretation of Sections 4 and 18 of the VAT Act, the Applicant submitted that it is not arguing that it is exempt. Rather, it contends that there is no identifiable service to which VAT could attach. They argued that simply because a service is not listed in the Third Schedule does not make it taxable. A supply must first be identified before it can be categorized as exempt or standard-rated.

71. Relying on the High Court's interpretation in ***Kampala Club Limited v URA***, the Applicant emphasized that a taxable supply requires the provision of goods or services; a supply by a taxable person engaged in business; a supply for consideration; and a supply forming part of business activities. They further emphasized that the High Court further observed that *"mere recreational or hobby pursuits, even if they occasionally yield income, do not constitute business activity…"*

The mutuality principle

72. In the alternative, the Applicant submitted that even if a link were found between subscription fees and services, the mutuality principle applies. They relied on ***State of West Bengal v Calcutta Club Ltd (2019) 70 GCT 121***; ***Ranchi Club Ltd v Chief Commissioner (2012) SCC 306***; and ***Indian Medical Association v Union of India (2023) 67 GST 456.*** The Applicant submits that "supply and service necessitate plurality of persons... a club, being a self-serving institution, cannot engage in a 'sale' or 'service' with its members."

Suspension of Membership Is Not Consideration

73. The Applicant rejected the Respondent's argument that the suspension of membership rights upon non-payment establishes consideration. The Applicant relied on the High Court's reasoning in ***Kampala Club Limited v URA***, where it was stated:

"...evidence confirms that membership fees are paid solely for membership qualification, not as a direct fee for specific services rendered... the subscription fee functions as a condition precedent to enjoyment of membership rights rather than consideration for a discrete service..."

74. The Applicant submitted that suspension of membership rights does not convert subscription fees into payment for services.

75. In conclusion, the Applicant invited the Tribunal to find that there is no direct or immediate link between subscription fees and any taxable service and follow the binding decision of the High Court in ***Kampala Club Limited v URA.***

VIII. The determination

76. Having carefully considered the pleadings, affidavits, annexures, and written submissions of both parties, the Tribunal now makes its decision.

Issue (i): Whether the Applicant is liable to pay the tax assessed?

The Applicable Legal Framework

77. Section 4(a) of the Value Added Tax Act provides that VAT shall be charged on every taxable supply made in Uganda by a taxable person. Section 18 of the VAT Act defines a taxable supply as a supply of goods or services, other than an exempt supply, made by a taxable person for consideration in the course of business. From these provisions, three elements must exist for VAT to arise:

(i) There must be an identifiable supply of goods or services;

(ii) The supply must be for consideration;

(iii) The supply must be made in the course of business.

78. Unless all three elements are satisfied, no charge to VAT can arise. VAT liability cannot be imposed by implication or inference. The statutory conditions must be satisfied strictly but interpreted purposively in light of the nature of VAT as a consumption tax.

Burden of proof and its practical effect on this record

79. Section 19 of the Tax Appeals Tribunal Act places the burden on the Applicant to prove that an assessment is excessive or erroneous. Section 101 of the Evidence Act reflects the general principle that he who asserts must prove. The legal burden therefore rests upon the Applicant. However, once the Applicant adduces credible evidence displacing the factual or legal foundation of an assessment, the evidential burden shifts to the Respondent to justify its position.

80. On the basis of the affidavit of Engineer Jacob Byamukama, sworn on 13 October 2025, and the annexures thereto, which were not rebutted by affidavit nor subjected to cross-examination, the Tribunal makes the following findings of fact on a balance of probabilities:

(i) The Applicant is a non-profit, member-based sports and recreational association established in 1901.

(ii) Subscription and membership fees are paid periodically to maintain membership status.

(iii) Subscription fees are not tied to specific use of facilities such as rounds of golf, hire of equipment, or particular services.

(iv) Non-payment of subscription results primarily in suspension of governance rights, not automatic exclusion from physical access in the strict contractual sense that is characteristic of commercial enterprises.

(v) The Club also accounts for VAT on distinct commercial transactions such as food and beverage sales.

(vi) The Respondent did not adduce evidence contradicting the Applicant's characterisation of subscription fees or demonstrating a specific quid pro quo arrangement.

81. Where affidavit evidence is not traversed, and no application for cross-examination is made, a tribunal is entitled to treat such evidence as uncontroverted unless inherently implausible. Nothing in the record renders the Applicant's evidence implausible.

82. Therefore, the Applicant discharged its burden by demonstrating:

- The absence of a discrete supply tied to subscription fees;
- The non-commercial character of the Club's operations in relation to subscriptions;
- The absence of a direct nexus between payment and supply;
- The lack of a factual computation basis tied to actual consideration received.

83. The Respondent did not adduce rebuttal evidence. The Tribunal therefore finds that the Applicant has discharged its statutory burden on a balance of probabilities.

Effect of Kampala Club Limited v URA (HCCA No. 115 of 2023/2024)

84. The Applicant contends that the Respondent's objection decision was premised on the Tribunal's earlier decision in ***Kampala Club Limited v URA, TAT Application No. 256 of 2022***, which was subsequently set aside

by the High Court in ***HCCA No. 115 of 2023/2024 (Kampala Club Limited v URA)***.

85. The High Court held:

"The subscription fee secures continued qualification for membership privileges, distinct from a service fee…"

The Court therefore set aside the Tribunal's earlier finding that subscription and membership fees constituted payment for services.

86. The Applicant further invoked stare decisis, relying on Supreme Court and Court of Appeal authority that lower courts/tribunals are bound by superior court decisions on questions of law. The Respondent did not meaningfully confront the Applicant's stare decisis point on the record reproduced before the Tribunal.

87. In those circumstances, the Tribunal cannot sustain an assessment whose legal foundation has been authoritatively rejected unless the Respondent demonstrates a material factual distinction taking this case outside the High Court's reasoning. The Respondent did not demonstrate any such distinction between the present case and the facts considered in the High Court's Kampala Club decision.

88. Accordingly, the Tribunal is bound to apply the High Court's legal characterization of subscription/membership fees. This position is dispositive of this matter.

Whether subscription fees here are consideration for a taxable supply

89. Even if the High Court authority was not dispositive, the Respondent would still have to establish the existence of a taxable supply for consideration.

90. The Respondent relied on Section 11(1)(b) of the VAT Act, which includes within "services" the making available of any facility or advantage. However, that provision must be read together with Sections 4 and 18. The mere making available of facilities does not suffice; it must be shown that such making available is done for consideration in the course of business.

91. The existence of facilities within a members' association does not automatically establish that subscription fees are paid in exchange for a supply. On the evidence before the Tribunal, subscription fees are contributions toward maintenance of facilities and governance participation within a mutual association, rather than consideration for specific services rendered.

92. The requirement of consideration entails a reciprocal relationship between payment and supply. The Respondent did not demonstrate that subscription fees were paid in return for an identifiable service. The Respondent's case proceeds largely by inference that "members would not pay without receiving services", but inference cannot substitute for proof of the statutory elements.

Business Activity

93. Section 18 requires that the supply be made in the course of business. The Applicant's uncontroverted evidence establishes that the Club operates as a non-profit recreational association. We agree that the absence of profit motive is not, by itself, determinative of existence of business. However, the commercial character of the activity is a key.

94. The authorities relied upon by the Respondent, including Esporta and Morrison's Academy, are distinguishable. Those cases involved structured commercial arrangements with contractual access rights directly conditioned upon payment. On the present facts, subscription fees are not structured as market-based consideration for defined services but as collective contributions within a mutual arrangement.

95. The Tribunal therefore finds that the subscription fees are not received in the course of business activity within the meaning of Section 18 of the VAT Act.

96. We also accept the Applicant's submission that the Respondent's reliance on section 19 and Third Schedule exemption is conceptually secondary. A transaction must first be a supply before questions of exemption/standard rating arise.

97. We find, on the evidence before us, that the subscription/membership fees do not constitute consideration for a taxable supply chargeable under section 4(a) of the VAT Act.

Alternative case: "reduced consideration" and "associates"

98. The Respondent argued in the alternative that members are "associates" under Section 3 of the VAT Act and that Section 18(7) applies. However, Section 18(7) concerning reduced consideration presupposes the existence of a supply. Having found that no taxable supply has been established, the reduced consideration provisions cannot be used to create VAT liability in the abstract.

99. Further, the Respondent did not adduce evidence to establish that members qualify as "associates" within the statutory meaning in the context intended by the Act. The existence of club rules and disciplinary provisions does not automatically establish that each member is an "associate" in the statutory sense intended for undervalued supplies designed to evade VAT.

100. Therefore, we do not accept this alternative argument.

101. The Applicant also relied, in the alternative, on the principle of mutuality. In the circumstances of this case, it is unnecessary for the Tribunal to determine the scope or applicability of that doctrine within the framework of Uganda's Value Added Tax Act. This Application is resolved on two sufficient and independent grounds. First, the Tribunal is bound by the High Court's decision in Kampala Club Limited v Uganda Revenue Authority, which addressed the characterization of subscription and membership fees in a materially similar context. Secondly, on the evidence before the Tribunal, the Respondent did not establish the

statutory elements necessary for a taxable supply to arise under sections 4 and 18 of the VAT Act. Those findings are sufficient to dispose of the dispute.

102. Nevertheless, it is appropriate to observe that liability to VAT under the Act arises only where there is an identifiable supply of goods or services made by a taxable person to another person for consideration in the course of business. On the evidentiary record before the Tribunal, the Respondent did not demonstrate such a supply relationship in respect of the subscription fees. The uncontroverted evidence indicates that the fees operate primarily as periodic contributions sustaining membership within a member-based association and supporting the maintenance of the Club's facilities and activities, rather than payments made in exchange for a discrete or identifiable service rendered to individual members.

103. In those circumstances, even if the doctrine of mutuality were to fall for consideration, the absence on this record of a demonstrated exchange of supply for consideration would remain a fundamental obstacle to the imposition of VAT under the statutory framework. The Tribunal therefore considers it unnecessary to pronounce on the broader doctrinal reach of the mutuality principle in Ugandan VAT law, and leaves that question open for determination in a case where it is squarely required for the resolution of the dispute.

Computation

104. The Applicant challenged the assessment methodology, asserting that VAT was computed by multiplying a standard subscription fee by the total membership without reference to the actual consideration received. The Respondent did not produce evidence detailing the computation or demonstrating that VAT was assessed on actual consideration received. Therefore, even if a liability had been established, the Tribunal would have found the quantum unsupported by sufficient evidence.

105. For the foregoing reasons, the Tribunal finds that the subscription and membership fees collected by the Applicant do not constitute consideration for a taxable supply under Sections 4 and 18 of the VAT Act. The assessments are therefore erroneous in law, and the Applicant is not liable to pay the tax assessed.

Issue (ii): What remedies are available to the parties?

106. Having found that the assessments are unlawful:

(i) The administrative additional VAT assessments totalling Shs. 598,435,868 for the tax periods 2019 to 2024 are set aside.

(ii) The objection decisions upholding those assessments are vacated.

(iii) Any tax deposit paid pursuant to Section 15(1) of the Tax Appeals Tribunal Act shall be refunded in accordance with the applicable provisions of the Tax Procedures Code Act, together with statutory interest.

(iv) Costs are awarded to the Applicant.

It is so ordered.

Dated at Kampala this **6th** day of **March** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. PROSCOVIA REBECCA NAMBI
MEMBER

HON. STELLA NYAPENDI CHOMBO
MEMBER