



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 131 OF 2024**

TOTAL ENERGIES EP UGANDA.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO,  
HON. CHRISTINE KATWE

**RULING**

**1. Introduction**

1. This Application challenges a penalty of USD 100,000 imposed by the Respondent due to the Applicant's failure to provide the Respondent with information to aid a transfer pricing audit.

**2. Background Facts**

2. The Applicant operates the Tilenga oil and gas project. On 15 June 2023, the Respondent commenced a transfer pricing audit of the Applicant's transactions with associated/related entities.

3. On 15 August 2023 and 18 August 2023, the Respondent requested various documents and information from the Applicant to aid the transfer pricing audit. On 27 November 2023, the Respondent wrote to the Applicant requiring that all information in relation to the transfer pricing audit be provided by 31 December 2023 and a failure to comply would result in a penalty of USD 500,000 in accordance with Section 89QA (1) of the Income Tax Act (currently section 112).
4. On 10 January 2024, the Applicant provided information and clarified that a substantial amount was being obtained from TotalEnergies SE, the group's headquarters in France. On the same date, the Respondent issued a penalty assessment of USD 100,000 against the Applicant pursuant to Section 89QA (1) of the Income Tax Act for failure to provide information in relation to the transfer pricing audit.
5. The Applicant objected to the penalty assessed, and the Respondent made an objection decision to maintain the penal tax assessment.

### **3. Issues to be determined**

6. The parties agreed upon the following issues:
  - (i) Whether the Applicant is liable to the penalty assessed by the Respondent; and
  - (ii) What remedies are available to the parties?

### **4. Representation and evidence**

7. Mr. Festus Akunobera and Ms. Leah Nambuya represented the Applicant, while Ms. Ritah Nabirye and Ms. Christine Mpumwire represented the Respondent.

#### **The Applicant's evidence**

8. Ms. Veronica Mawanda, the Tax Manager of the Applicant, was the Applicant's first witness. She testified that on 15 June 2023, the Respondent notified the Applicant of the commencement of a transfer pricing audit covering the Applicant's transactions with associated entities

from 2012 to 2020. The Respondent requested that the Applicant complete the relevant associated party transaction forms for the audit period.

9. She further testified that on 2 August 2023, the Applicant submitted the Associated Party disclosure form providing information on transactions between the Applicant and its associated entities for the period 2017 to 2020. The Applicant stated that the disclosure forms for 2012 to 2016 were shared in 2017.
10. She also stated that the Respondent reviewed the information and on 15 August 2023, requested that additional documents be provided by 24 September 2023. Three days later, on 18 August 2023, the Respondent requested that further information be supplied via SharePoint by 29 September 2023.
11. On October 2, 2023, the Applicant uploaded transfer pricing information to SharePoint, including policies, group structure, and financial statements. The Respondent confirmed receipt and requested clarification on 3 October 2023.
12. The witness further testified that the Applicant continuously updated the SharePoint with information. Specific clarifications were provided on 24 October 2023 (timesheets for 2016) and 26 October 2023 (whole purchases ledger), and the minutes for the Advisory Committee Meeting were provided on 3 October 2023.
13. She also stated that on 11 October 2023, a transfer pricing audit initiation meeting was held where the Applicant presented on related party transactions, the company structure and industry background.
14. Furthermore, on 27 November 2023, the Respondent requested that all outstanding information be provided by 31 December 2023 and that a failure to comply would result in a penalty of USD 500,000.
15. The Applicant supplied substantial information via Share Point in December 2023, including financial statements, approved work budget and program, corporate tax returns, asset registers, and transaction listings.

16. She also stated that on 10 January 2024, the Applicant provided additional information, explaining that the delays were due to the need to source extensive supporting documentation from Total Energies SE's group headquarters. The Respondent's audit team was requested to conduct a field visit to the group headquarters as part of the audit to fast-track the review of the transfer pricing information.
17. The witness also testified that on the same date, 10 January 2024, the Respondent issued a penalty assessment of USD 100,000 for failure to provide information in relation to the transfer pricing audit. On 21 February 2024, the Applicant objected to this penalty on the grounds that the Respondent's interpretation of Section 89QA of the ITA was flawed and, therefore, the Respondent erroneously penalized the Applicant.
18. Furthermore, the witness stated that the ITA does not prescribe timelines within which to furnish a document. Further, reading Section 49A (1) (now section 58) of the Tax Procedures Code Act (TPCA) is impermissible, as Section 89QA (1) of the ITA excludes the timelines under the section 49A. Moreover, the Applicant has cooperated with the Respondent throughout the audit.
19. The witness also stated that the audit was still ongoing and the Respondent continues to receive information from the Applicant. On 25 March 2024, the Applicant met with the Respondent to discuss the status of the required information and specific information requests. On 28 March 2024, a meeting was held with the Respondent to clarify the same and discuss the information provided on 29 January 2024 and further subsequent meetings on 11 and 18 July 2024, as well as 17 October 2024, to discuss the information provided to the Respondent. Therefore, penalizing the Applicant was disingenuous.

#### **The Respondent's evidence**

20. **Mr. Andrew Mugarama**, a Petroleum Officer in the Respondent's Domestic Taxes Department, was the Respondent's sole witness. He stated that the Respondent has been conducting a transfer pricing audit of the Applicant's tax affairs for the period of January 2012 to December 2020 to ascertain

whether intra-group transactions complied with the arm's length principle, as required by the ITA.

21. He testified that on 15 June 2023, the Applicant was notified of the initiation of the transfer pricing audit of the Applicant's petroleum expenditures and was requested to cooperate by providing information supporting intra-group transactions. Furthermore, on 15 August 2023, the Respondent requested that the Applicant provide additional documents and information to assist the audit team in assessing the Applicant's transactions from a transfer pricing perspective. The Respondent requested the Applicant to provide the information by 24 September 2023.
22. On 18 August 2023, the Respondent requested the Applicant to provide additional documents by 29 September 2023. On 28 September 2023, the Respondent sent an email to the Applicant to remind the Applicant about the pending information.
23. On 3 October 2023, the Respondent sent another email requesting that the Applicant provide the requested information. The Respondent requested the Applicant to explain its failure to submit the specified documents. The Applicant was asked to submit all the requested information along with explanations for any documents that would not be provided by 6 October 2023.
24. On 11 October 2023, the Respondent asked the Applicant to submit all outstanding information by 20 October 2023. On 27 November 2023, the Respondent wrote to the Applicant, reminding them to submit the remaining information, and extended the deadline to 31 December 2023. The Respondent notified the Applicant that failure to comply by this date would result in a USD 500,000 penalty under Section 89QA (1) of the ITA. On 28 December 2023, the Respondent reminded the Applicant over the telephone.
25. On 9 January 2024, the Respondent issued a penalty assessment of USD 100,000 (Shs. 378,175,000) for failure to provide the requested information. By the date of the penalty, only twelve out of thirty-nine pieces of

information had been fully provided, which could not enable the Respondent to conclude the audit.

26. The witness stated that the Applicant's failure to provide all requested information continues to delay the transfer pricing audit and gravely affects the audit's timelines, as critical tasks can only be concluded upon reviewing all specified documents. Therefore, the assessment was lawful and justified.

## 5. Submissions of the Applicant

27. The Applicant submitted that the question of law is whether the Respondent acted lawfully when it imposed a penalty under Section 89QA(1) of the ITA on account of the Applicant's alleged failure to provide information within the time. The Applicant submitted that the jurisdiction to impose a penalty under section 89QA (1) of the ITA cannot exist if the jurisdictional facts or conditions set out therein are not satisfied. Section 89QA (1) of the ITA provides:

*"Notwithstanding the provisions of sections 48 and 49A of the Tax Procedures Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars."*

28. The following had to be satisfied before the Respondent could impose a penalty on the Applicant;
- (i) The Applicant was required to provide information or documents, as requested by the Respondent;
  - (ii) The ITA prescribed the time within which the Applicant should provide the information or documents requested by the Respondent; and
  - (iii) The Applicant failed to provide the information or documents within the time prescribed by the ITA.
29. The Applicant submitted that the timelines prescribed under Section 89QA (1) of the ITA are clear. It provides that the information must be provided "within the time prescribed by this Act." However, the ITA does not

prescribe the time within which the Applicant ought to provide the information requested by the Respondent.

30. The Applicant submitted that the Respondent cannot arrogate itself the authority to apply the timelines prescribed under the Tax Procedures Code Act, when: (i) section 89QA (1) of the ITA has expressly disappplied the provisions of section 48 and 49A of the Tax Procedures Code Act; and (ii) section 89QA (1) of the ITA expressly states that the time within which a licensee must provide information should be prescribed under the ITA.

31. The Applicant submitted that in **Cape Brandy Syndicate v Inland Revenue Commissioner (1921) 2 K.B 403**, the Court held:

*"In a taxing Act, one has to look merely at what is clearly said; there is no room for any intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied."*

32. The Applicant submitted that the wording of Section 89QA (1) of the ITA is clear and unambiguous. The Respondent should uphold it, without room for intendment or presumption. The ITA does not prescribe the timelines within which information must be provided for purposes of Section 89QA (1) of the ITA.

33. The Applicant submitted that since the ITA does not prescribe the time within which the Applicant was supposed to provide the requested information, it follows that the Applicant did not fail to provide the information within the time prescribed by the ITA.

34. Therefore, the Respondent acted ultra vires (without jurisdiction) in imposing a penalty upon the Applicant pursuant to section 89QA (1) of the ITA, when the ingredients to be satisfied before a penalty could be invoked under the said section did not exist.

35. Consequently, the Applicant prayed that the Tribunal find that:

- (i) The Respondent's decision to impose the penalty upon the Applicant is null and void and, therefore, cannot stand;
- (ii) The Applicant is not liable to pay the penalty assessed; and
- (iii) The Applicant be awarded the costs of the application.

## 6. Submissions of the Respondent

36. The Respondent submitted that Section 89QA (1) of the Income Tax Act (as it then was) provided:

*"Notwithstanding the provisions of sections 48 and 49A of the Tax Procedure Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars".*

37. The Respondent cited the case of **R. v. Del Mastro, 2017 ONCA 711, 416 D.L.R. (4th) 726**, at para. 61, where it was held:

*"Statutory interpretation is a multi-dimensional exercise and requires a court to consider whether a particular interpretation complies with the legislative text, promotes the intention of the legislature, and produces a result that is reasonable and just, in compliance with accepted legal norms".*

38. The Respondent submitted that while Section 89QA (1) of the ITA lacks explicit timelines, Sections 48 and 49A of the Tax Procedures Code Act provide clear procedural timelines and penalty provisions.

39. The Respondent submitted that the Commissioner General is empowered, while handling an investigation and administering any provisions of the tax law, at all times and without prior notice, to have full and unrestricted access not only to the premises or place but also any records in electronic format or data storage devices as per Section 48 (1) (a) of the Tax Procedure Code Act.

40. The Respondent also referred to Section 42 of the Tax Procedure Code Act, 2014 (as it then was), which states:

*"(1) The Commissioner General may, for the purposes of administering any provision of a tax law, require any person, by notice in writing, whether or not liable for tax-*

- a) *to furnish, within the time specified in the notice, any information that may be stated in the notice; or*

b) *To attend at the time and place designed in the notice for the purposes of being examined by the Commissioner General concerning the tax affairs of that person or any other person, and for that purpose the Commissioner General may require the person to produce any record, including an electronic format, in the control of the person”.*

41. The Respondent submitted that Section 49A of the Tax Procedure Code Act, 2014 (as it then was) stated:

*“A person who, upon request by the Commissioner, fails to provide records in respect of transfer pricing within 30 days after the request, is liable to a penal tax equivalent to fifty million shillings”.*

42. The Respondent submitted that section 42 of the TPCA grants the Commissioner General the powers to require any person to furnish information by a time or deadline specified in the notice.

43. The Respondent submitted that in 2014, tax administrative procedures were repealed from various laws, including the ITA, and codified into the Tax Procedures Code Act, 2014. The Tax Procedures Code Act, 2014, was enacted to regulate the procedures for administering specified tax laws in Uganda, including the ITA as listed in Schedule 2 of the said Act. The two laws are intended to operate together and should not be interpreted or applied in isolation.

44. The Respondent submitted that Section 89QA (1) of the ITA, along with the other provisions under Part IXA governing petroleum taxation, incorporates the procedures set out in the Tax Procedures Code Act, subject to necessary modifications and provided they do not conflict. Section 49A of the Tax Procedures Code Act does not conflict with any provision of Part IXA in clarifying the timelines for submitting information.

45. The Respondent submitted that the obligation to provide documents exists under both laws, and the timeframe for providing them is under the TPCA, but the penalty amount is determined by Section 89QA (1) of the ITA, which specifically provides for the taxation of petroleum operations. Section 89QA (1) does not primarily restate the timelines for submission but instead

establishes a special penalty for licensees who fail to furnish returns or other documents as required by the Commissioner.

46. The Respondent submitted that Section 89QA (1) modifies the timelines for which to submit the information under Section 49A of the Tax Procedures Code Act. The Respondent issued written notices requesting information and clarification for a transfer pricing review covering historical upstream expenditures for the period from January 2012 to December 2020. The Respondent wrote to the Applicant on several occasions, for example, on 10 May 2021, 15 August 2023, 18 August 2023, and 27 November 2023. Despite several reminders, calls, and emails issued on 28 September 2023, 3 October 2023, 11 October 2023, and 28 November 2023, the Applicant did not comply.
47. Therefore, having failed to comply with the requests for information, the Respondent exercised its mandate under section 89QA (1) of the ITA by issuing a penalty assessment dated 9 January 2024.
48. The Respondent submitted that in the case of **Pepper v Hart [1993] AC 593 at 634- 635**, Lord Wilkinson stated:

*"Statute law consists of the words that parliament has enacted. It is for the courts to construe those words, and it is the Court's duty in so doing to give effect to the intention of Parliament in using those words. It is an inescapable fact that, despite all the care taken in passing legislation, some statutory provisions, when applied to the circumstances under consideration in any specific case, are found to be ambiguous... the use of parliamentary reports gives effect to the true intention of the legislature".*

49. The Respondent submitted that the several notices requesting relevant information, call reminders, and emails constitute prima facie justification that the Applicant failed in its duty, thereby offending the statutory provisions. The penalty imposed by the Respondent was a consequence for acting in violation of the statutory provisions, hence the penalty under section 89QA (1) of the ITA.

50. The Respondent submitted that the Applicant has to date not submitted all the information required to conclude the transfer pricing audit. It has been nearly two years since the last notice requesting information was issued to the Applicant. Therefore, the Respondent's penalty assessment was lawful.
51. The Respondent also relied on the case of **India v Citadel Fine Pharmaceutical, Madras and Others (1989) 3 SCC 483**, where it was held:

*"In the absence of any period of limitation, it is settled that every authority is to exercise the power within a reasonable time period. What would be a reasonable period would depend upon the facts of each case..."*

52. The Respondent submitted that strict enforcement, including penalties for non-compliance, is essential for the integrity of the tax system and to deter aggressive tax planning by multinational enterprises. Consequently, the Respondent prayed for orders that:
- (i) The Tribunal finds the Respondent's assessment and decision to impose a penalty meritorious.
  - (ii) The Applicant is liable to pay the penal tax as assessed by the Respondent.
  - (iii) Costs of the application.

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

53. Having studied the parties' pleadings and submissions, this is the Tribunal's decision.
54. The Respondent commenced a transfer pricing audit of the Applicant's transactions with associated/related entities. On 15 and 18 August 2023, the Respondent requested the Applicant to provide various documents and information for the transfer pricing audit.
55. On 27 November 2023, the Respondent wrote to the Applicant requiring that all information relating to the transfer pricing audit be provided by 31 December 2023, failing which the Applicant would be liable to a penalty of USD 500,000 under Section 89QA (1) of the ITA. On 10 January 2024, the

Applicant provided some of the information, and on the same date, the Respondent issued a penalty assessment of USD 100,000. The dispute before the Tribunal is whether the Applicant is liable to pay the assessed penalty.

56. Section 89QA (1) of the Income Tax Act provides:

"Notwithstanding the provisions of sections 48 and 49A of the Tax Procedures Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars."

57. The Applicant's argument is that section 89QA of the ITA expressly disapplies the provisions of sections 48 and 49A of the Tax Procedures Code Act. Therefore, the Respondent cannot rely on those provisions to impose a penalty for failing to meet the timelines specified in the TPCA when the ITA does not prescribe any timelines. Consequently, the Applicant invited the Tribunal to apply the strict/literal rule of interpretation in interpreting section 89QA of the ITA.

58. The Respondent contends that there is no conflict between section 89QA of the ITA and section 49A of the TPCA. The Respondent argued that while Section 89QA (1) of the ITA lacks explicit timelines, Sections 48 and 49A of the Tax Procedures Code Act provide clear procedural timelines and penalty provisions. In addition, section 42 of the TPCA grants the Respondent the powers to require any person to furnish, within the time specified in the notice, any information that may be stated in the notice.

59. The Respondent also argued that, since tax administrative procedures were repealed from various laws, including the ITA, and codified in the TPCA, the ITA and the TPCA are intended to operate together and should not be interpreted or applied in isolation.

**Whether to adopt a strict interpretation of section 89QA (1)**

60. The strict rule of interpretation has long been established in tax law; however, other principles of statutory interpretation apply mainly when there is a conflict between two statutes.

61. In the case of *Farid Meghani Versus URA Civil Appeal No. 006 of 2021*, Hon Justice Stephen Mubiru stated:

*“One of the cardinal rules of statutory interpretation is that statutes are to be read as a whole, in context, and, if possible, the court is to give effect to every word of the statute. The court is bound to give consistent, harmonious, and sensible effect to all of the parts of a statute, to the extent possible”.*

62. Furthermore, in the case of ***Mrs. Seforoza Nyamuchoncho & Another v Attorney General & 2 others, Misc Cause No. 241 of 2017***, Hon. Justice Ssekaana Musa held:

*“Construction, which commends itself to justice and reason, should be adopted. It is the duty of the courts to give broad interpretation, keeping in view with the purpose of the concerned legislation. The interpretation should further the object.”*

63. Further, in ***Uganda Revenue Authority v Rwenzori Bottling Company Limited, HCCA 10/ 2023***, the Hon. Justice Ocaya stated:

*“The harmonious rule of legislative interpretation is adopted when there is a conflict between two or more statutes or between two provisions of the same statute. The rule requires that a legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. The provisions of one statute should be interpreted in harmony with the tenor of other statutory provisions or the overall statutory purpose. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. However, if this is not possible, then it is settled law that where there is a conflict between two sections, and one cannot reconcile the two, one has to determine which the*

*leading provision is and which the subordinate provision is, and which one must give way to the other.”*

64. In the present case, the Applicant has argued that section 89QA (1) refers to the timeline prescribed in the Income Tax Act. However, the Income Tax Act does not prescribe any of the timelines alluded to in Section 89 QA(1), it follows that the Applicant was not bound to provide the information within any given timelines. The Applicant further argued that the timelines prescribed in section 49A of the TPCA do not apply, as section 89QA(1) overrides them.
65. However, we must consider the historical context of the TPCA.
66. Until 2014, individual taxing acts contained provisions on tax administration procedures. However, in 2014, all procedures for administering specified tax laws, such as the Income Tax Act and the VAT Act, were consolidated under the TPCA. Therefore, unlike before 2014 when taxing acts contained provisions concerning record keeping, tax assessments, objections and appeals procedures, penal tax, among others, these are now consolidated in one Act, the TPCA.
67. Therefore, the reference in section 89 QA (1) to the provision of documents “within the time prescribed by this Act” can only mean the time prescribed by the TPCA. This is because section 89QA was introduced by the Income Tax (Amendment) Act, 2010, which preceded the TPCA. Prior to the enactment of the TPCA, the timelines for the provision of information under the ITA were contained in section 132 of the ITA, which was repealed by the TPCA and replaced by section 42 of the TPCA. Section 49A of the TPCA, which both parties have referred to in their submissions, was introduced by the Tax Procedures Code (Amendment) Act, 2017.

**Whether section 89QA (1) overrides section 49A of the TPCA**

68. The Applicant has argued that section 89QA 91) overrides section 49A of the TPCA.
69. Section 89 QA (1) provides:

*"Notwithstanding the provisions of sections 48 and 49A of the Tax Procedures Code Act, 2014..."*

70. According to **Black's Law Dictionary, 10<sup>th</sup> Edition at page 1231**, the term 'notwithstanding' means "despite; in spite of." Furthermore, in legislative drafting, when the term 'notwithstanding' is used in a provision, the provision prevails over conflicting provisions, thereby establishing legislative supremacy.

71. Therefore, we must ascertain the extent to which section 49A of the TPCA conflicts with section 89QA (1) of the ITA. Section 49A of the Tax Procedure Code Act, 2014 provides:

*"A person who, upon request by the Commissioner, fails to provide records in respect of transfer pricing within 30 days after the request, is liable to a penal tax equivalent to fifty million shillings."*

72. Section 89QA of the ITA provides:

*"Notwithstanding the provisions of sections 48 and 49A of the Tax Procedures Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars."*

73. We have already determined that the phrase 'within the time prescribed by this Act' as used in section 89 QA(1) can only refer to the provisions of the TPCA when a harmonious approach to statutory interpretation is applied, since provisions concerning administrative procedures were consolidated in the TPCA.

74. Therefore, examining the two provisions reveals that the sole conflict concerns the amount of the penal tax. The penalty under section 89QA(1) is significantly higher than that prescribed in section 49A of the TPCA. However, we find no conflict regarding the timeframe for supplying information to the Respondent. This is because Section 89QA refers to timelines set out in the ITA, which we have determined are established in the TPCA.

75. To this end, the only aspect of section 49A of the TPCA that is overridden by section 89 QA(1) of the ITA is the amount of penal tax to the extent that a higher penal tax is imposed by Section 89QA (1).

**Section 42 of the TPCA**

76. Even if one were to override section 49A of the TPCA, other provisions of the TPCA contain timelines that apply to the Applicant. A case in point is section 42 (now section 49) of the TPCA, which the Respondent has cited. It provides:

“1. The *Commissioner* General may, for the purpose of administering any provision of a tax law, require any person, by notice in writing, whether or not liable for tax –

*(a) to furnish, within the time specified in the notice, any information that may be stated in the notice, or...”*

77. According to the above provision, the timelines set by the Commissioner General by written notice requiring a person to furnish any information stated in the notice constitute timelines referred to in section 89QA of the ITA.

78. It could not have been the legislature's intention that a taxpayer who does not provide information to the tax authority when requested suffers no consequences. In the present case, the Respondent sent several notices to the Applicant requiring information within the specified time periods. For example:

(i) On 15 June 2023, the Respondent informed the Applicant of the ongoing comprehensive audit and asked the Applicant to complete an associated party disclosure form. The Applicant submitted the form on 7 July 2023.

(ii) On 15 August 2023, the Respondent wrote another letter requesting written explanations and listed six items of information that they asked the Applicant to submit. The Applicant provided all the information by 24 September 2023.

- (iii) On 18 August 2023, the Respondent requested the Applicant to provide information for the period 2012-2020. The Respondent asked the Applicant to furnish the information by 29 September 2023.
- (iv) On 23 October 2023, the URA sent an email to the Applicant attaching the TEPU TP audit initiation minutes for review. In the minutes, the Respondent informed the Applicant that they had not provided a significant amount of the information requested.
- (v) On 27 November 2023, the Respondent wrote to the Applicant, highlighting the outstanding information and referencing the various reminders by telephone and email that the Respondent had sent them. The Respondent presented an itemized list of the outstanding information and asked that it is provided by 31 December 2023.
- (vi) On 10 January 2024, the Applicant wrote to the Respondent highlighting the information that had been provided and that which remained outstanding.
- (vii) A perusal of the Applicant's letter to the Respondent on pages 43-49 of the JTB indicates that the Applicant did not provide most of the documents, some were partially furnished, and some were not provided at all.
- (viii) On 10 January 2024, the Respondent forwarded a penalty assessment for the failure to provide information in relation to transfer pricing. The Respondent also attached a list of all the outstanding information.

79. Further, in her testimony, Ms. Veronica Magembe Mawanda (AW1) stated:

*"...On 27 November 2023, the Respondent requested that all outstanding information be provided by 31 December 2023....we supplied substantial information via SharePoint in December 2023...on 10 January 2024, the Applicant provided additional information, explaining that the delays were due to the need to source extensive supporting documentation from Total Energies SE's group headquarters... on the same date, 10 January 2024, the Respondent issued a penalty assessment..."*

80. The above statement confirms that the Applicant did not adhere to the timelines expressly set out in the Respondent's letters.
81. We note that penalties imposed under Section 89QA of the Income Tax Act are intended, by design, to operate as a statutory deterrent against non-compliance and to enforce strict adherence to tax obligations within the specified time frame. It should also be observed that the Respondent issued the initial information request on 15 June 2023, and subsequent requests were made thereafter, culminating in the final request dated 27 November 2023, which preceded the penal assessment. The letter stated a deadline of 31 December 2023.
82. Due to the Applicant's prolonged non-adherence to numerous requests, the Respondent was compelled to invoke Section 89QA by issuing a penalty assessment on 10 January 2024, seven and a half months after the initial request.
83. The present application was filed on 29 May 2024, and at the hearing thereof, information remained outstanding from the Applicant. For example, when this application came before the Tribunal on 4 March 2025, 9 April 2025, and 21 May 2025, the information remained outstanding. The Applicant stated that it required its headquarters in France to facilitate the provision of specified information.
84. The Tribunal finds that the Applicant repeatedly failed to comply with the Respondent's lawful requests for information within the timelines specified in the Respondent's letters. Consequently, the Respondent was justified in imposing a penalty pursuant to section 89QA (1) of the Income Tax Act.
85. Section 89QA (1) stipulates that the penalty shall not be less than USD 50,000 and not exceed USD 500,000. The Respondent imposed a penalty of USD 100,000, which lies within the statutory range. The Tribunal therefore finds that the Respondent's issuance of the penalty was appropriate and lawful.

**Orbiter**

86. Transfer pricing audits are not ordinary audits due to their intricate complexity, inherent subjectivity, and potential for substantial financial impact on both taxpayers and the government. Consequently, taxpayers have a duty to furnish the Uganda Revenue Authority with the information necessary to conduct an informed transfer pricing risk assessment and to enable a thorough audit of the taxpayer's transfer pricing practices. Given that such audits are conducted on Ugandan subsidiaries of multinational corporations, the duty extends to the group parent companies or associates of the local subsidiary, who must promptly cooperate with the Uganda Revenue Authority by providing information about their transactions with the Ugandan subsidiary. This obligation forms part of the multinationals' social licence to operate in Uganda and is vital for fostering a dynamic, trustworthy, and credible relationship between foreign investors and Ugandan stakeholders.
87. In the circumstances, the Tribunal orders as follows:
- (i) The Applicant is liable to pay the penalty of USD 100,000; and
  - (ii) Costs are awarded to the Respondent.

Dated at Kampala this 15<sup>th</sup> day of December 2025.

---

**HON. CRYSTAL KABAJWARA**  
**CHAIRPERSON**

---

**HON. STELLA NYAPENDI CHOMBO**  
**MEMBER**

---

**HON. CHRISTINE KATWE**  
**MEMBER**