



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 263 OF 2025**

TOURVEST WWL LIMITED.....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. PROSCOVIA REBECCA NAMBI,  
HON. WILLY NANGOSYAH.**

**I. Introduction**

1. This ruling is in respect of an application challenging the Respondent's rental income tax assessments amounting to Shs. 786,916,500. The assessments arose from income received by the Applicant from Wild Waters Lodge (U) Limited ("WWL"), a company in which the Applicant holds 99.99% of the shares. The Respondent treated the income as rental income taxable under section 5 of the Income Tax Act, while the Applicant contends that the income constitutes ordinary business income arising from an integrated owner-operator business structure.

**II. Background Facts**

2. The Applicant, Tourvest WWL Ltd, owns Wild Waters Lodge on Kalagala Island in Jinja. The lodge provides accommodation, food, beverages and recreational services. The Applicant incorporated Wild Waters Lodge (U) Limited ("WWL"), in which it holds 99.99% of the shares, while the remaining share is held by Leanne Haigh, a director of the Applicant.

3. The Applicant and WWL executed an Operating Lease Agreement giving WWL operational control over the Applicant's business, comprising fully serviced lodge facilities and mixed assets (movable and immovable), housekeeping and general use assets, machinery and tools, kitchen equipment and sundries, restaurant furniture, equipment, and sundries, buildings, fixtures, and motor vehicles, office furniture and equipment, swimming pool furniture and sundries, spa furniture and sundries, boats and boating equipment.
4. WWL operates the business in compliance with the Applicant's "Wild Waters" concept and system regulating credit policies, terms of admittance, room charges, food and beverage policies, entertainment and amusement policies, employee compensation, licensing, granting concessions for commercial space, and all phases of advertising, promotion and publicity.
5. The Applicant contends that WWL operated as an extension of its business because the Operating Lease Agreement required WWL to operate in accordance with the Applicant's "Wild Waters" concept and system. The Applicant reports this income as business income in its tax returns and has paid all requisite income tax. The Respondent, however, treated the arrangement as a lease of immovable property.
6. On 19 August 2024, the Respondent issued a compliance advisory letter alleging undeclared rental income from WWL. The Applicant's tax advisor, KANE Business Consultants Ltd, responded on 6 September 2024, explaining the correct classification as business income, and requesting for the Respondent's interpretation.
7. Follow-up meetings occurred on 27 September 2024 and 10 December 2024, and thereafter the Applicant's tax advisor sent a reminder letter to the Respondent on 20 February 2025, all seeking a formal ruling. Despite these requests, no ruling was provided by the Respondent. Instead, the Respondent issued rental tax assessments on 2 May and 13 May 2025.

8. The Applicant objected to these assessments, emphasising that the income's proper classification is business income and all income taxes due were already paid. The Respondent disallowed the objection and upheld the assessments as rental income.
9. According to the Respondent, it reviewed the Applicant's objection raised and confirmed that the Applicant was leasing out both the franchise and the hotel business, thus disallowing the objections raised and maintaining the assessed tax on the grounds that the Applicant rented out immovable property.

### **III. Issues for Determination**

10. The following issues arise for determination:
  - i. Whether the preliminary objection on non-payment of 30% under section 15(1) of the Tax Appeals Tribunal Act is sustainable.
  - ii. Whether the income received by the Applicant from WWL constituted rental income under sections 2 and 5 of the Income Tax Act or business income under sections 4, 17 and 18 of the Act.
  - iii. Whether the rental income tax assessments should be upheld, varied, credited, offset or set aside.
  - iv. What remedies are available to the parties?

### **IV. Representation**

11. The Applicant was represented by Mr. Brian Kwame Emurwon and Ms. Ruth Namirembe, while the Respondent was represented by Mr. Simon Peter Orishaba and Ms. Christine Mpumwire.

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

#### **Whether the relationship between the Applicant and WWL is that of Landlord and Tenant**

12. The Applicant submitted that, although titled an "Operating Lease Agreement", the economic reality of the arrangement between the

Applicant and its wholly owned subsidiary reflects an integrated and entrenched Owner-Operator relationship, not a Landlord-Tenant one.

13. The Applicant contended that in a classic Landlord-Tenant relationship, a landlord gives vacant possession of premises to the tenant. Section 2 of the Landlord and Tenant Act Cap 238 defines a landlord as "*a person who lets premises under a tenancy and a tenant as "the person to whom premises are let under a tenancy."* A landlord is duty-bound by law to grant the tenant autonomy and quiet possession of the premises. Section 19 of the Act provides that "*A landlord shall take all reasonable steps to ensure that the tenant has quiet enjoyment of the premises during the tenancy.*"
14. The Applicant submitted that quiet possession presupposes a landlord deriving passive income without investment in the tenant's affairs or business. The Applicant submitted that in the case of **Lake Victoria Hotel Ltd v URA** the Tribunal found a Landlord-Tenant relationship because:
  - a) Independent Parties: The Lessee (Granada Hotels Limited) was an Independent third party with no shareholder linkages with the Lessor.
  - b) Operational Autonomy: The Lessee enjoyed quiet possession and had the right to operate under its own brand, with no obligation to use the Lessor's brand.
  - c) Immovable Property: The Lease comprised solely of immovable property, with other contractual obligations being merely incidental.
15. The Applicant argued that, in contrast, the Applicant and WWL's Owner-Operator relationship reflects integrated economic activity within a dual-company corporate structure involving:

#### **Common underlying ownership**

16. As a 99.99% owned subsidiary, WWL operates as an extension of the Applicant's business. In **Aponye (U) Ltd v URA** App No. 80 Of 2021, this Tribunal, after noting that underlying ownership is defined in section 2 of the ITA, went on to opine that:

*"There are many ways of determining whether people are connected. One way is to look at ownership. Do they share the same owners or directors? Companies with the same owners usually fall in the same group of companies."*

17. The Applicant submitted that in the Recital to the Operating Lease Agreement, it is acknowledged that WWL is the Applicant's subsidiary. Further, Uganda Registration Services Bureau search reports verify that the Applicant owns 999,999 shares of WWL and a shareholder of the Applicant, Leanne Haigh, holds the remaining 1 share of WWL. To further entrench their integration, Clause 19(a) and (b) of the Operating Lease Agreement stipulates that *"the Operator shall not cede any of its rights nor delegate any of its obligations under this Agreement"* and *"the Owner shall not cede all or any of the Owner's rights hereunder."*
18. The Applicant submitted that where a parent company grants its 99.99% owned subsidiary operator rights over its business assets, it is exercising a corporate governance function, not acting as a landlord. The Applicant and WWL, for all practical and legal purposes, constitute a single economic enterprise. Characterising the income flowing within this near-unitary structure as 'rental income' is a fundamental misapplication of the law.

#### **Operational Control**

19. The Applicant contended that the URSB reports also verify that all the directors of WWL are directors of the Applicant. Further, WWL operates in strict compliance with the Applicant's policies and systems. The Applicant licenses WWL's use of its "Wild Waters" concept and system and retains oversight to ensure quality control and unified operations. The Recital to the Operating Lease Agreement notes that:

*"The Owner has the exclusive right to licence the concept and systems associated with the establishment and operation of lodges under the proprietary name and style "Wild Waters" and the Operator, a subsidiary of the Owner, is desirous of applying the standards and specifications of the Owner's "Wild Waters" concept and system to operate "Wild Waters" lodges in the Republic of Uganda."*

20. The Applicant further cited Clause 3 of the Agreement stipulates that the Operator is to run the lodge:

*"...in accordance with the Wild Waters concept and system regulating, without limitation, credit policies, terms of admittance, room charges, food and beverages policies, entertainment and amusement policies, employee compensation, licensing, granting concessions for commercial space, and all phases of advertising, promotion, and publicity."*

21. It was the Applicant's position that where a parent company maintains managerial control, policy oversight, and brand/systems governance over its subsidiary that it has deployed to run its facilities and assets, the economic reality and substance of the arrangement is that of a single economic enterprise generating business income, not of a landlord-tenant relationship.

#### **Movable and Immovable Property**

22. The Applicant contended that the subject matter of the Operating Lease Agreement differs from a tenancy agreement in scope and versatility. It is not merely a right to use or occupy immovable property. It is a comprehensive bundle of mixed assets and operational rights. The Applicant gives WWL operational control over the Applicant's mixed assets (movable and immovable) including housekeeping and general use assets, machinery and tools, kitchen equipment and sundries, restaurant furniture, equipment, and sundries, buildings, fixtures, and motor vehicles, office
23. furniture and equipment, swimming pool furniture and sundries, spa furniture and sundries, boats and boating equipment. The Schedule to the Agreement lists the assets in their respective categories.
24. The Applicant argued that where the consideration received by a parent company from its 99.99% owned subsidiary encompasses payment for use of movable assets and services in running the facilities and assets of the parent company, the receipt cannot be classified as rental income. The Applicant's only source of income is revenue from WWL, underscoring integrated business activity rather than passive rent collection. The Applicant and WWL, being parent and wholly owned subsidiary, relate with one another in a single trading enterprise as Owner-Operator.

## Whether the Applicant is liable to pay the assessed taxes

25. The Applicant submitted that the Income Tax Act explicitly delineates business income from rental income:

(a) Section 4 of the ITA imposes income tax on chargeable income, defined as the gross income, less deductions (section 15). Gross income includes business income (section 17 of the ITA) "income derived by a person in carrying on a business" (Section 18 of the ITA), where "business" encompasses any trade (Section 2 of the ITA).

(b) Section 5 of the ITA imposes Rental Tax to be charged for each year of income on every person who has rental income for a year of income. With regard to persons who are companies, under section 5(2)(b) of the ITA, the tax payable is calculated by applying the relevant rates of tax determined under section 7(2) to the rental income derived by the company for the year.

26. The Applicant submitted that the tax rate for companies under business income tax and rental tax is the same. Business income deductions are wholly allowed, whereas the ITA limits the deductible expenditures of rental income. Under section 5(3)(c) of the ITA:

*"Expenditures and losses incurred by a person, other than an individual or partnership, in the production of rent shall be allowed as a deduction for any year of income only as provided for in section 22(1)(c)."*

27. The Applicant further submitted that, section 22(1)(c) of the ITA provides that for the purpose of ascertaining chargeable income of a person for a year of income, there shall be allowed a deduction, in the case of rental income, the expenditure and losses incurred by a person other than an individual or partnership in the production of such income subject to subsection (1a) which states:

*"Where the expenditure and losses incurred by a person other than an individual or partnership in the production of rental income, exceed fifty per cent of the rental income, the allowable deduction shall be fifty per cent of the rental income for the year of income".*

28. The Applicant submitted that Hotel operations generate business income because the right to occupy and use immovable property is blended with the right to additional goods and/or services such as furnished accommodation, housekeeping, food and beverages, and recreation. This suggests that income qualifies as rental income if it is derived solely from leasing immovable property (without additional goods and/or services blended). Indeed, in section 2 of the ITA, rental income is strictly defined as concerning immovable property.

*"Rental Income in relation to a person for a year of income, means the total amount of rent derived by the person for the year of income from the lease of immovable property in Uganda with the deduction of any expenditures and losses incurred in respect of the property."*

29. The Applicant submitted that in **Lake Victoria Hotel Ltd v URA**, the Tribunal found that the main purpose of the Taxpayer's lease was to grant Granada Hotels Ltd the right to use Immovable Property and Quiet Possession:

"Clause 2 of the agreement, headed 'Grant of Rights', states:

*"2.1...the Lessor shall subject to clauses 8 and 9 herein lease the Hotel to Lessee for the duration of the term,*

*2.2 The Hotel comprises of 132 hotel rooms, 8 junior suites, 3 ministerial suites, 1 presidential suite, 4 conference rooms, 1 restaurant, 3 bars, shops, etc."*

In addition, the Applicant contended that clause 3.1 of the agreement states:

*"... the Lessor mandates the Lessee to take the Hotel in its current condition, to fully operate it as a hotel under its own name, logo, trademarks, and get up for the duration of the term."*

Further, clause 3.2 states:

*"... the Lessee shall have quiet possession of the Hotel establishment and shall ensure that all outgoings, including telephone line, internet, electricity, and water on the hotel are properly and punctually paid for."*

30. The Applicant submitted that it is clear from the above provisions that the main purpose of the transaction involving the lease of the hotel establishment was to grant the Lessee rights to use the buildings comprising the various rooms listed in clause 2.2 of the agreement. The Tribunal further found that other obligations imposed on Granada Hotels Ltd were merely incidental to the primary purpose of letting immovable property.

31. The Applicant submitted that the Applicant and WWL entered an Operating Lease Agreement. Under the arrangement, WWL is tasked to operate Wild Waters Lodge in compliance with the Applicant's brand. In clause 3 of the Agreement, the Applicant grants WWL:

*"control in the direction, management, and supervision of the assets for the purpose of operating a lodge consistent with the high quality associated with the "Wild Waters" concept and system regulating without limitation, credit policies, terms of admittance, room charges, food and beverage policies, entertainment and amusement policies, employee compensation, licensing, granting concessions for commercial space, and all phases of advertising, promotion, and publicity relating to the lodge..."*

32. The Applicant argued that the schedule to the Agreement lists mixed assets (movable and immovable), including:

*"... housekeeping and general use assets, machinery and tools, kitchen equipment and sundries, restaurant furniture, equipment, and sundries, buildings, fixtures, and motor vehicles, office furniture and equipment, swimming pool furniture and sundries, spa furniture and sundries, boats and boating equipment."*

33. The Applicant submitted that WWL leverages the Applicant's "Wild Waters" using a blend of movable and immovable assets. All assets used by WWL in the conduct of the Applicant's business are supplied by the Applicant. The inclusion of movable assets is legally significant because the Income Tax Act, under section 2, restricts the definition of "Rent" to payment received for the use of land or buildings, that is, immovable property.

34. The Applicant submitted that secondly, no autonomy or quiet possession is granted to WWL because the Applicant is the 99.99% owner of WWL and 100% of the directors of WWL are directors of the Applicant.
35. It was the Applicant's argument that the Respondent's decision to classify the Applicant's income as rental income ignores the common underlying ownership, the Applicant's pursuit of intra-group efficiencies, the Applicant's oversight and policy control of WWL, the WWL use of the Applicant's proprietary brand; and ignores the unique blend of movable and immovable asset classes.
36. The Applicant submitted that the Respondent's decision to classify the Applicant's income as rental income risks double taxation. The Applicant already paid tax on its business income. Reclassifying the business income as rental income would effectively result in the Applicant paying tax twice on the same income. The Applicant submitted that it is not liable to pay the assessed rental tax.
37. The Applicant prayed for the following orders:
  - (a) An order setting aside the rental income tax assessments.
  - (b) A declaration that the Respondent's objection decisions were misconceived and erroneous in law and fact.
  - (c) A declaration that the arrangement between the Applicant and WWL is an Owner-Operator relationship and not a Landlord-Tenant relationship.
  - (d) A declaration that the Applicant's income from WWL is business income, not rental income.
  - (e) An order as to general damages to the Applicant for administrative harm due to the Respondent's failure to provide a guiding ruling.
  - (f) Costs of the application to be borne by the Respondent.

## VI. The Submissions of the Respondent

38. In reply, the Respondent raised a preliminary objection on the issue of non-payment of thirty per cent of the tax assessed. The Respondent relied on section 15 of the Tax Appeals Tribunal Act, which provides that a taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty per cent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.
39. The Respondent cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 2009*, in which the Supreme Court held that the statutory requirement to pay thirty per cent of the tax assessed, or the part of the tax assessed not in dispute, whichever is greater, is constitutional and does not infringe the right to a fair hearing.
40. The Respondent submitted that the Applicant was required to comply with section 15 of the Tax Appeals Tribunal Act by paying thirty per cent of the disputed income tax, amounting to Shs. 236,074,950. According to the Respondent, the Applicant had not paid the mandatory thirty per cent deposit by the time of filing the Respondent's submissions. The Respondent therefore prayed that the preliminary objection be upheld and that the Application be dismissed with costs for failure to comply with section 15 of the Tax Appeals Tribunal Act.
41. Without prejudice to the preliminary objection, the Respondent submitted on the merits of the Application.

### **Whether the relationship between the Applicant and Wild Waters Lodge (U) Limited is that of landlord and tenant**

42. The Respondent submitted that section 2 of the Income Tax Act defines "rent" to mean any payment, including a premium or like amount, made as consideration for the use or occupation of, or the right to use or occupy, land or buildings. The Respondent further submitted that "rental income" is

defined under the same section as the total amount of rent derived by a person for a year of income from the lease of immovable property in Uganda, after deduction of the expenditures and losses incurred in respect of the property.

43. According to the Respondent, ownership of the lodge facilities and the assets used for the provision of accommodation and recreation remained vested in the Applicant. The Respondent submitted that the Applicant merely granted Wild Waters Lodge (U) Limited control over the assets for purposes of directing, managing and supervising the operation of the lodge, and that no ownership passed to Wild Waters Lodge (U) Limited.
44. The Respondent further submitted that the consideration paid by Wild Waters Lodge (U) Limited to the Applicant, namely USD 40,077 for 2020 and USD 402,000 for 2021 and 2022, as reflected in clause 6 of the Agreements, did not demonstrate that the Applicant's true intention was to let a business rather than property. The Respondent therefore maintained that the payments constituted rental income because the Applicant granted use of its lodge facilities for consideration, while retaining ownership of those facilities.

#### **Whether the Applicant is liable to pay the tax as assessed**

45. The Respondent maintained that the Applicant is liable to pay the assessed rental income tax of Shs. 786,916,500 for the period 1 September 2021 to 31 August 2022, arising from undeclared rental income received from Wild Waters Lodge (U) Limited.

#### **The law on rental income**

46. The Respondent submitted that rental income is treated differently from other gross income earned by a taxpayer. Section 5 of the Income Tax Act imposes tax on every person who has rental income for a year of income. The Respondent further relied on section 5(3) of the Income Tax Act, which provides that rental tax is separate from the tax imposed under section 4

and that rent derived by a person is not to be included in that person's gross income for that year of income.

47. The Respondent contended that the Applicant earned rental income amounting to Shs. 1,224,390,000 for the period 2021 to 2022, which was subjected to rental tax on the basis of non-declaration, resulting in an assessment of Shs. 786,916,500.
48. The Respondent acknowledged that the Applicant contended that the transaction was taxable as business income and that taxes had been paid on that basis. However, the Respondent submitted that the income received by the Applicant from Wild Waters Lodge (U) Limited was rental income. The Respondent further submitted that the Applicant had not provided sufficient proof of payment of tax under the business income head.
49. The Respondent invited the Tribunal to consider *Lake Victoria Hotel Limited v Uganda Revenue Authority, TAT Application No. 300 of 2024*, which it submitted was on all fours with the present Application. In that case, the Tribunal, after analysing the agreement between the parties and relying on *Haji Musa Ntale v Uganda Revenue Authority, HCT-00-CC-CS-303-2008*, found that the consideration received was for the right to use and occupy property and therefore fell within the statutory definition of rental income. The Respondent argued that, in the present case, the Applicant retained ownership of the lodge and its accompanying facilities and assets, received consideration for their use, and granted Wild Waters Lodge (U) Limited operational control for purposes of running the lodge. The Respondent therefore maintained that the assessment was lawful, justified and proper under section 5 of the Income Tax Act, and that the assessed rental tax of Shs. 786,916,500 is due and payable by the Applicant.
50. The Respondent prayed for the following orders:
  - i. This Application is dismissed.
  - ii. The preliminary objection on non-payment of 30% is upheld.

- iii. The Applicant is liable to pay the rental tax liability of Shs. 786,916,500 as assessed by the Respondent.
- iv. Costs of this Application are awarded to the Respondent.

## **VII. The Applicant's submissions in rejoinder**

- 51. In rejoinder, the Applicant submitted that the dispute concerns the legal interpretation of the Income Tax Act and not merely the amount of tax assessed. According to the Applicant, rental income under the Income Tax Act is limited to income derived from the lease of immovable property, whereas the present arrangement involved an Operating Lease Agreement, mixed assets (movable and immovable property), operational control and use of the Applicant's brand, systems and policies.
- 52. The Applicant argued that section 15(1) of the Tax Appeals Tribunal Act does not apply where the taxpayer disputes liability itself rather than the amount payable. Relying on **Fuelex (U) Ltd v URA**, the Applicant submitted that the Constitutional Court held section 15 unconstitutional insofar as it compels payment of 30% when the dispute concerns whether the taxpayer is liable to the tax at all. The Applicant, therefore, prayed that the Tribunal overrule the preliminary objection.

### **Relationship between the Applicant and WWL**

- 53. The Applicant submitted that the Respondent failed to appreciate the commercial reality of the arrangement between the parties. The Applicant argued that the Operating Lease Agreement created an integrated business framework characterised by mixed asset classes (movable and immovable property), affiliated parties (parent company and wholly owned subsidiary), and operational control through strict adherence to the Applicant's brand, systems and policies.
- 54. The Applicant further emphasised that WWL was a wholly owned subsidiary, the parties were economically integrated, and the consideration payable under the Agreement fluctuated depending on business performance, including reductions during the COVID period. It was

therefore submitted that the relationship was not one of landlord and tenant but rather one of owner and operator.

#### **Whether the income constituted rental income**

55. The Applicant submitted that the Respondent itself acknowledged in its Statement of Facts that the income received from WWL had been treated and taxed as business income and that the corresponding business taxes had already been paid.
56. The Applicant argued that rental income under section 5 of the Income Tax Act must arise purely from the lease of immovable property, whereas the present arrangement involved blended assets, branding, systems and operational services. The Applicant distinguished *Lake Victoria Hotel Ltd v URA*, arguing that the case involved unrelated autonomous companies and a straightforward lease of immovable property, whereas the present matter concerned a wholly owned subsidiary, common ownership, operational integration and mixed assets operating within the Applicant's business structure.
57. The Applicant invoked the substance-over-form doctrine, arguing that the true purpose of the arrangement was operational efficiency within a group structure rather than passive rental activity.
58. The Applicant further submitted that leasing of mixed assets was merely incidental, business income may arise from licensing and operational arrangements even without transfer of ownership and retention of ownership does not automatically convert income into rental income.

#### **Administrative unfairness**

59. The Applicant submitted that it proactively sought tax guidance from the Respondent, held meetings with the Respondent and requested formal interpretation before assessments were issued. According to the Applicant, the Respondent failed to provide the promised ruling and instead issued assessments and agency notices. The Applicant argued that this conduct

amounted to unreasonable administrative action, breach of natural justice and caused business disruption and administrative harm.

### **Reliefs sought**

60. The Applicant reiterated its prayers for setting aside the rental tax assessments, declaration that the Respondent's objection decisions were erroneous, declaration that the relationship was one of owner-operator and not landlord-tenant, declaration that the receipts constituted business income and not rental income, damages for administrative harm and costs of the Application.

## **VIII. The determination**

### **Issue 1: Whether the preliminary objection on non-payment of 30% is sustainable**

61. Section 15(1) of the Tax Appeals Tribunal Act provides:

*"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 per cent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."*

62. The Respondent argued that the Applicant failed to pay the mandatory 30% deposit and that the Application should therefore be dismissed. The Respondent relied on ***Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, SC Constitutional Appeal No. 2 of 2009***, in which the Supreme Court upheld the constitutionality of statutory provisions requiring payment of part of the assessed tax before a tax dispute may proceed. The Supreme Court endorsed the "pay now, argue later" principle as a legitimate mechanism for protecting public revenue.
63. However, subsequent jurisprudence has clarified the scope and limits of section 15(1). In ***Fuelex (U) Ltd v Uganda Revenue Authority Constitutional Petition No. 3 of 2009***, the Constitutional Court clarified

that section 15(1) cannot be applied rigidly where the dispute concerns the legal basis of liability itself rather than the mere amount payable. The Constitutional Court held:

*“Section 15 of the Tax Appeals Tribunal Act, in so far as it compels an objector to a tax assessment, whose challenge is not with regard to the amount of tax payable, to pay to the tax authority 30% of the tax assessed, is inconsistent with Article 44 of the Constitution...”*

64. The Court distinguished disputes about quantification from disputes about legal liability. The majority reasoned that section 15(1) was intended for disputes over assessed amounts and not for cases where the taxpayer contends, for example, that the tax was assessed under the wrong law, the taxpayer is not liable to that tax, the taxpayer is exempt, or the assessment is founded on a non-existent legal obligation.
65. This Tribunal recently carefully analysed these authorities in ***Fortuna Limited v URA Misc. Application No. 264 of 2025***, where it held section 15(1) *“remains valid and mandatory in ordinary tax disputes, but its application may be moderated where the dispute raises a fundamental legal challenge to the basis of the assessment itself.”*
66. This Tribunal in ***Fortuna*** further stated that *“the exception recognised in Fuelex applies only where the dispute goes to the core of the very existence of a tax liability itself in the first place, such as where the taxpayer contends that the tax was imposed under an inapplicable law, that the taxpayer is not subject to the tax, or that the assessment is founded on a non-existent legal obligation.”*
67. The distinction is therefore between a taxpayer who accepts the applicable tax head but disputes the computation, and a taxpayer who disputes the legal foundation of the tax head invoked by the Commissioner. The former ordinarily falls within section 15(1); the latter may fall within the constitutional exception recognised in Fuelex.

68. Further guidance emerges from the recent High Court decision in *Dr. Jaala Higenyi Alfred v Uganda Revenue Authority Civil Appeal No. 121 of 2023*, where Hon. Lady Justice Susan Odongo revisited the purpose of section 15(1). The Court observed that while the “pay now, argue later” principle protects public revenue, tax administration must also remain consistent with Articles 28, 44(c), and 126 of the Constitution. The learned Judge emphasised that:

*“Judicial precedent has clarified that the 30% requirement should not be an absolute barrier to justice.”*

69. The High Court therefore held that section 15(1) must be applied in a manner that balances revenue protection with the taxpayer’s constitutional right to a fair hearing.
70. In the present case, the Applicant contends that the Respondent invoked the wrong charging provision altogether. The Applicant argues that the receipts constitute business income and not rental income. The dispute, therefore, concerns the legal classification of the receipts and the applicability of section 5 of the Income-tax Act. This is not merely a dispute over arithmetic computation.
71. The Tribunal must first determine whether the receipts legally constitute rental income before insisting on payment under section 15(1). To require payment of 30% before resolving that foundational legal question would risk shutting the Applicant out before determining whether the tax head invoked by the Respondent lawfully applies.
72. It should also be noted that the Applicant submitted that they had treated the income as business income and had already paid all the requisite income tax, a fact that the Respondent has not disputed. Should the Tribunal find that the income ought to be treated as rental income rather than business income, the Applicant would have to pay a top-up tax to take into account the tax already paid as income tax.

73. The Tribunal therefore finds that the present dispute falls within the exception recognised in the Fuelex case as well as in *Dr. Jaala Higenyi Alfred v Uganda Revenue Authority*. Accordingly, the preliminary objection is overruled.

**Issue 2: Whether the relationship between the Applicant and WWL is one of landlord and tenant**

74. The Applicant argued that the relationship between itself and WWL is not a landlord-tenant relationship but an integrated owner-operator arrangement involving common ownership, operational control, brand governance and mixed assets.

75. The Applicant relied heavily on the fact that WWL is a 99.99% subsidiary, both companies share directors, WWL operates under the Applicant's "Wild Waters" brand and operational policies, and the arrangement includes movable assets and operational systems in addition to immovable property. These facts are not disputed.

76. The Tribunal accepts that the arrangement was commercially integrated and differed from an ordinary lease between unrelated parties. However, common ownership alone does not extinguish the separate legal personality of companies. A company is a legal person distinct from its shareholders and affiliated companies, see *Salomon v Salomon & Co Ltd [1897] AC 22*. WWL and the Applicant, therefore, remained separate taxable persons notwithstanding their common ownership and shared directors. The Tribunal must accordingly examine the legal rights and obligations created by the Operating Lease Agreement, not merely the group relationship between the parties.

77. Section 2 of the Income Tax Act defines "rent" as:

*"any payment, including a premium or like amount, made as consideration for the use or occupation of, or the right to use or occupy, land or buildings."*

78. The Tribunal must therefore determine the dominant legal character of the consideration paid by WWL. This requires the Tribunal to examine the rights granted under the Operating Lease Agreement, the subject matter of the payment, and whether the non-immovable elements, such as movable assets, brand standards and operational systems, were independent income-generating rights or merely ancillary to the use and occupation of the lodge premises.
79. This Tribunal is guided by the decision in ***Lake Victoria Hotel Ltd v URA TAT Application No. 300 of 2024***, where the Tribunal held that “*the main purpose of the transaction involving the lease of the hotel establishment was to grant the Lessee rights to use the buildings.*” The Tribunal further held that operational obligations imposed upon the lessee were “incidental to the main purpose of granting possession and use of the property.”
80. This Tribunal respectfully agrees with that reasoning. A hotel business frequently includes furniture, fixtures, kitchen equipment, operational standards and brand restrictions. Such features do not necessarily alter the essential legal character of the payment if the dominant consideration remains the right to use and occupy the hotel establishment.
81. The Tribunal has considered the Applicant’s attempt to distinguish Lake Victoria Hotel on the basis that the lessee in that case was an unrelated third party with greater operational autonomy. In the Tribunal’s view, those factual differences do not displace the central principle. The decisive question is not whether the parties were related, or whether operational standards were imposed, but whether the consideration was paid substantially for the use or occupation of land or buildings.
82. The Applicant urged the Tribunal to find that the arrangement was an owner-operator structure rather than a tenancy. The Tribunal accepts that the arrangement possesses characteristics of both operational integration and property use. However, tax characterisation must ultimately follow the legal rights granted and the substance of the consideration.

83. WWL paid consideration to obtain operational possession and use of the lodge establishment owned by the Applicant. The Applicant itself did not directly provide accommodation, food, beverage or recreation services to guests during the relevant period. WWL operated the hospitality business and paid the Applicant agreed consideration for use of the lodge infrastructure. In substance, the Applicant stood in the position of owner granting another legal person the right to use and operate the premises.
84. The Tribunal therefore finds that, whatever commercial label the parties used, the arrangement possessed the essential characteristics of a letting of lodge premises for purposes of the rental income provisions of the Income Tax Act.

**Issue 3: Whether the income constitutes rental income or business income**

85. Section 5(1) of the Income Tax Act provides:

*“Subject to this section, a tax shall be charged for each year of income and is imposed on every person who has rental income for the year of income.”*

Section 2 defines rental income as income derived from “the lease of immovable property in Uganda.”

86. The Tribunal also notes section 18 of the Income Tax Act. Section 18 includes, within business income, income derived by a person in carrying on a business. However, where rent is included in business income because a person’s business consists wholly or mainly of holding or letting property, section 18(2) preserves the character of that amount as rent for purposes of provisions referring to rent. Accordingly, the mere fact that a receipt arises in a business context does not necessarily preclude its treatment as rent where the statutory definition of rent is satisfied.
87. The Applicant argued that the receipts cannot constitute rental income because the arrangement involved movable assets, the Applicant retained operational oversight, the relationship was commercially integrated and the

Applicant had already paid business income tax on the receipts. The Tribunal has carefully considered these arguments.

88. The Tribunal agrees that hotel operations ordinarily generate business income. However, it is necessary to distinguish between:
- (i) hotel business income earned from accommodating guests; and
  - (ii) income earned by an owner from granting another entity the right to operate the hotel establishment.
89. Income earned by an entity that itself provides accommodation, food, beverages and recreation to guests ordinarily constitutes business income. However, that is not the same as income earned by an owner who grants a separate legal person the right to use and operate a hotel establishment. The character of the Applicant's receipt must be determined from the source and legal basis of that receipt.
90. The key question is therefore whether the consideration paid by WWL was principally for operational management services or the right to use and occupy the lodge establishment.

#### **Mixed assets and brand control**

91. The Applicant's strongest point is that the agreement was not a bare lease of land and buildings. It included movable assets and operating systems. However, a commercial hotel lease is rarely a bare lease of empty walls. A functioning hotel normally includes furniture, fixtures, kitchen equipment, operating standards, brand restrictions and quality obligations. These matters may be commercially important, but they do not automatically change the nature of the payment.
92. The Tribunal has considered whether the movable assets, brand rights and operating controls were the main subject of the consideration, or whether they were ancillary to the right to use the lodge premises.

93. The Operating Lease Agreement did not provide separate pricing for the use of buildings, movable assets, brand licensing, intellectual property, management systems, or operational services. Nor did the Applicant present a valuation, apportionment schedule, transfer-pricing analysis, management-services agreement, or other evidence showing that a distinct and severable portion of the consideration related to non-rental rights.
94. In the absence of reliable apportionment, the Tribunal is unable to treat the composite payment as non-rental income merely because movable assets and operational obligations were included. The inclusion of such ancillary rights does not, without more, change the dominant character of the consideration where the substantial right granted is the use and occupation of the lodge establishment.
95. The taxpayer bears the burden of proving that the assessment is excessive or that the Commissioner's classification is wrong. In the present case, that burden required the Applicant to demonstrate, by evidence, that the composite consideration was wholly or partly attributable to non-rental rights.
96. The Applicant's argument would have been stronger if the evidence showed that WWL acted merely as the Applicant's agent or manager, collecting hotel revenues on behalf of the Applicant and remitting them subject to a management fee. The evidence before the Tribunal does not establish such an agency arrangement. Instead, WWL was granted operational control and paid the agreed consideration to the Applicant. That points away from agency and towards a letting or operating lease arrangement.
97. The Tribunal therefore finds that the dominant character of the receipts was consideration for the use or occupation of the lodge establishment, notwithstanding the inclusion of movable assets, brand standards and operational obligations. The receipts accordingly fall within the definition of "rent" under section 2 and constitute rental income taxable under section 5 of the Income Tax Act.

### **Double taxation**

98. The Applicant argued that it had already paid business income tax on the same receipts and that reclassification would result in double taxation. The Tribunal accepts that the same receipts should not be subjected to double recovery. However, payment under an incorrect tax head does not prevent the Respondent from reclassifying the receipts under the correct charging provision. The Respondent must, before enforcing recovery, verify any income tax already paid by the Applicant on the same receipts and credit, offset or otherwise account for such payment in accordance with the law.

### **General Damages**

99. The Applicant sought general damages for administrative harm arising from the Respondent's failure to issue a ruling despite requests for clarification.
100. Although the Applicant complained of administrative delay and failure by the Respondent to issue a formal ruling, it did not establish the legal basis upon which the Tribunal may award general damages in these tax appeal proceedings. Nor did it prove the alleged loss with sufficient particularity. The prayer for general damages is therefore declined.


### **Orders**


101. Accordingly, save for the preliminary objection, which is overruled, and the direction on credit or offset of any tax already paid on the same receipts, the Application is dismissed. The Tribunal makes the following orders:
- i. The preliminary objection based on non-payment of 30% under section 15(1) of the Tax Appeals Tribunal Act is overruled.
  - ii. The income received by the Applicant from WWL under the Operating Lease Agreement constituted consideration for the use or occupation of the lodge establishment.
  - iii. The said income constitutes rental income taxable under section 5 of the Income Tax Act.
  - iv. The rental income tax assessments are upheld, subject to verification and credit or offset of any income tax already paid by the Applicant on the same receipts.

- v. The claim for general damages is declined.
- vi. Each party shall bear its own costs.

It is so ordered.

Dated at Kampala this.....<sup>28<sup>th</sup></sup>.....day of **May** 2026.

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

  
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**HON. PROSCOVIA REBECCA NAMBI**  
**MEMBER**

  
\_\_\_\_\_  
**HON. WILLY NANGOSYAH**  
**MEMBER**