

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 89 OF 2023

TUNGA NUTRITION (U) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. WILLY NANGOSYAH,
MS. GRACE SAFI.

RULING

This ruling is in respect of an application seeking a declaration that the transfer of assets from Unga millers (U) Ltd to the Applicant was not a purchase subject to withholding tax and at any rate qualifies for roll over relief and is exempt from tax.

1. Background Facts

The Applicant is a company incorporated in Uganda whose principal business is the manufacture of animal feeds in the business of agriculture and forestry. On 2 August 2021, Nutreco International B.V("Nutreco") and Unga Millers (U) Limited entered into an investment agreement to form a joint venture to consolidate the aquafeed business in Uganda. The Joint Venture birthed Tunga Nutrition (U) Limited in which Nutreco and Unga Millers would receive shares in exchange for contributions in kind and cash.

On 19 November 2021, the Applicant was incorporated wherein the shareholders held unpaid shares in the Applicant. On 19 February 2022, Unga Millers Limited, a resident shareholder through an asset transfer agreement transferred to the Applicant assets and buildings including the land in dispute as consideration for the shares. No cash was paid by the Applicant to Unga Millers for the said land. At the point of transfer, the Applicant paid stamp duty based on Government valuation which usually translates the market value of the land. The Respondent issued a withholding tax assessment of

Shs. 637,960,410 basing on the stamp duty government valuation of the land at Shs. 10,632,673,500. This assessment was initially based on the assumption that the Applicant purchased this property from Unga Millers whereas no cash was paid as the consideration was 50% shareholding in the Applicant.

Being dissatisfied with the assessment, the Applicant objected providing full disclosure of the transaction and how it was a reorganisation which qualified for roll over relief which meant that withholding tax as a collection mechanism would not apply.

On 4 May 2023, the Respondent's objections team reviewed the application and upheld the assessment on the new founded basis that the land was transferred at market value and not cost base as stipulated under the roll over relief provisions.

The Respondent compared the Unga Millers tax return for the period ended 30 June 2021 wherein land and buildings were reported at a value of Shs. 521,749,000 in comparison with the Applicant's stamp duty declarations which indicated the value as Shs. 10,632,673,500. It further noted that there were fluctuations in the value of the assets in Unga Millers tax returns for the periods 2010 to 2012.

At the time of issuance of the objection decision on 4 May 2023, the Applicant's tax return was still not due however this was eventually filed on 30 June 2023 declaring the cost base value in the Applicant's tax return.

2. Issue for determination

Whether the Applicant is liable to pay withholding tax of Shs. 637,960,410 as assessed by the Respondent.

3. Representation

At the hearing of this application, the Applicant was represented by Mr Gerald Ndobyia and Ms. Rhoda Nakanwagi while the Respondent was represented by Ms. Patricia Ndagire and Mr. Barnabas Nuwaha.

Mr. Charles Mwololo, the Group Financial Controller at Unga Group Limited was the Applicant's sole witness. He stated in his witness statement that the Applicant is a duly incorporated company in Uganda limited. He also stated that the Applicant is a joint venture initiative by Nutreco international B.V and Unga Millers Limited. He stated that

Unga millers transferred its business assets to the Applicant and stamp duty was duly paid on the transfer of the assets.

He also stated that the Respondent issued an administrative default assessment amounting to Shs. 637,960,410 being 6% withholding tax on the transfer of assets to Unga Millers. The Applicant objected to the assessment on grounds that the transfer was not subject to tax due to roll-over relief and that the said transaction was not a purchase but a contribution of assets in exchange of shares because the asset was transferred at its cost base.

He further testified that the Respondent cannot deny applicability of roll over relief in this transaction because all the requirements for its applicability were met and the Respondent's only role was to confirm the cost base for calculating the deferred capital gain when the applicant disposes off the asset to another person in future.

Ms. Deborah Mirembe, an Officer in the Respondent's Domestic Department was the Respondent's sole witness. She stated in her witness statement that she was part of the team that reviewed the stamp duty declarations of the Unga Millers Uganda limited and the said review revealed that the Applicant paid stamp duty in lieu of the land acquired from Unga Millers at a consideration of Shs. 10.632,673,500.

She further stated that based on the reviewed information, the Applicant was requested to provide additional information and upon failure to do so, the Respondent issued a withholding tax assessment to the Applicant.

4. Submissions of the Applicant

The Applicant submitted that the transaction falls within the Roll-Over Relief provisions under **Section 76(1) of the Income Tax Act Cap 338** which states that;

"Where a resident person, in this subsection referred to as the "transferor", transfers a business asset, with or without any liability not in excess of the cost base of the asset, to a resident company other than an exempt organisation, in this subsection referred to as the "transferee", in exchange for a share in the transferee and the transferor has a 50 percent or greater interest in the voting power of the transferee immediately after the transfer,

- a) *the transfer is not treated as a disposal of the asset by the transferor but is treated as the acquisition by the transferee of a business asset;*

- b) *the transferee's cost base for the asset is equal to the transferor's cost base for the asset at the time of transfer; and*
- c) *the cost base of a share received by the transferor in exchange for the asset is equal to the cost base of the asset transferred, less any liability assumed by the transferor in respect of the asset".*

The Applicant argued that the explanatory Notes to the Income Tax Act at Page 97 have explained the applicability of this provision noting that where these conditions are satisfied, the transfer is not treated as a disposal of the asset by the transferor for the purposes of the Act. The transferee company is treated as having acquired the asset as a business asset for an amount equal to the cost base of the transferor at the time of the transfer for the purposes of calculating any gain or loss to the transferee company on a subsequent disposal of the asset. The cost base of the share received in return for the transfer of the asset is the cost base of the asset transferred (at the time of the transfer) less any liability transferred. The effect of the subsection (1) is that the cost base of the asset is rolled over to the company and taxation of the gain or loss on the asset which has accrued prior to the transfer to the company is deferred until the company subsequently disposes of the asset.

The Applicant submitted that the law provides that immediately after the transfer, the transaction is not treated as a disposal of the asset by the transferor. However, it is treated as the acquisition by the transferee of a business asset and the transferee's cost base for the asset is equal to the transferor's cost base for the asset at the time of transfer and the cost base of a share received by the transferor in exchange for the asset is equal to the cost base of the asset transferred.

Therefore, the transfer of the land from Unga Millers to the Applicant is not a disposal of the asset and hence no tax should arise on the transfer because it was not a taxable event. The Applicant further submitted that the applicability of the relief has been explained in the case of ***Elisabeth Moyre Ramsay v The Commissioner for Her Majesty's Revenue and Customs UKUT 0226 (TCC) Appeal number: FTC 77/2012***, wherein it was stated:

"The relief is applied by reducing the chargeable gain that would otherwise arise on the disposal of relevant assets. The amount of the reduction depends on whether the whole consideration, or only part of the consideration, for the transfer of the business is provided in the form of shares."

This connotes that where the consideration for a transfer of business assets is wholly in the form of shares, the relief given is generally the full amount of the chargeable gain leading to a no capital gain being charged any form of tax as is in this case. In the present case, since Unga Millers received shares in exchange for the land, no capital gain should be subject to tax and consequently, no withholding tax should have been assessed.

The Applicant argued that the transferee's cost base for the asset is equal to the transferor's cost base for the asset at the time of transfer and relied on Section 76(1)(b) of the Income Tax Act. The section provides that in a roll over relief qualifying reorganization, the transferee inherits the cost base of the asset from the transferor. As noted in the Income Tax Act explanatory notes.

"The effect of the subsection (1) is that the cost base of the asset is rolled over to the company and taxation of the gain or loss on the asset which has accrued prior to the transfer to the company is deferred until the company subsequently disposes of the asset."

By virtue of this consequence, the law deems it that the cost base of the land and building as well as other assets at the time of transfer is the same cost base that was rolled over to the Applicant. This means that at the point when the Applicant seeks to dispose of the land and buildings, the cost base of the land and buildings as held by Unga Millers will be the cost base of the asset. The Applicant noted that the value at which the asset is transferred is not relevant as a precondition. For qualification of the roll over relief, it is only relevant for determining the value of any loss or gain to be rolled over. The allegation by the Respondent that the land was not transferred at cost and as such it does not qualify is not based on any provisions of the law.

In fact, a transfer at cost would render the roll over relief moot as there would be no gain to roll over anyway. Secondly, once the condition precedents are met, the Commissioner has no discretion to refuse the roll over relief. All that is left for the Commissioner to do is to ascertain and confirm that the correct values for cost base are indeed inherited by the transferor and transferee as prescribed by law.

The Applicant submitted that the Respondent's assessment and objection decision rejected the applicability of roll-over relief on the basis that the land was transferred at market value rather than cost base. The basis for the Respondent's finding was

fundamentally flawed from the start. The Respondent wrongly assumed that the value used for stamp duty declarations and assessment reflects the tax cost base of the land for income tax purposes specifically the applicability the roll-over relief.

Stamp duty is assessed based on a government valuer's determination, which is beyond the control of the taxpayer and properly within his mandate. The value at which the land is transferred in the transfer agreement and in the stamp duty declarations is not relevant as a precondition for qualifying for roll over relief.

Contrary to the Respondent's assumptions and rush to judgment, as demonstrated above, Unga Millers cost based was rolled over to the Applicant, in full compliance with the requirements of Section 76 of the Income Tax Act.

The Applicant submitted that it is necessary to distinguish between tax accounting and financial reporting as the Respondent's assessment appears to conflate the two. The Income Tax Act prescribes specific methods of accounting for tax purposes and mandates that a taxpayer's method of accounting conforms to generally accepted accounting principles. However, tax accounting rules serve a different purpose from financial reporting standards, particularly in relation to roll-over relief. Under the Income Tax Act, when roll-over relief applies, the transferee inherits the cost base of the transferor. This is reflected in the taxpayer's income tax return, where the cost base of the asset transferred by Unga Millers is identical to the cost base of the Applicant's asset, as demonstrated in its asset schedule.

In contrast, financial reporting standards specifically IAS 16, which governs the accounting treatment of Property, Plant, and Equipment (PPE) permit two valuation methods. Which include the cost model where the asset is carried at cost, less accumulated depreciation and impairment [IAS 16.30] and the revaluation Model where the asset is carried at its revalued amount (fair value), less subsequent depreciation and impairment, provided the fair value can be reliably measured [IAS 16.31]. A review of the Applicant's audited financial statements indicates that Land and buildings are measured at fair value, less accumulated depreciation on buildings and impairment losses recognized after the date of revaluation. Valuations are performed with sufficient frequency to ensure that the fair value of a revalued asset does not differ materially carrying amount. This demonstrates that while financial reporting may reflect fair value for accounting purposes, tax reporting remains governed by the cost base

principle under Section 76 of the Income Tax Act. The Applicant correctly reported the cost base in its tax return, and this should have been the focus of the Respondent's assessment.

The Applicant reiterated that the transfer of land by Unga Millers to the Applicant was not amenable to income tax by virtue of Section 76(1) of the Income Tax Act that provides that such a transfer is not a disposal. On the understanding that disposals are subject to capital gains tax that can be withheld by the purchaser through the withholding method, where there is no disposal, income tax cannot arise and consequently there can be no withholding tax since there is no tax to remit. The Applicant submitted that withholding tax is not a stand-alone tax but merely a mode of collecting income tax. This principle was affirmed in ***Luwaluwa Investments V. Uganda Revenue Authority (HCCA No. 43 of 2022)*** wherein Ocaya J, at Page 49 of 63 of the judgment stated:

*"I must note that withholding is a mode of collection of tax and not a head of tax in itself. Withholding allows the Respondent to collect tax from the entity purchasing a good or tax by remitting a portion of the consideration to the Respondent directly, rather than the same having to first be declared and remitted by the entity receiving the payment. By way of first principles, **Section 118B (2) (Now Section 130(2))** (which provides for withholding) is a mode of collection of income tax. Where the transaction is not amenable to income tax, there can be no withholding since there is no tax to remit."*

Given that withholding tax is merely a collection mechanism for income tax, it follows that where no income tax is due, no withholding tax obligation can arise. Since the transaction in question does not constitute a taxable disposal, no income tax liability arose, and consequently, no withholding tax was payable. Section 130(2) of the Income Tax Act Cap 338 requires a resident person who purchases a business asset to withhold tax at a rate of 6%. The Respondent issued a withholding tax assessment Shs. 637,960,410 on the premise that the Applicant purchased land which is incorrect.

The Applicant argued that it merely acquired the land in exchange for shares from Unga Millers Limited. This sort of acquisition is not deemed as a disposal under section 76 of the Income Tax Act. The definition of "purchase" is critical in determining the applicability of withholding tax.

In Luwaluwa Investments Ltd v Uganda Revenue Authority (TAT Application No. 39 of 2021), the Tribunal referred to Black's Law Dictionary, which defines a purchase as the act or an instance of buying; or the acquisition of an interest in real or personal property through sale, discount, negotiation, mortgage, pledge, lien, issue, reissue, gift, or any other voluntary transaction.

While the second limb of the definition may include various forms of acquisition, it does not override specific tax provisions that categorize certain transactions as non-disposals. Since the land transfer was affected as part of a qualifying reorganization and not a purchase within the meaning of Section 130(2), the withholding tax assessment was improperly issued.

Counsel for the Applicant prayed that the Tribunal quashes the decision issued by the Respondent and declares that the taxes assessed are not payable by the Applicant and that the 30% tax paid be refunded with interest.

5. Submissions of the Respondent

The Respondent submitted that Section 118B is to the effect that a resident who purchases a business asset shall withhold tax on the same. Purchase is defined under **Black's Law 11th Edition** as the acquisition of interest in real or personal property by sale, discount, negotiation, mortgage, pledge, lien, issue or other voluntary transaction.

The Applicant declared a transfer of land valued at UGX 10,632,673,500 from Unga Millers Uganda Limited for purposes of stamp duty. The said transfer price is not disputed by the Applicant in fact the Applicant paid stamp duty on the same. It is not in dispute that the Applicant acquired an asset from Unga Millers and upon acquisition of the same tax under Section 118B is accordingly due. It is noteworthy that a transfer of land is subject to executing of a transfer agreement and transfer forms which bear value of the land transferred however the Applicant did not lead evidence on this which goes a long way in showing that the Applicant was not involved in a transparent transaction but rather a scheme to not pay WHT.

The Respondent relied on Section 77 of the Income Tax Act and stated that. The following elements must be present for a transaction to qualify under Section 77 (1) of

the Income Tax Act. The transferor and transferee must both be residents and According to Section 2 (hhh) of the ITA, a resident person means a resident individual, resident company, resident partnership, resident trust, resident retirement fund, the government of Uganda or a political subdivision of the government of Uganda.

Section 2 (eee) of the ITA states that the term resident company has the meaning in Section 10. Section 10 of the ITA states:

"A company is a resident company for a year of income if it is incorporated or formed under the laws of Uganda, has its management and control exercised in Uganda at any time during the year of income or undertakes the majority of its operations in Uganda during the year of income."

The Applicant did not provide information to the Respondent in this regard at the objections or assessment.

The Respondent submitted that the transferor must obtain a 50 percent or greater interest in the voting power of the transferee immediately after the transfer. Further, the transferee's cost base for the asset should be equal to the transferor's cost base for the asset at the time of transfer. In addition, the cost base of shares received by the transferor in exchange for the asset should be equal to the cost base of the asset transferred.

The Respondent further submitted that a business asset is defined in Section 2(h) of the ITA to mean:

"An asset which is used or held ready for use in business, and includes any asset held for sale in a business and any asset of a partnership or company"

Under Section 52(2) of the ITA:

"The cost base of an asset purchased, or constructed by the taxpayer is the amount paid or incurred by the taxpayer in respect of the asset, and includes the market value at the date of acquisition or any consideration in kind given for the asset."

According to Applicant's Memorandum of Association, the company's share capital is Shs. 1,000,000 divided into 1,000 ordinary shares. Pursuant to an Investment agreement dated 2 August 2021, Unga Millers agreed to subscribe to 500 of the shares of the Applicant which were issued and allotted on an unpaid basis. In effect the value of the shares transferred to Unga Millers Ltd is worth Shs. 500,000 which value is a stark contrast to the value of the land transferred to the Applicant and accordingly the Applicant fails on this ground.

The Respondent contends that according to the Applicant's Investment Agreement, the consideration payable for the 500 shares allotted to it was a combination of its property and certain other assets the agreed aggregate value of which was USD 3,815,000 and a transfer of the Unga business by Unga Farm Care to the Applicant.

The Respondent submitted that on 19 February 2022, about four months after the allotment and issue of the 500 shares in Tunga to Unga, the companies executed an asset transfer agreement. Under the agreement Unga Millers sold to Applicant on a going concern basis its property, fixed assets, moveable assets, business information and Records. The above assets were in effect worth more than USD 3,815,000 exclusive of VAT which would be settled by Tunga issuing and allotting Unga the shares it had subscribed for credited as fully paid.

It's the Respondent's considered view that the cost base of the shares allotted is not equal to the cost base of the asset transferred and to that end the transaction fulfils only 2 out of the 5 aforementioned elements for qualification for roll over relief to wit the transaction is between residents and the transferee is not an exempt organisation. There is no evidence of the value of the asset (land) transferred by Unga Millers at the time it was acquired by the transferrer to the Applicant. Also, the said asset did not bear a monetary value equivalent to the value of the shares transferred to the transferor by the Applicant.

The Respondent argued that the value of Applicant's property prior to/at time of transfer kept on fluctuating between Shs. 10,670,069,000 and Shs. 208,144,000. At the time of transfer there was no valuation made and even if the same were done, it was not declared to the Respondent as the value of Unga's land at the time

it was transferred to the Applicant and accordingly there is no basis for the value of the asset transferred by Unga which is equivalent to the consideration by the Applicant.

Even if the valuation were to be done the same would not be equal to the value of the share holding for which the land was exchanged and in the circumstances the Respondent submitted that the Applicant doesn't qualify for roll over relief on the premise that the cost of the land at the time of acquisition by Unga Millers is not the cost of the shares issued by the Applicant and or the consideration in lieu of the asset (land) given to the Applicant and thus prayed that the roll over relief sought by the Applicant is not granted and the assessment of the Respondent be upheld.

6. Submissions of the Applicant in rejoinder

In rejoinder, the submitted that the Respondent incorrectly alleged that the Applicant did not lead evidence on the transfer specifically the land agreement transfer forms that bear the value of the land.

The Applicant further submitted that the concept of roll-over relief exists to defer tax liability in cases where economic ownership of assets remains largely unchanged. The Provisions of **Section 76** have been part of the law since the inception of the ITA in 1997, and Section 76(1) has remained unchanged since inception. Parliament set conditions for taxpayers to qualify for roll over relief and also outlined the consequences. For purposes of Section 76(1), once the conditions are met, the Commissioner has no discretion but to implement the consequences, the key consequences being non recognition of loss or gain for the transferor, as well as a fair mechanism for taxing the transferee at the future date of disposal.

The Respondent's attempt to deny this relief contravenes established tax principles and statutory provisions. The Applicant is a special-purpose entity formed under an investment agreement between two companies. These companies transferred their assets to a newly established entity (the Applicant), subsequently holding a 50% shareholding in the Applicant.

The Applicant contends that the Respondent's assessment is fundamentally flawed as it mischaracterizes the nature of the transaction and falls short of legal scrutiny on the

applicability of roll over relief provisions. The assessment was based on stamp duty declarations made at the time of transfer of land which is generally imposed on the value of the land rather than any actual income realized. The Respondent assumed that the transaction did not qualify for roll over relief because it was transferred at market value and not cost base in May 2022 as per stamp duty declarations. However, this assumption is misplaced, as the income tax return where such a declaration should have been made was only due on 30 June 2023. The assessments were therefore premature and baseless given that when the Applicant filed its income tax returns, it properly declared the cost base of the land and buildings in accordance with the law.

Regarding the value of the Applicant's shares and them not being equal to the value of the transferred assets, the Applicant submitted the Respondent is conflating the conditions for the application of roll over relief with the consequences of having satisfied the conditions. For purposes of reclarifying the position, the Applicant relied on Section 76(1) of the Income Tax Act Cap 338. The transaction between the Applicant and Unga Millers fulfilled its requirements which are the transferor Unga Millers is a resident entity registered under TIN 1000025111. The transferee is a resident entity under TIN 1021586488.

The Applicant is a company incorporated in Uganda owned by Unga Millers that is equally a Ugandan resident company and Nutreco BV. Unga Millers and the Applicant entered into an asset transfer agreement dated 19 February 2022 under which Unga Millers transferred its property and assets including the land in issue to the applicant in exchange for a share in the Applicant and immediately after the transfer of the shares, Unga Millers obtained a 50% shareholding in the Applicant.

The Applicant reiterates that the transaction between Unga Millers resulting in the transfer of assets including land for a 50% shareholding in Tunga Nutrition fits within the conditions of Section 76(1) of the Income Tax Act and meets the requirements for applicability of the roll over relief and the consequences of satisfying the above conditions have been explained by the explanatory notes to the Income Tax Act at Page 97 noting that where these conditions are satisfied, the transfer is not treated as a disposal of the asset by the transferor for the purposes of the Act.

The transferee company is treated as having acquired the asset as a business asset for an amount equal to the cost base of the transferor at the time of the transfer for the purposes of calculating any gain or loss to the transferee company on a subsequent disposal of the asset. The cost base of the share received in return for the transfer of the asset is the cost base of the asset transferred (at the time of the transfer) less any liability transferred. The effect of the subsection (1) is that the cost base of the asset is rolled over to the company and taxation of the gain or loss on the asset which has accumulated prior to the transfer to the company is deferred until the company subsequently disposes of the asset.

The Applicant argued that by virtue of meeting the roll over relief conditions, the law deems it that the cost base of the land and building as well as other assets at the time of transfer is the same cost base that was rolled over to the Applicant. The closing tax written-down values (TWDV) of the other assets in Unga Millers' 2020/2021 tax return match the opening values recorded in the Applicant's to match the opening values recorded in the Applicant's 2022/2023 return. This directly conforms with Section 76(b) of the Income Tax Act, which mandates that the transferee's cost base for the asset is equal to the transferor's cost base at the time of transfer.

The Applicant contended that it has already applied the consequences of having undertaken a roll-over relief qualifying transaction with Unga Millers in their return indicating how the buildings subject to Industrial Building Deductions were transferred at the cost base. Any taxable gain will arise only when the Applicant disposes the land and buildings. At the time the gain would be established as the difference between the consideration offered to the Applicant and the rolled-over cost base. Since the transaction in question does not constitute a taxable disposal, no income tax liability arose, and consequently, no withholding tax was payable.

The Applicant humbly prayed that the WHT assessment of Shs. 637,960,410 be set aside as the transaction was exempt from tax and the 30% tax paid by the applicant be refunded with interest.

7. The determination of the Tribunal

Having listened to the evidence and read the submissions of the parties, this is the decision of the Tribunal.

The Tribunal will break down the case into two sub issues namely:

- (i) Did the Applicant's transfer of land in exchange for shares satisfy the conditions of roll-over relief in section 76(1) of the Income Tax Act?
- (ii) Was the withholding tax assessment correctly imposed?

Whether the Applicant meets the conditions for roll-over relief

The Black's Law Dictionary defines the term "roll-over" to mean:

"The transfer of funds to a new investment of the same type, especially so as to defer the payment of taxes".

In effect, rollover relief allows a taxpayer to defer the payment of capital gains tax where the disposal proceeds of a business asset or the assets themselves are reinvested in a new business.

Rollover relief provisions are found in section 76 (1) of the Income Tax Act (ITA). Under this provision, once a person qualifies for roll-over relief, the transfer is not treated as a disposal for income tax purposes and the assets are deemed to have been transferred on a no gains-no loss basis.

The conditions set out in section 76 (1) are as follows:

- (i) There must be a resident person (the transferor);
- (ii) Who transfers a business asset;
- (iii) Not in excess of its cost base;
- (iv) To another resident company (the transferee) (other than an exempt organisation);
- (v) In exchange for a share in the transferee; and
- (vi) the transferor has a fifty-percent or greater interest in the voting power of the transferee immediately after the transfer.

Applying the above conditions to the present facts:

- (i) Unga Millers, a resident person, that is incorporated and registered in Uganda.
- (ii) On 19 February 2022, by virtue of an asset transfer agreement, Unga Millers transferred its assets including property, fixed assets, moveable assets, business information and records;
- (iii) The assets were transferred to the Applicant, a company incorporated and resident in Uganda.
- (iv) The transfer of the assets was in exchange for 50% shares in the Applicant. This is evidenced by the 500 shares held by the Unga Millers in the Applicant which equate to 50% of the Applicant's total shareholding.
- (v) The assets were transferred at their cost base as evidence by the income tax returns of both the transferor and the transferee. An analysis of the returns shows that the Unga Miller's residual carried forward tax written down values of the assets is the same as the Applicant's brought forward tax written down values. This shows that the assets were transferred by Unga Millers to the Applicant at their cost hence a no gain / no loss position.

Therefore, the Applicant meets all the conditions for the roll-over relief. The Respondent's arguments that the shares must have the same value as the asset does not hold. The assets were the consideration for the shares and while this will have an effect on the overall value of the Applicant arising from the transferred assets, it does not translate into a new book value for the shares.

Further, there was no need for a valuation report as the assets are transferred at their tax written down value i.e. the carrying amount for tax purposes and not at their market value.

Therefore, we find that the Applicant met the conditions for rollover relief. Consequently, as stated in section 76 (1) of the ITA, where the conditions are met, the transfer is not treated as a disposal of the asset.

We now turn to the interplay between the roll-over relief and the withholding tax under Section 130(2).

Whether withholding tax was correctly assessed

Section 130(2) of the Act provides

“A resident person who purchases a business or business asset shall withhold tax” at the prescribed rate.”

The WHT payable under section 130 (2) is not a final tax as per the provisions of section 139 of the ITA. This means that it is advance income tax which is offset against the taxpayers' year end tax liability.

In ordinary circumstances, when a taxpayer disposes of an asset, they either make a gain or a loss and this is computed as per the provisions of Part VI of the ITA which deals with gains and losses in the disposal of assets.

The gain that is made on the disposal is treated as business income and taxed as such. On the other hand, the loss is treated as deductible expense for tax purposes.

In such cases, section 130 (2) comes into play as it requires the purchase to withhold tax at a rate of 6% from the gross payment for the disposal proceeds. The tax withheld is eventually offset against the seller's income tax liability for the period.

However, roll over relief is the exception to the above. This is because the transfer of the asset is treated as not amounting to a disposal and the asset is considered to have been disposed of on a no gain/ no loss basis owing to the transfer at the cost of the asset.

Therefore, a harmonious interpretation of the ITA should be applied to reconcile the two provisions.

In the case of ***Farid Meghani v URA, Civil Appeal No. 0006 OF 2021***, Justice 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. Thus, in cases involving statutory construction, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof in pari materia. It is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.”

A harmonious interpretation of the to provision would mean that since section 76 (1) of the ITA treats the transfer as a non-disposal, it would also follow that withholding tax

does not arise. This is because there is no gain to subject to income. The gain that would have been subjected to tax is deferred to such a time as when the Applicant eventually disposes of the assets to another person. Collecting withholding tax would amount to collecting a tax on income that does not exist.

As highlighted by the Applicant in the case of *Luwaluwa Investments V. Uganda Revenue Authority (HCCA No. 43 of 2022)* where it was held that withholding is a mode of collection of tax and not a head of tax in itself. Therefore, the Respondent cannot rely on section 130 (2) as a backdoor to impose tax.

Therefore, for the above reason, the application succeeds and the Tribunal makes the following orders:

- (i) The withholding tax assessment of Shs. 637,960,410 is hereby set aside;
- (ii) The Respondent should refund the 30% deposit of the assessed tax in accordance with section 123 (4) of the ITA; and
- (iii) Costs are hereby awarded to the Applicant.

Dated at Kampala this ^{26th} day of June 2025.


CRYSTAL KABAJWARA
CAHIRPERSON


WILLY NANGOSYAH
MEMBER


GRACE SAFI
MEMBER