TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 98 OF 2025

UGANDA TEA CORPORATION LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO, HON. ROSEMARY NAJJEMBA

RULING

I. Introduction

1. This Ruling is in respect of an application challenging the Respondent's decision to assess a withholding tax amounting to Shs. 56,564,399 on brokerage fees paid by the Applicant to Kenyan brokerage firms.

II. Background Facts

2. The Applicant is a company duly incorporated and validly existing under the laws of Uganda and is engaged in the business of growing and processing tea, which is subsequently exported to Kenya for auction.

3. The Respondent conducted a customs post-clearance audit into the tax affairs of the Applicant for the period July 2019-June 2024 to assess the Applicant's compliance with the customs laws and procedures.

4. Following the audit, the Respondent issued an Audit Management Letter dated 3 February 2025 alleging that the Applicant had failed to withhold tax on payments made to Kenyan brokerage firms.

5. The Respondent consequently raised an assessment of Shs. 56,564,399, being 15% of the brokerage fees paid by the Applicant.

6. The Applicant, on 25 February 2025, objected to the WHT assessment on grounds that the brokerage fees are paid to auctioneers in Mombasa for the sale of tea conducted there, without any connection to Uganda and the Withholding tax is not applicable on the brokerage fees since the services are not rendered in Uganda, and the income is not sourced from Uganda.

III. Issues

7. At scheduling, the following issues were set down for determination by the Tribunal;

   (i) Whether the Applicant is liable to pay the tax assessed?
   (ii) What remedies are available to the parties?

IV. Representation and evidence

8. Mr. Kalibala Bruno and Mr. Amanya Bruno Edwin represented the Applicant, while Mr. Kenan Aruho and Ms. Ritah Nabirye represented the Respondent.

9. Mr. Pius Babyesiza, the Chief Operations Manager of the Applicant, was the Applicant's sole witness. He stated in his witness statement that the Applicant is in the business of growing and processing tea and to expand its market and sell tea on the world market, the Applicant subscribed to membership in the East African Tea Trade Association ("EATTA") and has since complied with the provisions of the EATTA Rule Book and under the EATTA rule book, the Applicant can only sell its tea in the Mombasa tea auction platform through

licensed brokers. Pursuant to the said rules, the Applicant engaged the services of three Kenya-based brokerage firms, namely: Tea Brokers East Africa Ltd, Africa Tea Brokers Ltd, and Venus Tea Brokers Ltd, to sell its tea at EATTA Mombasa's tea auctions.

10. Furthermore, the execution structure requires the Applicant to deliver tea to bonded warehouses in Mombasa, Kenya, after which the brokers take charge, look for potential buyers, and proceed to sell the tea. The sale proceeds arising from the auctions are received in EATTA's tea sales collections and EATTA deducts the brokerage fees from the sales proceeds, remitting the net sale proceeds to the Applicant.

11. The Applicant is not permitted to receive the gross proceeds and would be unable to sell its tea at the Mombasa auction if it insisted on receiving the gross proceeds. The brokers' role is strictly to facilitate the sale of the Applicant's tea, for which they charge a fee determined as a percentage of the sales proceeds. In addition, the Applicant pays mandatory subscription fees to EATTA in accordance with the Rule Book.

12. Ms. Acen Esther of the Respondent's Department of Legal Services and Board Affairs, was the Respondent's sole witness. She stated in her witness statement that on 30 October 2024, the Respondent communicated to the Applicant its intention to carry out a post Authorized Economic Operator (AEO) authorization and post clearance audit for the period July 2019 to June 2024, and requested for some documentation to be availed which included bank statements, stock movement details, among others.

13. During the audit, the Respondent observed that the Applicant is engaged in the growing and processing of tea, which is subsequently exported to Kenya for auction. The Applicant sourced brokerage services from three firms during the tea auction, all domiciled in Kenya, whose role, among others, was to seek the best price for the Applicant and to charge the Applicant brokerage fees at a rate of 0.75% of the total value of the tea consigned.

14. Further, upon review of the brokerage firms' ledgers, it was noted that the Applicant incurred Shs. 377,0695,996 as an imported service in the form of brokerage fees over the audit period. Consequently, the Respondent reviewed the Applicant's WHT returns, which established that the Applicant did not withhold tax on the payments made to the Kenyan brokerage firms, and the Respondent computed WHT at a rate of 15% on the total value of payments made by the Applicant.

V. Submissions of the Applicant

15. The Applicant submitted that the tax assessment of Shs. 56,564,399 issued by the Respondent should be set aside on several grounds.

16. The Applicant contended that the brokerage fees paid to Kenyan firms do not fall within the definition of a "Ugandan-source services contract" under Section 84(4) of the Income Tax Act (ITA). They argued that the principal purpose of their agreement with the brokers is the sale of tea at Kenyan auctions, which constitutes a supply of goods outside Uganda. Relying on the High Court decision in ***Uganda Revenue Authority v Total Uganda Limited (Civil Appeal No. 11/2012),*** they argued that the brokerage and subscription services were merely "incidental"; defined as a minor occurrence following a larger event. This was further supported by the ***UK case of Card Protection Plan Ltd. v Commissioners Customs and Excise UKHL 4,*** where it was held that a service is ancillary if it is not an end in itself but a means of better enjoying the principal service.

17. The Applicant maintained that the income earned by the Kenyan brokerage firms lacked a real and substantive territorial nexus to Uganda. They argued that under Section 17(2)(b) and Section 78 of the ITA, income is only taxable if it is derived from sources in Uganda. Citing ***East African Breweries International Limited (EABIL) vs URA TAT No. 17 of 2017***, they submitted that the legislature's intent was to tax activities occurring within Uganda.

18. Furthermore, they urged the Tribunal to apply the harmonious rule of statutory interpretation as laid out in ***Uganda Revenue Authority v COWI A/S (Civil Appeal 34 of 2020),*** which requires provisions to be construed in line with the overall statutory purpose. To illustrate legislative intent, the Applicant pointed to the 2022 amendment to Section 84 of the ITA, which clarified that certain foreign transport services are not Ugandan-sourced a direct response to the ruling in ***Roche Transport and Logistics Uganda Limited v Uganda Revenue Authority (TAT Application No. 94 of 2020).***

19. The Applicant submitted that a literal interpretation of Section 78(d)(ii) would lead to "manifest absurdity" never intended by Parliament, such as requiring residents to withhold tax on foreign taxi fares or hospital bills. They relied on several authorities to support a more reasonable interpretation, including: ***Goal Relief Development Organization v URA TAT No 77 of 2021,*** where the Tribunal questioned taxing services rendered entirely abroad; ***Uganda Revenue Authority v Jacobsen Uganda Power Plant CO, LTD HCCA 26 of 2018,*** regarding air tickets procured outside Uganda; The "Golden Rule" of interpretation as established in ***Grey v Penrson HLC 6*** and applied locally in ***Kinyara Sugar Works Ltd v URA TAT 17 of 2008***; Maxwell on the Interpretation of Statutes, which states that an intention to produce an unreasonable result should not be imputed to a statute.

20. Finally, the Applicant argued that the withholding obligation under Section 137(1) of the ITA was a practical and factual impossibility. They led evidence that the East African Tea Trade Association (EATTA) deducts brokerage fees directly from sales proceeds before remitting only the net balance to the Applicant. They relied on ***Machame Estates Limited v Uganda Revenue Authority TAT 49 of 2025,*** which held that a payer is merely a "collecting agent" and that withholding tax should be looked at from the perspective of the person making the payment.

21. Citing the definition of "withholding" in ***Black's Law Dictionary 9th Edn***, the Applicant submitted that one cannot "deduct" funds they do not possess. They

concluded that imposing a liability for failing to perform an act where they lacked custody and control of the funds disregards the principle of effective control that underpins the architecture of withholding tax.

22. Finally, the Applicant prayed that the application be allowed with costs.

VI. Submissions of the Respondent

23. The Respondent contended that the Applicant is liable for the assessed Withholding Tax (WHT) of Shs. 56,564,399 on payments made to Kenyan brokerage firms.

24. The Respondent submitted that, as a matter of law, the burden of proving that a tax assessment is incorrect or erroneous lies squarely on the taxpayer. This position was anchored on Section 19 of the Tax Appeal Tribunal Act and Section 28 of the Tax Procedures Code Act. To further fortify this point, the Respondent cited ***Williamson Diamonds Ltd vs Commissioner General (2008) 4 TTLR 167,*** where it was held that the burden of proving an assessment is excessive in no way shifts to the revenue authority.

25. The Respondent argued that income tax is a mandatory imposition under Section 4(1) of the Income Tax Act (ITA). They maintained that for a resident entity like the Applicant, gross income includes income derived from all geographical sources pursuant to Section 17(2)(a) of the ITA. Consequently, the Respondent submitted that the contracts between the Applicant and the Kenyan brokerage firms for the sale of tea are "Ugandan source services contracts", which attract a 15% withholding tax under Section 84(1) and (2) and Part V of Schedule 4 of the ITA.

26. The Respondent contended that, under Section 137(1) of the Income Tax Act Cap 338, the legal obligation to withhold tax rests with the person making the payment. In this case, the brokerage contracts exist solely between the Applicant and the brokers, while the East African Tea Trade Association is not a contracting party but merely acts as a conduit for receiving sale proceeds and remitting brokerage fees on the Applicant's behalf. Accordingly, the

Respondent argued that the involvement of EATTA does not absolve the Applicant of its withholding obligations. Further, pursuant to Section 142 of the Act, a withholding agent who fails to withhold tax remains personally liable to pay the amount due to the Commissioner General.4. Literal Rule of Statutory Interpretation

27. The Respondent urged this Tribunal to apply a strict and literal interpretation of the tax statutes. Relying on Article 17(1)(g) of the Constitution, they argued that the duty to pay taxes is a mandatory constitutional obligation. They cited the Supreme Court of Uganda in ***Siraje Hassan Kajura vs URA (Civil Appeal No. 9 of 2015),*** which adopted the principle from ***Cape Brandy Syndicate v IRC (1921) K.B 64:*** that in a taxing act, one must look strictly at what is clearly said, as there is "no room for an intendment" or equity regarding tax.

28. The Respondent also referred to ***Halsbury's Laws of England*** and the ***Kenyan case of Primarosa Flowers Limited vs. The Commissioner of Income Tax (Appeal No. 18 of 2013)*** to support the principle that a subject is only liable to tax if they fall clearly within the letter of the law.

29. Finally, the Respondent prayed that the Application be dismissed with costs.

VII. Submissions of the Applicant in rejoinder

30. The Applicant contended that the Respondent's characterization of the East African Tea Trade Association (EATTA) as a mere "conduit" is both factually and legally incorrect. The Applicant submitted that EATTA is a central and controlling entity in the transaction chain, whose binding rules dictate the entire auction arrangement and payment flows. They maintained that as a member of EATTA, the Applicant has no control or authority over how sales proceeds are handled or how charges are paid.

31. Regarding the withholding tax obligation, the Applicant argued for a plain and purposive interpretation of Section 137 of the Income Tax Act (ITA). They submitted that the legislature intended the withholding mechanism to apply

only where the payer has custody and control over the funds from which the tax is to be withheld. Imposing this obligation on a party that neither receives the gross proceeds nor pays out the funds was described as being inconsistent with both the statutory text and the operational realities of the tea auction system.

32. The Applicant relied on the case of ***Sunfresh Enterprises (Pvt) Ltd t/a Bulembi Safaris v Zimbabwe Revenue Authority (HB 78 of 2004)*** to demonstrate that a revenue authority cannot legally assess a party for taxes on commissions that were paid directly by a third party and never held by the applicant. They also relied on the case of ***ABSA Bank Uganda Limited v Uganda Revenue Authority (TAT No. 57 of 2021)*** to establish that the obligation to withhold tax rests on the party that "actually effects payment". The Applicant submitted that since EATTA is the party effecting the payment, the withholding obligation cannot rest on the Applicant.

33. The Applicant further highlighted that during cross-examination, the Respondent's own witness (RW1) confirmed there was no evidence in the Applicant's bank statements of any payments being made to the brokers.

34. Finally, the Applicant submitted that the Respondent's insistence on a withholding obligation without a practical possibility of the Applicant deducting or recovering the tax would amount to imposing an export levy on tea. They argued this would be contrary to the Government of Uganda's established policy of supporting exports. Consequently, the Applicant prayed that the Tribunal set aside the assessment in its entirety.

VIII. Determination by the Tribunal

35. Having carefully considered the pleadings, the evidence on record, and the submissions of the parties together with the authorities cited, the Tribunal now proceeds to determine the issues framed.

Burden of Proof

36. The Tribunal is guided by section 19 of the Tax Appeals Tribunal Act, which places the legal burden upon the Applicant to demonstrate that the assessment raised by the Respondent is excessive, erroneous, or otherwise not in accordance with the law. This statutory position establishes that an assessment issued by the Respondent is presumed correct unless displaced by credible evidence and sound legal argument presented by the taxpayer.

37. This position is well settled in tax jurisprudence. In ***Williamson Diamonds Ltd v Commissioner General [1971] EA 247***, it was held that the obligation to prove that an assessment is incorrect rests squarely on the taxpayer. This principle has been consistently applied by this Tribunal, including in ***Red Concepts Ltd v URA (TAT Application No. 36 of 2018)*** and ***Leds Uganda Ltd v URA (TAT Application No. 3 of 2018),*** where it was emphasized that a taxpayer asserting a claim must substantiate it with evidence of the underlying transactions.

38. Accordingly, the Applicant bears the burden of establishing, on a balance of probabilities, that the impugned assessment ought not to stand.

Whether the Applicant is liable to pay the assessed tax

39. The Applicant challenges the Respondent's imposition of withholding tax on brokerage and commission fees that are earned by brokers in Kenya from the sale of the Applicant's tea at the Mombasa auction. The Applicant disputes the withholding tax assessment on the basis that they did not pay the brokers directly and received only the net proceeds from the sale of the tea. The Applicant argues that EATA, an organisation in Kenya, determines and pays the brokerage fees and remits only the net proceeds. Therefore, the duty to withhold does not arise.

40. The Applicant's brokers are non-resident persons for tax purposes. We must therefore determine whether the brokerage fees are subject to Ugandan tax.

This is because withholding tax is merely a collection mechanism; therefore, we must determine whether there is a charging provision that brings the brokerage fees within the ambit of Ugandan taxation.

41. Section 4 of the ITA, read together with sections 15 and 17 (2) (b) of the ITA imposes tax on every non-resident person who derives income from sources in Uganda. The sourcing rules, which determine when a non-resident person is deemed by the ITA to have derived income from sources in Uganda, are contained in Part IX of the ITA, which deals with international taxation. Section 84 of the ITA imposes withholding tax on every non-resident person deriving income under a Ugandan source services contract.

42. Two conditions must be met for a non-resident person to be taxable under section 84:

(i) There must be a non-resident person; and
(ii) Who derives income under a Uganda-sourced services contract.

The first condition is satisfied, as the recipients of the brokerage and commission fees are residents of Kenya who operate in Kenya. The second condition is whether the income is derived under a Ugandan source services contract.

43. A Ugandan source services contract is defined by section 84 (4) to mean a contract, other than an employment contract, whose principal purpose of the contract is the performance of services which give rise to income sourced in Uganda. This means that there must be:

(i) A contract;
(ii) whose principal purpose/ aim/ objective is the performance of services; and
(iii) The contract must give rise to income sourced in Uganda.

44. In the present case, there are contracts between the Applicant and the Kenyan brokerage firms for the sale of tea. Therefore, both conditions (i) and (ii) are

met. Regarding the third condition, we must determine whether the contracts give rise to income sourced in Uganda. Section 78 of the ITA lists several circumstances in which a non-resident person will be deemed to have sourced income from Uganda. One of these is contained in section 78 (d) (ii), which provides that income is derived from sources in Uganda to the extent to which it is a fee for the provision of services paid by a resident person.

45. The above provision applies to scenarios where a resident person, such as the Applicant, pays a fee to a non-resident person for the provision of services.

46. In the present case, the Applicant paid brokerage and commission fees to non-resident persons for brokerage services rendered in Kenya. In their evidence and submissions, the Applicant stated that the East African Tea Trade Association (EATTA) deducts brokerage fees directly from sales proceeds before remitting only the net balance. The payments, admittedly, are deducted from the Applicant's business income. Therefore, they constitute payments by the Applicant to the brokerage firms, thereby falling squarely within section 78 (d) (ii) as they constitute income, in the hands of the non-resident persons, that they derived from the sources in Uganda.

47. The Applicant has argued that when interpreted literally, section 78 (d) (ii) leads to "manifest absurdity" never intended by Parliament and invited the Tribunal to adopt a purposive rule of interpretation. Similar arguments were made in ***Rwenzori Commodities Limited v URA TAT Application 36 of 2025,*** which is on all fours with the present application. In that case, the Tribunal rejected the application of the purposive rule, finding a clear intention by the Legislature to widen the scope of withholding tax to capture payments made by resident persons to non-resident persons.

48. The Tribunal held:

> *"... section 78 (d) (ii)...was introduced by the Income Tax (Amendment) Act, 2015, which repealed the previous provision – section 78 (c)...which ...was narrower in scope than the current section 78 (d) (ii), as only income that arose from services rendered in Uganda was taxable on the non-resident person.*

Therefore, unlike the current section 78 (d) (ii), the provision would not apply where the services were rendered or performed abroad. Had this dispute related to brokerage fees paid before 2015, the fees would not have fallen within the source rules as they stood then...However, in 2015, the Legislature ... widened the scope of section 78 by repealing subsection (c) and replacing it with a catch-all provision. Under the new provision, section 78(d)(11), it does not matter where the services are rendered. As long as a payment originates from Uganda and it is to a non-resident person for services rendered wherever, the Ugandan resident person is required to withhold...The Tribunal cannot depart from the literal rule of interpretation in favour of the golden rule when there is a clear intention of the Legislature to depart from the very position that the Applicant would like us to adopt."

49. In addition to the above, the Tribunal found that the Long Title of the 2015 amendment Act clearly stated that the intention of the Act was to expand the scope of withholding tax to include all payments made to non-resident persons for services rendered, irrespective of the place of performance of the services.

50. In view of the above, we find that the Applicant's brokers derived income from sources in Uganda and are therefore liable to tax in Uganda in accordance with sections 4, 17 and 78 of the Income Tax Act. We now turn to the withholding tax obligations of the Applicant, specifically, whether the Applicant, ought to have withheld tax from the brokerage fees.

51. Section 137 of the ITA requires any person making a payment of the kind referred to in Section 82, 84 or *85* of the ITA to withhold from the payment the tax levied under the relevant Section. Having established that the payments fall under section 84 of the ITA, the Applicant was obliged to withhold tax and account for it. Further, section 142 of the ITA provides that a withholding agent who fails to withhold tax is personally liable to pay to the Commissioner General the amount of tax which has not been withheld. However, the withholding agent is entitled to recover this amount from the payee.

52. The Applicant has argued that the withholding obligation under Section 137(1) of the ITA was a practical and factual impossibility because the East African

Tea Trade Association (EATTA) deducts brokerage fees directly from sales proceeds before remitting only the net balance to the Applicant.

53. The Applicant's witness stated that they engaged the services of three Kenya-based brokerage firms, namely: Tea Brokers East Africa Ltd, Africa Tea Brokers Ltd, and Venus Tea Brokers Ltd, to sell its tea at EATTA Mombasa's tea auctions. Therefore, it was the Applicant's duty, when contracting with its brokers, to ensure that the brokers' tax obligations concerning their brokerage fees were contractually agreed. By failing in this duty, the Applicant assumed the Applicant's tax obligation, thereby, bringing themselves within the scope of section 142 of the ITA, which makes the Applicant personally liable to pay the Respondent the tax which has not been withheld.

54. The Tribunal, as was the case in ***Rwenzori Commodities Limited (supra),*** rejects the argument that the Applicant is absolved from the duty to withhold since the payments were not directly made by them. The Tribunal held:

> *"It should also be noted that while the Applicant did not have physical custody of the funds from which the brokerage fees were deducted, the funds at all material times belonged to the Applicant, who had control over them as they arose from the sale of its tea. The economic reality or true essence of a transaction is more important than its legal or superficial appearance. In other words, the Tribunal shall consider the substance of the transaction over its form. Therefore, how the Applicant chooses to settle its obligations with the brokers, whether by a direct cash payment or offset, does not dispense with its withholding tax obligations."*

55. It is also worth noting that the Applicant recognises the brokerage fees as expenses in its books of accounts and claims an income tax deduction for the same. It is therefore disingenuous for the Applicant to hide behind the absence of a direct payment mechanism on its part while expensing the very brokerage fees both for accounting and tax purposes.

56. Therefore, having evaluated the evidence, the Tribunal finds that the Applicant is liable to pay the withholding tax assessed and makes the following orders:

(i) The withholding tax assessment amounting to Shs. 56,564,399 is hereby maintained.

(ii) Costs are awarded to the Respondent.

Dated at Kampala this **17th** day of **April** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. STELLA NYAPENDI CHOMBO
MEMBER

HON. NAJJEMBA ROSEMARY
MEMBER