TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 125 OF 2024

VIVO ENERGY UGANDA LIMITED .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO, HON. PROSCOVIA REBECCA NAMBI.

RULING

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's objection decision dated 21 May 2024 arising from a tax audit of the Applicant for the period 2020 to 2022, which initially resulted in assessments amounting to Shs.67,176,149,496 under various tax heads.

2. Following objection proceedings, reconciliation, and Tribunal-guided mediation, the parties resolved part of the dispute and filed a Partial Consent Settlement Order, leaving for determination a residual contested amount of Shs.44,881,314,376 comprising Income Tax of Shs.14,120,626,285, Rental Income Tax of Shs.15,239,151,011, Withholding Tax of Shs. 3,462,531,485, and Value Added Tax of Shs.12,059,005,595.

3. The unresolved issues relate to alleged sales and stock variances, cylinder deposits, deemed rental income under the Company-Owned Dealer-

Operated model, and VAT and WHT on throughput fees paid to Vivo Energy Kenya for services connected with the importation of petroleum products into Uganda.

II. Background facts

4. The Applicant is engaged in the importation, marketing and distribution of petroleum products and Shell-branded lubricants in Uganda. The Respondent conducted a tax audit of the Applicant for the period 2020 to 2022. Following the audit, the Respondent issued a management letter dated 18 January 2024 assessing the Applicant under several tax heads, including Income Tax, Rental Income Tax, Value Added Tax and Withholding Tax. The assessments initially amounted to Shs.67,176,149,496

5. The Applicant objected to the assessments. The objection process was followed by reconciliation and Tribunal-guided mediation. As a result, part of the dispute was resolved between the parties. The parties subsequently filed a Partial Consent Settlement Order, which the Tribunal adopted on 17 February 2026. The effect of the partial settlement was to narrow the dispute before the Tribunal.

6. The residual contested liability left for determination is Shs. 44,881,314,376. This amount comprises Income Tax of Shs. 14,120,626,285, Rental Income Tax of Shs.15,239,151,011, Withholding Tax of Shs.3,462,531,485, and Value Added Tax of Shs.12,059,005,595.

7. The residual income tax assessment arises from variances identified during the audit between the Applicant's VAT returns, sales records, stock movement records and financial statements for the audit period. The items contributing to the remaining variance include cylinder deposits, the 2020 un-invoiced excise duty variance, the December 2021 VAT return variance, and fuel stock movement variances.

8. The cylinder deposit item arose from differences between the Applicant's general ledger records and amounts declared in the VAT returns in respect of LPG cylinder deposits. The record shows that this item was considered during reconciliation and was further reduced during the proceedings.

9. The 2020 un-invoiced excise duty item arose from a variance between the Applicant's VAT sales, exclusive of excise duty, and the corresponding income tax sales figures for the same period.

10. The December 2021 VAT return item arose from a variance of approximately Shs.28.5 billion between the Applicant's trial balance and VAT returns for the period January to October 2021.

11. The stock movement item arose from variances identified in the Applicant's fuel stock records. The stock records included fuel movements relating to the Applicant's petroleum operations during the audit period.

12. The Rental income tax assessment arose from the Applicant's Company-Owned Dealer-Operated model. Under this model, the Applicant owns certain service stations and appoints dealers to operate from those stations and sell the Applicant's petroleum products.

13. The Applicant also sells petroleum products through Dealer-Owned Dealer-Operated stations. Under that model, the dealer owns the station and sells the Applicant's products from that station. During the audit, the Respondent compared the margins applicable under the Company-Owned Dealer-Operated model with those applicable under the Dealer-Owned Dealer-Operated model. The difference between the two margins formed the basis of the rental income assessment.

14. The VAT component of the residual dispute includes VAT assessed on cylinder deposits and on throughput and automation charges relating to service stations. The VAT and WHT assessments on throughput fees arise from payments made by the Applicant to Vivo Energy Kenya Limited. The Applicant imports petroleum products through Kenya and uses Vivo Energy

Kenya in connection with the movement of such products through Kenya's petroleum importation and pipeline system.

15. Under the Supply Services Agreement between the Applicant and Vivo Energy Kenya, the Applicant paid throughput fees and related charges in respect of services connected with the importation, handling, storage, processing, loading, dispatch and movement of petroleum products destined for Uganda. The throughput fee was stated as USD 6.0 per cubic metre. The record identifies components associated with the throughput arrangement, including financing, distribution and supply, and clearing and forwarding costs. Following the narrowing of the dispute through the Partial Consent Settlement Order, the Tribunal is required to determine the residual assessments under the remaining tax heads and to make the appropriate consequential orders.

III. Issues for determination

16. The issues for determination are:
    (i) Whether the Applicant is liable to pay the taxes as assessed
    (ii) What remedies are available to the parties

IV. Representation

17. Mr. Joseph Luswata and Mr. Winston Churchill Ruhayana represented the Applicant while Ms. Gloria Akatuhurira Twinomugisha, Ms. Charlotte Katuutu, Mr. Simon Peter Orishaba, Mr. Tonny Kalungi, and Mr. Blaise Alenyo Okwero from the Respondent's Legal Services and Board Affairs Department represented the Respondent.

V. The Applicant's evidence

18. Mr. Joshua Kabugo (AW1), the Applicant's Financial Controller, testified in support of the Applicant's case.

19. AW1 testified that the Respondent's assessments were founded on accounting and reconciliation errors rather than actual undeclared income. In relation to the Income Tax assessment, he explained that the alleged

turnover understatement arising from cylinder deposits was attributable to internal General Ledger reclassifications involving the movement of Shs. 8.01 billion between accounts and did not represent sales. He further challenged the Respondent's reliance on adjustments recommended by PwC concerning un-invoiced excise duty for 2020, contending that the auditors applied incorrect fuel volumes and failed to account for amendments to excise duty rates during the year. AW1 also testified that the alleged variance of Shs.28.5 billion in the December 2021 VAT return resulted from the omission of several revenue-adjusting items, including rebates, discounts, and LPG tank deposits.

20. Regarding stock movement variances, AW1 explained that the discrepancies arose from operational transactions that did not constitute sales. These included borrowing and lending arrangements between Oil Marketing Companies, hospitality transactions involving the use of storage facilities by other operators, and transporter and loading losses resulting from theft, evaporation, and temperature-related differences. He stated that the Respondent erroneously aggregated certain transporter losses during mediation, rather than utilising them as reconciling items.

21. In respect of Value Added Tax, AW1 testified that the Respondent's computation of VAT on cylinder deposits contained errors arising from the selection of incorrect General Ledger figures and the omission of certain monthly declarations. He further disputed the Respondent's valuation of throughput and automation fees, maintaining that the correct amount was SHS. 750.7 million rather than SHS. 989.7 million as assessed.

22. AW1 also challenged the Respondent's assessment of assumed rental income. He explained the distinction between the Applicant's Company Owned Dealer Operated (CODO) and Dealer Owned Dealer Operated (DODO) business models and testified that the 85 shillings per litre margin differential granted to DODO dealers represented compensation for their investment in fuel station infrastructure rather than rental income accruing to the Applicant.

23. Finally, AW1 testified that the Applicant pays brand fees to Shell Brands International AG under a licensing arrangement and that the applicable licence agreement expressly prohibits the recharging of those costs to dealers. He therefore maintained that the Respondent's treatment of the related transactions was erroneous.

24. On the basis of the foregoing evidence, AW1 maintained that the impugned assessments were excessive, erroneous, and unsupported by the Applicant's accounting records and operational realities.

25. The Applicant's second witness was their Transport and Logistics Manager, Mr. Samuel Bukenya Tusubira (AW2). He testified regarding the nature and tax treatment of throughput fees paid by the Applicant to Vivo Energy Kenya (VEK) during the audit period.

26. AW2 testified that the Applicant imports petroleum products from the Middle East through the Port of Mombasa. He explained that under Kenyan law and policy, non-Kenyan trading companies are not permitted to participate directly in the Open Tender System for fuel importation or engage directly with the Kenya Pipeline Company (KPC). Consequently, the Applicant operates through Vivo Energy Kenya pursuant to a Supply Services Agreement executed in 2014.

27. AW2 stated that under the Supply Services Agreement, the Applicant pays VEK a throughput fee of US$ 6.0 per cubic metre to facilitate the importation, handling, storage, and transportation of petroleum products destined for Uganda. He testified that the throughput fee represented a reimbursement of the actual costs incurred by VEK in providing the logistical and operational support necessary to move the Applicant's products through the Kenyan supply chain.

28. AW2 explained that the throughput fee comprised various cost components, including distribution and supply costs, financing costs, clearing and forwarding expenses, and a margin element. According to the

witness, the distribution and supply costs covered staff expenses, rental costs for operational premises, depreciation, and other administrative expenditures incurred by VEK in managing the fuel supply chain. He further testified that financing costs arose from the requirement to maintain a minimum volume of fuel within the KPC pipeline system, commonly referred to as the "line fill" obligation, which VEK financed through borrowings from Kenyan commercial banks.

29. The witness further testified that clearing and forwarding costs constituted reimbursements for payments made by VEK to Kenyan clearing agents responsible for processing mandatory customs and transit documentation within the Kenya Revenue Authority system. He stated that these costs were incurred on the Applicant's behalf and subsequently allocated to the Applicant in proportion to the volume of fuel handled.

30. AW2 described the operational process through which fuel imported by the Applicant is received, stored, and transported to Uganda. He testified that VEK personnel, together with independent surveyors, supervise the receipt, allocation, storage, and loading of fuel products. He further stated that VEK coordinates truck vetting, loading operations, and interactions with clearing agents to ensure that the Applicant's products are properly cleared for transit to Uganda.

31. The witness testified that he personally reviews and validates the detailed monthly calculations supporting the invoices issued by VEK. He explained that the invoices separately identify throughput fees and KPC pipeline costs before being submitted to the Applicant's Finance Department for payment. According to AW2, these invoices reflect actual operational costs incurred by VEK and do not constitute consideration for any independent taxable service supplied to the Applicant.

32. On the basis of the foregoing evidence, AW2 maintained that the amounts paid to VEK represented reimbursements of actual costs incurred in facilitating the transportation and handling of the Applicant's petroleum

products and should not be treated as taxable service fees for the purposes of the impugned assessments.

VI. The Respondent's evidence

33. The Respondent called Ms. Ritah Namugumya (RW1), a Supervisor in the Domestic Taxes Department, as their first witness.

34. RW1 testified that the Applicant was subjected to a comprehensive tax audit covering the period January 2020 to December 2022. She stated that the audit initially resulted in assessments totalling Shs.67,176,149,496. However, following various reconciliations and mediation processes undertaken during the proceedings, the disputed tax liability was reduced to Shs.44,881,314,376.

35. In relation to the Income Tax assessment, RW1 testified that the Respondent identified significant variances between the sales declared in the Applicant's VAT returns and those reflected in its Income Tax returns and financial statements. She stated that the Respondent carried out detailed reconciliations using EFRIS data, sales ledgers, VAT returns, and financial statements and concluded that portions of the variances remained unexplained.

36. With regard to the adjustment relating to un-invoiced excise duty for the year 2020, RW1 rejected the Applicant's explanation that the variance arose from a misstatement adjustment recommended by its external auditors. She testified that the fuel volumes reflected in the Applicant's supporting workings exceeded the volumes contained in the Applicant's own sales records by more than two million litres and that the Applicant failed to provide documentary evidence capable of reconciling the discrepancy. According to RW1, the Respondent therefore disallowed the adjustment.

37. RW1 further challenged the Applicant's explanation concerning the sales variance reported in December 2021. She testified that whereas the

Applicant sought to retract a declaration of approximately Shs. 28.5 billion on the basis that it arose from an interim audit recommendation, the Applicant's auditors subsequently clarified that the adjustment did not form part of their final recommendations. She further stated that the Applicant's revised position was inconsistent with historical trading patterns and industry trends, which ordinarily reflect increased fuel sales in December.

38. Concerning cylinder deposits, RW1 testified that the Respondent accepted and allowed a substantial portion of the variance following reconciliation exercises undertaken with the Applicant. However, she maintained that an amount of approximately Shs.486 million remained unexplained and was therefore properly treated as taxable income.

39. RW1 also testified regarding stock movement variances identified during the audit. She stated that the Respondent observed discrepancies between stock movement reports and sales records, which initially resulted in a variance of approximately Shs.10.1 billion. She rejected the Applicant's explanation regarding hospitality fuel transactions, stating that the proposed adjustments would create inconsistencies between available stock and recorded sales. She further denied that the Respondent had double-counted transporter losses and maintained that the Respondent's reconciliations accurately reflected the movements of stock.

40. In relation to Rental Income Tax, RW1 testified that the Applicant failed to declare rental income arising from the use of service station premises by dealers operating under the Company-Owned Dealer Operated (CODO) model. She stated that the Applicant recovered only Shs. 3 per litre from such dealers despite incurring substantial expenditure in constructing and maintaining the stations.

41. RW1 further testified that a comparison between Dealer-Owned Dealer Operated (DODO) stations and CODO stations revealed a margin differential of approximately Shs.85 per litre. In her view, this differential reflected the economic value of the infrastructure and premises provided by

the Applicant and demonstrated that the amounts recovered from dealers did not reflect arm's-length market conditions. She therefore maintained that the Respondent was justified in making an adjustment under the applicable transfer pricing provisions.

42. RW1 also testified concerning the Respondent's assessment relating to brand fee recharges. She stated that the Respondent initially assessed VAT on the basis that the Applicant had recharged dealers for the use of the Shell brand. However, following a review of the licensing agreement between the Applicant and Shell Brands International AG, the Respondent established that sublicensing was prohibited and that the Applicant had not earned any such income. Consequently, the Respondent vacated the assessment relating to brand fee recharges.

43. RW1 concluded that the remaining assessments were based on objective reconciliations of EFRIS data, financial statements, accounting records, and other documentary evidence obtained during the audit. She maintained that the Applicant had failed to provide sufficient evidence to rebut the Respondent's findings and therefore remained liable for the disputed taxes.

44. The Respondent called a second witness, Mr. Rogers Kasirye Pavlov (RW2), a Supervisor in the Large Taxpayers Office of the Domestic Taxes Department of the Respondent, who testified regarding the findings of an independent review committee established to review certain sales variances identified during the audit.

45. RW2 testified that the review committee was tasked with examining variances between the Applicant's VAT declarations and Income Tax returns for the years 2020 and 2021. He stated that the committee independently reviewed the Applicant's records, reconciliations, and supporting documentation before making recommendations to the Respondent.

46. In relation to the 2020 sales variance, RW2 testified that the Applicant had attributed a variance of Shs.21,097,798,426 to differences arising from the

treatment of excise duty. According to the Applicant, the audited accounts reflected sales net of excise duty, whereas VAT returns were filed on figures inclusive of excise duty. The Applicant further attributed the discrepancy to system limitations, which occasionally prevented the separate recording of excise duty and sales.

47. RW2 testified that the review committee undertook an analysis of the Applicant's sales ledger for the period ending 31 December 2020. He stated that the committee observed instances in which local sales transactions were recorded without corresponding excise duty entries. In the committee's view, this indicated that certain excise duty amounts had not been properly captured within the Applicant's accounting records.

48. The witness further testified that the committee established that 13,280,109 litres of fuel had been sold locally without the corresponding duty being reflected in the sales ledger. Based on its analysis, the committee concluded that excise duty amounting to Shs.13,600,035,308 had not been properly accounted for, resulting in an overstatement of sales. Consequently, the committee recommended that the 2020 sales variance be reduced by that amount.

49. Regarding the 2021 sales variance of Shs. 28,529,043,721, RW2 testified that the Applicant had attributed the adjustment to advice allegedly received from its former external auditors, PricewaterhouseCoopers (PwC), recommending that VAT declarations be aligned with figures reflected in the trial balance.

50. RW2 stated that the review committee requested documentary evidence from the Applicant demonstrating that PwC had directed or recommended the adjustment. According to the witness, the Applicant failed to produce any formal written instruction from PwC and instead indicated that the recommendation had been communicated verbally. He testified that the committee considered the emails and workings produced by the Applicant but found them insufficient to justify the adjustment.

51. The witness further testified that the committee undertook a trend analysis of the Applicant's sales declarations for the month of December over several years. He stated that if the disputed amount of Shs.28,529,043,721 were removed from the December 2021 VAT declaration, the resulting figures would reflect a decline of approximately 0.7% compared to sales reported in November 2021.

52. RW2 testified that such a decline was inconsistent with established industry trends and the Applicant's historical trading patterns, given that December is ordinarily characterised by increased consumer demand and higher fuel sales volumes. He noted that the Applicant's sales declarations showed growth of approximately 20.8% in December 2020 and 9.1% in December 2019, when compared to the preceding months.

53. Based on the foregoing analysis, RW2 testified that the review committee concluded that the Applicant had failed to provide sufficient evidence to demonstrate that the disputed declaration resulted from an accounting or reporting error. He stated that the committee therefore resolved to maintain the full variance of Shs.28,529,043,721 in the Applicant's taxable income.

54. RW2 maintained that the review committee's findings were based on an independent review of the Applicant's accounting records, sales ledgers, VAT declarations, and supporting documentation. He therefore supported the Respondent's position that the remaining assessments were justified and should be upheld.

VII. Submissions of the Applicant

55. The Applicant submitted that the residual disputed tax liability of Shs. 44,881,314,376 comprises assessments for Income Tax, Rental Income Tax, Value Added Tax (VAT), and Withholding Tax (WHT), all of which are excessive, erroneous, and unsupported by the evidence on record.

56. Regarding Income Tax, the Applicant submitted that the impugned assessment arose from variances identified by the Respondent between VAT returns and the Applicant's financial statements. The Applicant argued that these variances were adequately explained and that the applicable standard is proof on a balance of probabilities, relying on ***Bullion Refinery Limited v Uganda Revenue Authority (TAT Application No. 87 of 2021)*** and ***Explorer Limited v Uganda Revenue Authority (TAT Application No. 87 of 2023).***

57. The Applicant submitted that the alleged turnover variance arising from cylinder deposits was attributable to an internal movement of cash balances between General Ledger accounts and did not constitute a sale transaction capable of generating taxable income. It was further submitted that the Respondent eventually conceded this issue during the proceedings.

58. The Applicant further challenged the assessment relating to un-invoiced excise duty for the year 2020, contending that both the external auditors and the Respondent applied incorrect excise duty rates and overstated fuel volumes. The Applicant argued that the remaining unexplained variance was immaterial and ought to be disregarded under the doctrine of proportionality and the principle of de minimis non curat lex.

59. The Applicant also submitted that the variance relating to the December 2021 VAT return resulted from an erroneous classification of revenue as exempt sales following recommendations made by its external auditors. According to the Applicant, the calculations failed to take into account various revenue-adjusting items, including rebates, discounts, and LPG tank deposits.

60. In relation to stock movement variances, the Applicant argued that the Respondent failed to properly account for hospitality transactions, borrow-loan arrangements, and transporter losses, and further erred by double-counting certain losses. The Applicant contended that the Respondent unlawfully sought to tax gross figures without taking into consideration the

expenses associated with those transactions, contrary to Section 22 of the Income Tax Act.

61. Concerning VAT assessed on cylinder deposits, the Applicant submitted that the Respondent's computations contained several errors, including the selection of incorrect General Ledger balances and the omission of certain declarations made during the audit period.

62. The Applicant further challenged the VAT assessment on throughput and automation fees. It was submitted that those fees were incidental to the exempt supply of petroleum products and therefore formed part of the exempt supply under Section 12(1) of the Value Added Tax Act. Reliance was placed on ***Total Uganda Limited v Uganda Revenue Authority (2008-2011) UTLR283 and Uganda Revenue Authority v Uganda Taxi Operators and Drivers Association (UTODA), CA 13 Of 2015***, wherein courts and tribunals adopted the principle that ancillary services assume the tax character of the principal supply.

63. The Applicant also disputed the Rental Income Tax assessment arising from what the Respondent described as deemed rental income earned from dealers operating under the Company Owned Dealer Operated (CODO) model. The Applicant submitted that Ugandan tax law does not recognize the concept of deemed rental income and that only actual income earned or received may be subjected to tax. Reliance was placed on ***Zee Investments Limited v Uganda Revenue Authority, TAT App No. 242 Of 2022, Guaranty Trust Bank Limited v Uganda Revenue Authority, TAT App No. 20 of 2024, and Cape Brandy Syndicate v Inland Revenue Commissioners, (1921) KB 64.***

64. The Applicant further argued that the station infrastructure provided to dealers under the CODO model was merely incidental to the principal activity of supplying fuel and therefore could not be separately subjected to Rental Income Tax or VAT.

65. In respect of VAT assessed on throughput fees paid to Vivo Energy Kenya (VEK), the Applicant submitted that the impugned payments constituted reimbursements and disbursements rather than consideration for imported services. It was argued that the activities giving rise to the costs were performed and consumed in Kenya and therefore fell outside the scope of imported services under the Value Added Tax Act. The Applicant relied on Africa Broadcasting (U) Limited v Uganda Revenue Authority and other authorities concerning the taxation of imported services.

66. The Applicant further submitted that the payments represented reimbursements of actual costs incurred by VEK on the Applicant's behalf, including line-fill financing costs, clearing and forwarding charges, and operational expenses. Reliance was placed on ***Bank of Africa v Uganda Revenue Authority, TAT 62 of 2018, Prime Solutions Limited v Uganda Revenue Authority, TAT 116 Of 2019 and Nell Gwynn House Maintenance Fund Trustees v Customs & Excise Commissioners, (1999) STC 79, 90*** for the proposition that genuine disbursements do not form part of the consideration for taxable services.

67. The Applicant also argued that because the fuel remained in international transit, the associated services and costs were properly treated as zero-rated supplies. Reliance was placed on ***Diamond Shipping Company v Uganda Revenue Authority, TAT 21 Of 2008.***

68. Regarding Withholding Tax, the Applicant submitted that reimbursements do not constitute income and therefore cannot attract withholding tax. It was argued that the repayment of expenditure incurred on behalf of another person merely restores the payee to its original position and does not result in any gain or profit. Reliance was placed on ***Jacobsen Uganda v Uganda Revenue Authority, TAT App No. 11 Of 2016 and Uganda Revenue Authority v Jacobsen Uganda Power Plant Co. Ltd, CA No. 26 Of 2018.***

69. The Applicant further submitted that withholding tax is merely a mechanism for the collection of income tax and cannot arise where there is no

underlying chargeable income. Reliance was placed on ***Luwaluwa Investment Limited v Uganda Revenue Authority, CA No. 043 Of 2022*** and on foreign authorities, including ***GE India Technology Centre v Commissioner of Income Tax, (2010) 327 ITR 456 and Coca-Cola v Deputy Commissioner of Income Tax.***

70. The Applicant therefore prayed that the Tribunal find that the impugned assessments are excessive, erroneous, and unsupported by law and evidence, and consequently set aside the disputed tax liability in its entirety together with such other reliefs as the Tribunal may deem just.

VIII. Submissions of the Respondent

71. The Respondent submitted that, following the mediation and reconciliation processes undertaken by the parties, the residual tax liability remaining for determination by the Tribunal was Shs.44,502,462,081. The Respondent maintained that the assessments were lawfully issued and that the Applicant had failed to discharge the statutory burden of proving that the assessments were excessive, incorrect, or should have been made differently.

72. The Respondent submitted that the burden of proof rests on the taxpayer challenging an assessment. It relied on section 19 of the Tax Appeals Tribunal Act, section 28 of the Tax Procedures Code Act, and section 101 of the Evidence Act. The Respondent also relied on ***Wabulungu Multipurpose Estates Ltd v Uganda Revenue Authority, Civil Appeal No. 26 Of 2015 and Williamson Diamonds Ltd v Commissioner General [2008], 4 TTLR 167,*** for the proposition that a taxpayer seeking a deduction, exclusion, or adjustment bears the burden of proving entitlement to it, and that the burden does not shift to the Respondent.

73. The Respondent further submitted that where a taxpayer's records do not reconcile, the Commissioner is entitled to raise assessments based on the best available information. It relied on ***Tembo Steels (U) Ltd v Uganda Revenue Authority, Civil Appeal No. 77 of 2011***. The Respondent also

submitted that any adjustment capable of reducing a taxpayer's liability must be supported by credible, reliable, and independently verifiable documentation, relying on ***Quickway Property Services Limited v Uganda Revenue Authority, (Application TAT 105 of 2021), MTN Uganda Ltd v Uganda Revenue Authority, TAT Application No. 15 of 2018 and SMEC International Limited v Uganda Revenue Authority, TAT Application No. 75 of 2019.***

74. In relation to Income Tax, the Respondent submitted that the variances established between the Applicant's VAT returns, income tax declarations, sales ledgers and stock movement records constituted undeclared taxable income. The Respondent maintained that the Applicant failed to provide satisfactory documentary evidence to support the reclassification of transactions and variances reflected in its records.

75. Regarding the un-invoiced excise duty issue, the Respondent submitted that the Applicant's reclassification of Shs.21,097,798,426 was not supported by the sales ledger data. The Respondent stated that it allowed an adjustment of Shs.13,600,035,308 in favour of the Applicant but retained the residual unsupported amount. It further submitted that the Applicant's reliance on the doctrines of de minimis and proportionality was misconceived because Uganda's Income Tax Act does not create a de minimis threshold below which taxable income is disregarded.

76. The Respondent also submitted that the Applicant's attempt to retract or reclassify amounts previously declared in statutory returns was not supported by contemporaneous records. It relied on ***Nile Breweries Limited v Uganda Revenue Authority, TAT Applications No. 135 Of 2024*** for the proposition that EFRIS and electronic invoicing records constitute strong corroborative evidence against a taxpayer's attempt to reclassify or retract declared transactions.

77. Concerning the December 2021 VAT return adjustment of Shs. 28,529,043,721, the Respondent submitted that the Applicant had not produced sufficient written evidence from its external auditors to justify the

adjustment. The Respondent relied on EFRIS data and a six-year trend analysis, which it submitted showed that December was ordinarily a peak trading month and that the Applicant's revised figures were commercially implausible.

78. In relation to stock movement variances, the Respondent submitted that it had accepted and allowed verified categories such as additional transporter losses, loading losses, and borrowed fuel volumes. However, it maintained that the explanations for the remaining hospitality fuel and the OLA Energy consignment were unsupported by credible contemporaneous documentation and that the unresolved variances remained taxable.

79. On VAT assessed on cylinder deposits, the Respondent submitted that cylinder deposits constitute consideration for the supply or use of LPG cylinders and are taxable supplies. It maintained the VAT assessments for 2021 and 2022 after reducing the 2022 variance as a good-faith concession.

80. Regarding throughput and automation charges at service stations, the Respondent submitted that the charges were not incidental to the exempt supply of fuel. It distinguished ***Total Uganda Limited v Uganda Revenue Authority, TAT Application (2008-2011) and Uganda Revenue Authority v Uganda Taxi Operators and Drivers Association***, ***Civil Appeal No. 13 of 2015,*** arguing that throughput and automation charges provide independent benefits to dealers, including access to station infrastructure and real-time monitoring systems, and should therefore be treated as distinct taxable supplies.

81. With respect to Rental Income Tax, the Respondent submitted that the Applicant made station premises and infrastructure available to CODO dealers and charged only SHS. 3 per litre as throughput rent. The Respondent argued that this charge was not at arm's length, and that the DODO/CODO margin differential of Shs. 85 per litre provided an appropriate benchmark for the market value of the benefit enjoyed by CODO dealers. The Respondent relied on section 116(1) of the Income Tax

Act, the Income Tax (Transfer Pricing) Regulations, 2011, OECD Transfer Pricing Guidelines, ***W T Ramsay Ltd v Inland Revenue Commissioners, UKKL1; [1982] and Vivo Energy Uganda Ltd v Commissioner General Uganda Revenue Authority, CA No. 1 Of 2019***.

82. The Respondent further submitted that the CODO dealers were associated persons because they were commercially dependent on the Applicant, operated from the Applicant's premises, sold the Applicant's products, and used the Applicant's station infrastructure. In the alternative, the Respondent submitted that section 117 of the Income Tax Act permitted recharacterisation because the form of the transaction did not reflect its substance.

83. Regarding VAT and Withholding Tax on throughput fees paid to Vivo Energy Kenya, the Respondent submitted that the payments represented consideration for imported services consumed by the Applicant in Uganda. It argued that the Supply Services Agreement showed that VEK provided services for receiving, storing, processing, taking delivery of, loading and dispatching fuel from Kenya for delivery to Uganda, and that the economic benefit of the services was realised in the Applicant's Ugandan business.

84. The Respondent distinguished ***Africa Broadcasting (U) Limited v Uganda Revenue Authority, TAT Application No. 44 of 2018, and Diamond Shipping Company v Uganda Revenue Authority, No. 21 of 2008***. It submitted that the relevant inquiry was not the location of each operational step, but the character and consumption of the composite service. The Respondent maintained that the throughput payments were not zero-rated international transport charges but consideration for VEK's procurement, financing, management, coordination and operational support services.

85. The Respondent rejected the Applicant's characterisation of the throughput payments as disbursements. It submitted that VEK incurred the Supply and Distribution Costs, Finance Costs and C&F Costs in its own capacity while performing its contractual obligations and not merely as the Applicant's

payment agent. The Respondent relied on ***Nell Gwynn House Maintenance Fund Trustees v Customs & Excise Commissioners, (1999) STC 79, 90, Bank of Africa v Uganda Revenue Authority, TAT 62 of 2018, Prime Solutions Limited v Uganda Revenue Authority, TAT 116 Of 2019, Jacobsen Uganda v Uganda Revenue Authority, , CA No. 26 Of 2018 and GE India Technology Centre v Commissioner of Income Tax, (2010) 327 ITR 456***.

86. The Respondent further submitted that the throughput fees included a margin and therefore contained an income element in VEK's hands. It argued that, once the payment was shown to be consideration for VEK's composite service, the whole gross payment was subject to WHT unless the Applicant proved that a component was a pure cost recovery. The Respondent relied on ***Vivo Energy Uganda Limited v Uganda Revenue Authority, TAT Application No. 268 of 2022***, where the Tribunal held that throughput fees paid to VEK were taxable reimbursements of costs incurred by VEK in performing its operational obligations.

87. The Respondent stated that it had made several concessions during the proceedings, including accepting verified transporter losses, loading losses, borrowed fuel volumes, excise duty adjustments, the cylinder deposit misposting of Shs.8,013,854,433, the reduction of the 2022-cylinder deposit VAT variance, withdrawal of the Shell brand recharge assessment, and correction of the throughput and automation figure to Shs. 4,170,933,352.

88. The Respondent therefore prayed that the Tribunal find that the Applicant failed to discharge its statutory burden of proof and uphold the assessments for Income Tax, Rental Income Tax, VAT and WHT in the residual amount of Shs.44,502,462,081, with costs to the Respondent.

IX. The Applicant's submissions in rejoinder

89. In rejoinder, the Applicant joined issue with the Respondent's submissions and noted the Respondent's further adjustment of the tax in dispute to Shs. 44,502,462,081. The Applicant submitted that any additional

information provided during the proceedings was necessitated by the Respondent's progressive requests during the audit and dispute resolution process, and that no adverse inference should be drawn from the timing of such information.

90. The Applicant reiterated that the applicable standard of proof in tax disputes is proof on a balance of probabilities and not proof beyond reasonable doubt. It submitted that, in several respects, the Respondent had imposed an unduly high evidential standard by requiring further proof even where the Applicant had provided sufficient explanations and supporting evidence.

91. On the un-invoiced excise duty issue for 2020, the Applicant submitted that the Respondent had already accepted a substantial adjustment after being satisfied that there had been a failure to recognise excise duty separately. The Applicant contended that the remaining disputed amount was attributable to errors in the external auditor's computation, including the use of wrong duty rates and fuel volumes, and that the explanations were available to the Respondent but were only accepted after the Tribunal's intervention.

92. The Applicant further submitted that the doctrine of de minimis was not relied upon as a tax exemption rule, but as an evidential principle. It argued that, for a business of the Applicant's scale, it would be disproportionate to reject an otherwise credible reconciliation merely because of a minor residual variance. The Applicant maintained that the residual variance represented approximately 2.3% and had been sufficiently explained.

93. The Applicant also reiterated that the reclassification of excise duty was tax neutral. It was submitted that the movement of approximately Shs. 21 billion from cost of sales to excise duty, which was also a cost of sales item, though mapped under revenue, did not affect the Applicant's profit. The Applicant therefore contended that the un-invoiced excise duty adjustment should never have been assessed in the amounts maintained by the Respondent.

94. On cylinder deposits included in VAT returns for 2020, the Applicant submitted that the Respondent's position that Shs. 164,129,310 remained unreconciled, contradicting evidence given during the proceedings that the cylinder deposit issue for Income Tax for 2020 had been fully reconciled. The Applicant maintained that any failure to reconcile the entire amount arose from the Respondent's inclusion of non-LPG items in the relevant ledger.

95. Regarding the December 2021 VAT return variance of Shs. 28,529,043,721, the Applicant submitted that the Respondent downplayed its officers' failure to consider adjusting items contained in the Applicant's trial bundle. It argued that the adjusting items were ignored by the external auditor and that, once they were considered, the variance was adequately explained.

96. The Applicant further challenged the Respondent's reliance on trend analysis and EFRIS data in relation to the December 2021 variance. It submitted that the trend analysis did not take into account the unique circumstances of November and December 2021, including differences in fuel volumes and fuel prices. The Applicant also contended that the EFRIS analysis was inconclusive because the December 2021 EFRIS sales included spillover exempt sales from October and November 2021, which were fiscalised in December.

97. In relation to stock movement variances, the Applicant submitted that the only outstanding issue concerned hospitality stock movement. It maintained that even this item would be fully accounted for once the Respondent corrected the double-counting of transporter losses and considered the transporter losses ascertained during mediation. The Applicant submitted that the Respondent had tactfully conceded the error and that the stock movement variance should be discharged.

98. On the VAT cylinder deposit variance, the Applicant submitted that only the 2021 and 2022 amounts remained in issue, the Respondent having adjusted the 2020 variance to nil. The Applicant disputed the remaining

2021 and 2022 balances, arguing that the Respondent's figures did not reconcile because the Respondent considered the wrong VAT return period and wrong ledger balances. The Applicant prayed that the VAT assessments on LPG cylinder deposits for 2021 and 2022 be discharged.

99. On throughput and automation charges, the Applicant noted the Respondent's concession that the amount in dispute under this item was Shs.4,170,933,352 and not Shs.5,498,482,806. The Applicant reiterated that the charges were incidental to the exempt supply of fuel because, without fuel sales, there would be no need for dealers to pay for use of the forecourt space, canopy, equipment or automation platform.

100. The Applicant relied on ***Total Uganda Limited v Uganda Revenue Authority, (2008-2011) UTLR, Uganda Revenue Authority v Uganda Taxi Operators and Drivers Association, CA No. 13 Of 2015 and Card Protection Plan Ltd v Commissioners of Customs and Excise, [2001] UKHL 4***. It submitted that throughput and automation services did not constitute an end in themselves for the dealer, but were means of optimising and facilitating fuel sales at the service stations. The Applicant therefore submitted that the charges should be subject to the same VAT-exempt treatment as the supply of fuel.

101. Regarding deemed or assumed rental income from CODO stations, the Applicant submitted that section 116 of the Income Tax Act applies only to transactions between associates that are not conducted at arm's length. The Applicant contended that the dealers were selected through a competitive open tender process and were not its associates within the meaning of section 3 of the Income Tax Act.

102. The Applicant further submitted that its relationship with the CODO dealers was a typical commercial fuel distributorship arrangement. It argued that the Applicant is not in the business of renting premises but of selling and distributing fuel, and that the Respondent had not proved that the dealers were subject to the Applicant's directions, requests, suggestions, or wishes in the manner required to establish association.

103. The Applicant also submitted that its business model is structured to maximise profits, on which it pays income tax. It contended that it was wrong for the Respondent to assume that the Applicant ought to have collected rent from CODO dealers. According to the Applicant, the Respondent's expense-to-income analysis wrongly compared business expenses with alleged rental income, yet the expenses were business-related and should have been compared to the Applicant's overall business income.

104. The Applicant distinguished ***Vivo Energy Uganda Ltd v Uganda Revenue Authority, HCCA No. 1 of 2019***, submitting that the case concerned deductibility of rent expenses in a business income context and not whether deemed rental income arose in the hands of the Applicant. The Applicant urged the Tribunal to guard against the Respondent dictating to the Applicant the business model that, in the Respondent's view, would make commercial sense.

105. The Applicant further submitted that the rental assessment would result in unlawful double taxation because the income earned from the CODO stations was already declared and taxed as the Applicant's business income. It argued that recharacterising the same income as rental income would tax the same economic income twice.

106. In the alternative, the Applicant submitted that if the Tribunal were to find that CODO dealers ought to pay rent, the appropriate course would be to determine the arm's length rental income afresh through a mutual exercise by the parties guided by market forces, rather than adopting the Respondent's differential rate of Shs.85 per litre derived from DODO dealer margins.

107. On VAT arising from alleged rental income, the Applicant reiterated that no VAT was payable because CODO dealers' use of station facilities was part of the mixed supply of fuel, which is exempt from VAT. It relied on the

UTODA reasoning and submitted that the use of station facilities was merely a means of achieving fuel sales and not an end in itself.

108. Regarding VAT on throughput fees paid to Vivo Energy Kenya, the Applicant reiterated that no VAT on imported services was payable. It submitted that the Respondent's attempt to distinguish ***Africa Broadcasting (U) Limited v Uganda Revenue Authority***, ***TAT App No. 44 of 2018*** should be rejected because the relevant services, including representation in the Open Tender System, line-fill obligations, clearing and forwarding, and other coordination activities, were performed and consumed in Kenya.

109. The Applicant further submitted that the decisions in ***Vivo Energy Uganda Ltd v Uganda Revenue Authority, TAT Application No. 268 of 2022, and TotalEnergies Marketing Uganda Ltd v Uganda Revenue Authority, TAT Application No. 104 of 2023***, were decided without considering the argument that there was no imported service consumed by the Applicant in Uganda. The Applicant urged the Tribunal to determine the issue of imported services on that basis.

110. The Applicant also reiterated that the throughput fees were largely disbursements outside the scope of VAT. It submitted that the finance costs were incurred by commercial banks in Kenya and recovered by VEK from the Applicant at actual cost in proportion to the Applicant's fuel entitlement. It further submitted that VEK paid clearing and forwarding agents in Kenya as the Applicant's agent and recovered the expenses at cost, bringing the payments within the principle in ***Nell Gwynn House Maintenance Fund Trustees v Customs & Excise Commissioners, (1999) STC 79, 90.***

111. In the further alternative, the Applicant submitted that the throughput services were incidental to the importation and international transportation of fuel and therefore exempt or zero-rated. It relied on sections 12(3) and 20 of the VAT Act, paragraph 1(b) of the Fourth Schedule to the VAT Act, and ***Diamond Shipping Company v Uganda Revenue Authority, 21 Of 2008***. The Applicant also pointed to what it described as the Respondent's

concession that clearing and forwarding costs are incidental to international transport.

112. On Withholding Tax, the Applicant submitted that the expenses in issue, including financing costs and clearing and forwarding costs, were pass-through expenses paid to third-party service providers in relation to the Applicant's fuel entitlement. It submitted that such expenses did not take on the character of income in VEK's hands and were not subject to WHT.

113. The Applicant relied on ***Jacobsen Uganda v Uganda Revenue Authority, TAT App No. 11 Of 2016 and Uganda Revenue Authority v Jacobsen Uganda Power Plant Co. Ltd, CA 26 Of 2018*** for the proposition that reimbursed expenses do not become income merely because they are recoverable. It further relied on ***GE India Technology Centre v Commissioner of Income Tax, (2010) 327 ITR 456*** for the proposition that, in the case of composite payments, the taxable income component must be identified and taxed proportionately.

114. The Applicant submitted that it was not true that it had failed to adduce evidence showing that supply and distribution costs, finance costs and clearing and forwarding costs were passed through at actual cost. It argued that AWII's evidence was that only the margin component constituted income to VEK, while the rest of the items represented recovery of actual costs. The Applicant stated that this evidence was not impeached in cross-examination.

115. The Applicant acknowledged that the Tribunal generally follows its previous decisions but submitted that it may depart from them where there is good reason. It argued that the Tribunal is bound by the High Court decision in Jacobsen and should not follow earlier Tribunal decisions in ***Vivo Energy Uganda Ltd v Uganda Revenue Authority, TAT Application No. 268 of 2022, and TotalEnergies Marketing Uganda Ltd v Uganda Revenue Authority, TAT Application No. 104 of 2023***, where those decisions were reached in disregard of the binding authority of Jacobsen.

116. The Applicant therefore prayed that the Tribunal find that the obligation to withhold tax does not arise upon mere payment, but only applies to components of a payment which constitute income in the hands of the recipient.

117. In conclusion, the Applicant prayed that the Application be allowed. It sought findings that the tax imposed on the alleged variances had been sufficiently explained; that throughput and automation charges were incidental to the exempt supply of fuel; that no deemed rental income arose from the CODO arrangements; that VAT on the alleged rental income and throughput payments was not payable; that throughput payments to VEK were disbursements or, alternatively, reimbursements not liable to VAT or WHT except for any true margin component; that the 30% tax paid be refunded with interest; and that costs be awarded to the Applicant.

X. The Determination

118. The Tribunal has carefully considered the pleadings, witness statements, oral testimony, documentary evidence, the Partial Consent Settlement Order, the written submissions of both parties, and the authorities cited.

Preliminary Observations

119. This dispute must be determined in its narrowed form. The original audit resulted in assessments across Income Tax, Rental Income Tax, Value Added Tax, and Withholding Tax. Through objection proceedings, reconciliation, Tribunal-guided mediation, the Partial Consent Settlement Order, and post-hearing adjustments, the dispute was reduced. The tax remaining for determination is Shs.44,502,462,081, comprising Income Tax of Shs.13,808,204,756, Rental Tax of Shs.15,239,151,011, Withholding Tax of Shs.3,462,531,485, and Value Added Tax of Shs.11,992,574,829.

120. The unresolved issues fall under the following broad heads:

(i) Whether the Respondent was justified in maintaining Income Tax assessments arising from the alleged sales and accounting variances,

including the December 2021 VAT return variance, the 2020 un-invoiced excise duty variance, stock movement variances and cylinder deposits;

(ii) Whether VAT was properly assessed on cylinder deposits and on throughput and automation charges at service stations;

(iii) Whether the Respondent was justified in assessing Rental Income Tax and VAT on alleged deemed rental income arising from the Company-Owned Dealer-Operated model;

(iv) Whether VAT was properly assessed on throughput fees paid to Vivo Energy Kenya;

(v) Whether WHT was properly assessed on throughput fees paid to Vivo Energy Kenya; and

(vi) the appropriate consequential orders.

Burden and standard of proof

121. Section 19 of the Tax Appeals Tribunals Act places the burden on the taxpayer to prove that an assessment is excessive or that the taxation decision should not have been made or should have been made differently. Section 26 of the Tax Procedures Code Act is to the same effect

122. The standard of proof is proof on a balance of probabilities. (see ***Bullion Refinery Limited v Uganda Revenue Authority, TAT Application No. 87 of 2021*** and ***Explorer Limited v Uganda Revenue Authority, TAT Application No. 87 of 2023).*** The taxpayer is not required to prove its case beyond a reasonable doubt. However, proof on the balance of probabilities requires credible evidence showing that the assessment is wrong, excessive, or should have been made differently.

123. In ***Wabulungu Multipurpose Estates Ltd v Uganda Revenue Authority, Civil Appeal No. 26 Of 2015,*** and ***Williamson Diamonds Ltd v Commissioner General, [2008], 4 TTLR 167*** the courts emphasised that the taxpayer who challenges an assessment bears the burden of proving the basis for any deduction, exclusion or adjustment. The burden does not shift merely because the taxpayer disputes the assessment.

124. The Tribunal is also guided by ***Tembo Steels (U) Ltd v Uganda Revenue Authority, Civil Appeal No. 77 of 2011***, where the Court of Appeal recognised that the Commissioner may make assessments on the basis of the best available information where the taxpayer's records do not sufficiently resolve the tax position. However, such assessment must still be rational, evidence-based and connected to the available material.

125. The Tribunal also bears in mind the reasoning in ***Quickway Property Services Limited v Uganda Revenue Authority, TAT Application No. 105 of 2021, and SMEC International Limited v Uganda Revenue Authority, TAT Application No. 075 of 2019,*** where the Tribunal emphasised that a taxpayer seeking to reduce or displace an assessment must rely on credible, reliable and independently verifiable documentation. This principle is particularly important where a taxpayer seeks to retract, reclassify or explain figures appearing in its own returns, ledgers, stock movement reports, EFRIS records or audited financial statements.

126. The decision in ***Airtel Uganda Limited v Uganda Revenue Authority, Civil Appeal No. 0033 of 2021*** is also relevant. Although it concerned customs valuation, the broader evidential principle applies to tax disputes generally. A party should present its case fully at first instance and should not expect to fill evidential gaps later. Where the explanation depends on documents within a taxpayer's possession or control, those documents should be produced before the Tribunal.

127. The legal burden remains on the Applicant throughout. However, where the Applicant produces credible evidence explaining an item, the Respondent is expected to engage with that evidence. The Tribunal therefore considers each disputed item separately.

Income Tax on sales and accounting variances

<u>The December 2021 VAT return variance</u>

128. The first substantial issue concerns the December 2021 VAT return variance of Shs.28,529,043,721. The Applicant's explanation was that the

figure arose from an erroneous adjustment recommended by its external auditors during interim external audit work, and that the Respondent failed to take into account adjusting items such as rebates, discounts, sales accruals, LPG tank deposits, supplier fees, hospitality revenue and other reconciling entries.

129. The Respondent's position was that the amount that appeared in the Applicant's own statutory VAT return, was supported by EFRIS data, and was not displaced by contemporaneous evidence. The Respondent also relied on a trend analysis showing that December was ordinarily a peak trading period and that removing the disputed amount would produce an anomalous decline in December 2021 sales.

130. A taxpayer's return is a formal statutory declaration. It may be corrected where an error is proved, but the taxpayer must show the error, its origin, the correct treatment, and the effect of the correction on the tax position. In ***Nile Breweries Limited v Uganda Revenue Authority, TAT Application No. 135 of 2024***, the Tribunal held that EFRIS and electronic invoicing records constitute strong corroborative evidence against a taxpayer's attempt to reclassify or retract declared transactions without sufficient supporting evidence. The Tribunal cannot disregard a declared amount merely because the taxpayer later says that the declaration was wrong.

131. The Applicant's explanation was plausible in a broad accounting sense. The record shows that adjusting items existed. The difficulty is that the Applicant did not provide a complete reconciliation showing that the identified adjusting items accounted for the full Shs.28,529,043,721. The evidence did not sufficiently connect each reconciling item to the disputed figure, nor did it establish why the declared amount should be treated as non-existent income rather than a declaration requiring proper amendment and proof.

132. The Applicant also challenged the trend analysis and EFRIS evidence. The Tribunal agrees that trend analysis, standing alone, cannot create taxable income. It is merely a reasonableness check. However, in this matter the

Respondent relied not only on trend analysis but also on the Applicant's declaration and EFRIS records. Those records were not displaced by a complete reconciliation.

133. The Applicant has not proved, on a balance of probabilities, that the Shs.28,529,043,721 declared in the December 2021 VAT return was erroneous or non-taxable. The assessment arising from this item is upheld.

The un-invoiced excise duty variance for 2020

134. The Applicant also challenged the Respondent's treatment of the 2020 un-invoiced excise duty variance. The Applicant submitted that the variance arose because excise duty was not properly separated from cost of sales, and because wrong excise duty rates and overstated fuel volumes were applied in the reconciliation. The Respondent accepted a substantial adjustment but maintained a residual amount.

135. The Applicant relied on the de minimis and proportionality principles. The Tribunal does not treat de minimis as a tax exemption. Income tax is imposed on chargeable income under the Income Tax Act. There is no statutory rule allowing income to escape tax merely because the residual variance is proportionately small. The Act does not create a general materiality threshold below which otherwise taxable income may be ignored. If an amount is taxable, it does not cease to be taxable merely because it is considered small when compared to the taxpayer's overall turnover. Therefore, the deminis rule may assist in evaluating evidence, but it cannot extinguish a statutory assessment.

136. The Respondent relied on ***Tembo Steels (U) Ltd v Uganda Revenue Authority, Civil Appeal No. 77 of 2011*** for the proposition that where a taxpayer's records are unreliable or incomplete, the Commissioner may make an assessment using the best available information. The principle is correct, but it has limits. "Best available information" is not a licence for guesswork. The assessment must be rational, connected to the taxpayer's records, and capable of explanation.

137. In the present case, the Respondent did not reject the Applicant's explanation wholesale. The evidence shows that the review committee engaged with the Applicant's workings and reduced the original variance. That is relevant because it demonstrates that the Respondent's final position was not merely mechanical. However, even after that reduction, the question is whether the Applicant proved that the residual amount maintained after those concessions was also wrong.

138. The Respondent also relied on ***Quickway Property Services Limited v Uganda Revenue Authority, TAT App No. 105 Of 2021*** and ***SMEC International Limited v Uganda Revenue Authority, TAT NO. 75 Of 2019*** for the proposition that adjustments reducing tax liability must be supported by credible and verifiable documentation. The general principle is not in dispute. The Applicant's alternative computations were not sufficiently supported by primary transactional records. In a dispute of this nature, the Tribunal would expect the taxpayer to produce records such as EFRIS invoices, delivery notes, stock movement records, excise duty schedules, volume reconciliations and contemporaneous ledger explanations linking the alleged error to the specific assessed amount.

139. The Applicant also submitted that the reclassification was tax neutral because the movement was from cost of sales to excise duty, both being cost-side items. A truly tax-neutral accounting movement should not generate income. However, where an assessment arises from a mismatch between statutory returns and accounting records, the taxpayer must demonstrate neutrality by a clear reconciliation. That is consistent with the burden explained in ***Wabulungu*** and ***Williamson Diamonds.***

140. The Applicant did not produce a sufficient audit trail demonstrating that the residual amount maintained by the Respondent was wholly tax-neutral. The Respondent was therefore justified in maintaining the residual un-invoiced excise duty assessment after allowing the conceded adjustments. Therefore, assessment on the residual 2020 un-invoiced excise duty variance is upheld.

Fuel stock movement variances

141. The Respondent treated certain stock movement variances as undeclared sales and assessed income tax accordingly. The Applicant explained that the differences arose from normal petroleum-sector activities, including borrow-loan arrangements between oil marketing companies, hospitality storage transactions, transporter losses, loading losses, theft, evaporation and temperature-related differences.

142. The Tribunal recognises that petroleum operations involve movements of non-sale stock. Fuel may move under hospitality arrangements, borrow-loan arrangements, pipeline and transporter movements, temperature adjustments and operational losses. It would therefore be wrong to treat every stock movement variance automatically as a sale.

143. However, the taxpayer must still maintain records sufficient to ascertain the tax consequences of those movements. Section 15 of the Tax Procedures Code Act requires a taxpayer to keep records from which its tax liability can be readily determined. General industry practice cannot substitute for specific transactional proof.

144. The Respondent accepted verified categories during reconciliation, including transporter losses, loading losses and borrowed fuel volumes. The maintained assessment therefore relates to residual items that were not sufficiently verified.

145. The Applicant relied on borrow-loan correspondence, a hospitality agreement and sample documentation. Those documents establish that such arrangements existed. They do not, however, prove that the specific assessed variance arose from those arrangements. General commercial documentation cannot substitute for transaction-level proof where the assessment is based on recorded discrepancies. In ***SMEC International Limited v Uganda Revenue Authority***, ***TAT App No. 75 Of 2019*** the Tribunal rejected generic explanations that were insufficient to substantiate the extent of services or transactions relied upon by the taxpayer. The same

principle applies here. The Applicant had to link the residual stock movement variances to specific non-sale movements using contemporaneous records, invoices, agreements, stock ledgers, and reconciliations. A taxpayer's explanation must be grounded in specific and verifiable evidence, not merely in general commercial possibility.

146. The Tribunal therefore finds that the Applicant failed to prove, on a balance of probabilities, that the assessed stock movement variances represented non-taxable stock movements rather than undeclared sales. The residual Income Tax assessment arising from stock movement variances is upheld.

Cylinder deposits, throughput and automation

Cylinder deposits – income tax

147. The cylinder deposit assessment stands on a different footing. The Applicant's evidence was that LGP cylinder deposits were refundable liabilities and not sales revenue. AW1 testified that the alleged variance arose from general ledger reclassifications and movement of balances between cylinder deposit accounts. The Applicant produced ledger extracts and reconciliations showing the accounting treatment of those deposits.

148. A refundable deposit does not become income merely because it is received. It may become taxable if it is forfeited, appropriated, converted into sales proceeds, or otherwise ceases to be a refundable liability. In the absence of such a taxable event, movement between liability accounts does not constitute income.

149. The Respondent accepted during reconciliation that a substantial portion of the original cylinder deposit assessment related to accounting reclassifications. However, it maintained a residual assessment of approximately Shs.486 million.

150. For the remaining cylinder deposit amounts, the Respondent did not demonstrate that the deposits had been forfeited, appropriated, converted into sales, or otherwise ceased to be refundable liabilities. A mismatch

between ledger balances and VAT declarations, without proof of a taxable event, is not sufficient to convert refundable deposits into taxable income or consideration.

151. The income tax component, if any, maintained solely on residual cylinder deposit variances is set aside and shall be removed from the final income tax computation.

VAT on cylinder deposits

152. The Respondent maintained VAT on cylinder deposit variances for 2021 and 2022, identified as Shs.214,376,324 for 2021 and Shs.546,772,481 for 2022. VAT is chargeable on taxable supplies. Where a payment is a refundable deposit and remains a liability, it is not, without more, consideration for a taxable supply. The Respondent had to show that the deposits became consideration for the sale, use, forfeiture or appropriation of cylinders, or another taxable supply.

153. The evidence does not establish that the residual cylinder deposit amounts for 2021 and 2022 were taxable consideration. The Respondent's computation was based principally on variance analysis and ledger comparisons. That did not sufficiently establish a taxable supply. The VAT assessments on cylinder deposit variances of Shs.214,376,324 for 2021 and Shs.546,772,481 for 2022 are set aside.

VAT on throughput and automation charges at service stations

154. The next issue concerns VAT assessed on throughput and automation charges at the Applicant's service stations. The Respondent accepted that the correct amount in dispute under this item is Shs.4,170,933,352 and not Shs.5,498,482,806.

155. The Applicant submitted that throughput and automation charges are incidental to the exempt supply of fuel. The Respondent contended that they provide independent benefits to dealers, including access to station infrastructure and real-time monitoring systems.

156. The supply and import of qualifying petroleum products are exempt from VAT. The exemption does not automatically extend to every service connected with petroleum. The question is whether, on the facts, the relevant charge is an independent supply or merely ancillary to the exempt fuel supply.

157. Section 12 of the VAT Act addresses mixed supplies and incidental supplies. The principles in ***Total Uganda Limited v Uganda Revenue Authority, (2008-2011) UTLR, Uganda Revenue Authority v Uganda Taxi Operators and Drivers Association, SC Civil Appeal No. 13 of 2015,*** and ***Card Protection Plan Ltd v Commissioners of Customs and Excise [2001] UKHL 4*** are instructive. These authorities require the decision-maker to identify the principal supply and to avoid artificially separating ancillary elements that do not constitute an end in themselves for the consumer.

158. The throughput charge at the service station relates to the dealer's use of the forecourt, canopy, pump equipment and station facilities. The automation charge relates to the monitoring platform used for fuel sales and transaction control. These facilities and systems exist to enable, monitor and optimise the sale of fuel at the service station.

159. A dealer that ceased selling fuel would have no independent commercial reason to pay for throughput facilities or the automation platform. Their utility is tied to fuel sales. The evidence does not show that the dealers consumed those facilities or systems as independent taxable supplies separate from the exempt supply of fuel.

160. Applying the composite supply principles in ***Total Uganda, UTODA and Card Protection Plan***, the station throughput and automation charges are ancillary to the exempt fuel supply. The VAT assessment on station throughput and automation charges of Shs.4,170,933,352 is set aside.

Rental Income Tax arising from the CODO model

161. The Respondent assessed rental tax of Shs.15,239,151,011 on the basis that the Dealer-Owned Dealer-Operated stations and Company-Owned Dealer-Operated stations margin differential represented rental income or the market value of the benefit derived from making station premises and infrastructure made available by the Applicant to CODO dealers.

162. The Applicant's case is that the margin differential is not rent. It submitted that the higher DODO margin compensated DODO dealers for their own investment in premises, equipment, maintenance, operational risk and related station infrastructure. On that basis, the Applicant argued that the difference between the DODO and CODO margins was a commercial dealer-margin distinction, not rent received, accrued, or legally receivable by the Applicant. The Applicant further submitted that the CODO model was part of its fuel distribution business and that the infrastructure made available to dealers was incidental to the supply and sale of fuel.

163. The Respondent's case is that the CODO dealers obtained the use and benefit of the Applicant's premises and infrastructure and that the nominal amount recovered from them did not reflect an arm's-length charge. The Respondent relied on sections 90 and 91 of the Income Tax Act and argued that the DODO/CODO margin differential provided a reasonable benchmark for the market value of the benefit enjoyed by the CODO dealers.

164. Section 5 of the Income Tax Act imposes rental tax on every person who has rental income for the year of income. Under section 5(2)(b), where that person is a company, the tax is calculated by applying the company rate under section 7(2) to the rental income derived by the company for the year. The issue is therefore not whether a company may be liable for rental tax. The real question is whether the alleged DODO/CODO margin differential constituted rent or rental income derived by the Applicant.

165. The Income Tax Act defines rent as a 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. It defines rental income as the total amount of rent derived by a person for the year of income from the lease of immovable property in Uganda, subject to deductions allowed by the Act. Those definitions require a payment or entitlement that bears the legal character of consideration for use or occupation of land or buildings.

166. The evidence does not show that the Applicant received, accrued, invoiced, or became legally entitled to receive rent from the CODO dealers in the amount assessed. Nor does it show that the DODO/CODO margin differential was agreed between the parties as consideration for the use or occupation of land or buildings. The Respondent established that the two dealer models had different commercial margins. That difference does not, by itself, prove rent.

167. ***Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64*** remains relevant for the principle that taxation must be imposed by clear statutory language. A margin differential cannot be taxed as rental income unless the statute properly captures it as rent or unless a valid statutory adjustment is made on facts satisfying the relevant statutory conditions.

168. ***Zee Investments Limited v Uganda Revenue Authority, TAT Application No. 242 of 2022,*** and ***Guaranty Trust Bank Limited v Uganda Revenue Authority, TAT Application No. 20 of 2024***, support the proposition that tax is imposed on income actually derived, accrued, received or legally receivable, not on hypothetical income which the tax authority considers the taxpayer ought to have earned.

169. The DODO/CODO margin differential may reflect several commercial distinctions. DODO dealers own or control their own premises and infrastructure and bear corresponding investment and maintenance obligations. CODO dealers operate within a different commercial structure.

A lower CODO margin does not automatically represent rent retained by the Applicant.

170. The Respondent relied on section 116 of the Income Tax Act, the arm's length principle and the OECD Transfer Pricing Guidelines. Those principles can apply where the statutory gateway is satisfied. The evidence did not establish that the CODO dealers were associates of the Applicant within the meaning of section 3 of the Income Tax Act. The fact that dealers sold the Applicant's products and operated from the Applicant's premises did not, without more, prove that they acted in accordance with the Applicant's directions, requests, suggestions or wishes in the statutory sense required to establish association.

171. The OECD Transfer Pricing Guidelines cannot create an association where the domestic statute has not been satisfied. Nor can the Guidelines convert a dealer margin differential into rent without proof that the amount was paid or payable for the use or occupation of land or buildings.

172. Section 117 of the Income Tax Act also does not assist the Respondent on the evidence. That provision permits recharacterisation where a transaction forms part of a tax avoidance scheme, lacks substantial economic effect, or where the form of the transaction does not reflect its substance. The Respondent relied on ***W T Ramsay Ltd v Inland Revenue Commissioners [1981] UKHL 1; [1982] AC 300***. That authority supports a substance-over-form inquiry in tax cases. It does not permit the Tribunal to ignore the statutory charge. Substance must still be anchored in evidence and statute. The CODO arrangement was a real petroleum distribution model. The Respondent did not establish that it was a sham, lacked substantial economic effect, or was entered into as a tax avoidance scheme.

173. The Respondent also relied on ***Vivo Energy Uganda Ltd v Commissioner General, Uganda Revenue Authority, HCCA No. 1 of 2019*** for the proposition that amounts received for occupation and use of premises may constitute rental income. That authority is distinguishable. That case

concerned the deductibility of rent paid by Vivo in relation to station leases. It supports the proposition that rent paid for occupation and use of leased premises is revenue expenditure. It does not decide that a margin differential between CODO and DODO dealers is rent received by the Applicant. In the present matter, the Respondent did not identify an amount actually received or receivable as consideration for occupation or use of premises. It inferred rent from the difference between the two dealer-margin models. That is not the same thing.

174. The Tribunal therefore finds that, on the facts pleaded and proved, the CODO model did not generate rental income in the amount assessed. The rental tax assessment arising from the alleged DODO/CODO margin differential is accordingly set aside.

VAT on alleged rental income under the CODO model

175. The VAT assessment on alleged rental income under the CODO model rests on the same factual foundation as the rental tax assessment. The Respondent treated the provision of station premises, forecourt, canopy and equipment as a separate taxable supply to CODO dealers.

176. Having found that the Respondent did not prove a separate rent or rental income transaction, the VAT assessment cannot stand on the same factual foundation. The evidence shows a fuel distribution arrangement in which station infrastructure facilitated the sale of petroleum products. A separate taxable supply of premises or infrastructure independent of the fuel distribution arrangement was not established.

177. Any VAT component arising from alleged CODO rental income is set aside.

VAT on throughput fees paid to Vivo Energy Kenya

178. The Tribunal now considers the VAT assessment on throughput fees paid by the Applicant to Vivo Energy Kenya Limited (VEK). The Respondent assessed reverse-charge VAT on the basis that the payments made by the Applicant to VEK constituted consideration for imported services. The assessed throughput payments were Shs.9,309,084,439 for 2020, Shs.

6,932,761,599 for 2021 and Shs.6,841,697,193 for 2022, making a total payment base of Shs.23,083,543,231. Applying VAT at 18%, the principal VAT component on this item is Shs.4,155,037,782, subject to the Respondent's final reconciliation of penalties, interest and any computational adjustments.

179. The Applicant's case is that no VAT was payable because the payments were reimbursements or disbursements of costs incurred by VEK in Kenya; that the services were performed and consumed in Kenya; and that, in any event, the charges were incidental to the importation and international transportation of exempt petroleum products. The Respondent's case is that VEK supplied a composite facilitation, handling, logistics and operational service to the Applicant, that the service was consumed by the Applicant in Uganda, and that the payments were consideration for imported services within the meaning of the VAT Act.

180. Section 4 of the VAT Act provides that VAT shall be charged on: "(a) every taxable supply made by a taxable person; (b) every import of goods other than an exempt import; and (c) the supply of imported services, other than an exempt service, by any person." Section 5(c) provides, in substance, that in the case of a supply of imported services, other than an exempt service, the tax is payable by the person receiving the supply. Regulation 13 of the VAT Regulations further provides that "a person who receives imported services other than an exempt service shall account for the tax due on the supply" at the time performance is completed, payment is made, or the invoice is received, whichever is earliest.

181. The question is therefore not answered merely by asking whether the underlying petroleum products were exempt. The correct inquiry is whether VEK supplied services to the Applicant; whether the services were imported services received and used by the Applicant in Uganda; whether the payments were consideration for those services; and whether any clearly identified amount was a true third-party disbursement rather than part of VEK's own service fee.

182. The Tribunal first considers the character of the VEK arrangement. AW2, Mr. Samuel Bukenya Tusubira, testified that the Applicant imports petroleum products into Uganda through Kenya. He explained that the Applicant could not directly participate in the Kenyan Open Tender System or engage the Kenya Pipeline Company's infrastructure because non-Kenyan trading companies do not participate in those petroleum importation and pipeline processes. The Applicant therefore used VEK, a Kenyan oil marketing company, to participate in the relevant Kenyan systems on its behalf.

183. AW2 further testified that the relationship between the Applicant and VEK was governed by a Supply Services Agreement executed in 2014. Under that Agreement, the Applicant paid VEK a throughput fee of USD 6.0 per cubic metre for each cubic metre of fuel loaded into trucks for transportation to Uganda. AW2 described the throughput fee as the fee for the "operational services and facilities" provided by VEK in the importation and transportation of the Applicant's fuel to Uganda.

184. The fee was not a single unexplained lump sum. AW2's evidence was that Annex A to the Supply Services Agreement broke down the USD 6.0 per cubic metre fee into distribution and supply costs, financing costs, clearing and forwarding costs, margin and rounding. For VEK-owned depots, the stated components included distribution and supply at USD 3.15, financing cost at USD 0.75, clearing and forwarding at USD 0.44, margin at USD 1.6, and rounding at USD 0.0. For KPC-owned depots, the components included distribution and supply at USD 2.14, financing cost at USD 0.09, clearing and forwarding at USD 0.44, margin at USD 1.66, and rounding at USD 0.17.

185. AW2 also explained the operational activities behind those charges. VEK consolidated the Applicant's fuel import requirements with its own requirements, participated in the Open Tender System, allocated product upon importation, supervised loading, ensured truck vetting, coordinated gantry loading, facilitated clearing and forwarding procedures, and arranged the documentation required for the dispatch and movement of fuel

from Kenya to Uganda. He further testified that VEK employed personnel for those functions, rented premises at terminals and depots, and incurred staff costs, rent, depreciation and other administrative costs which were recovered as distribution and supply costs.

186. The invoices placed before the Tribunal are consistent with that description. They were issued by VEK to the Applicant and contained various line items, including throughput fees, KPC freight fees, financing costs, product marking, C11 processing fees, wharfage, stevedoring, superintendence, discharge, surveyor and inspection charges, demurrage, mainline transfer charges, staff accommodation and meals, manpower cost recovery, and journey planner cost recovery. The invoices therefore show that the charges were not all of one character. Some items appear, on their face, to relate to third-party petroleum import-chain costs. Others, such as throughput fees, financing costs, manpower cost recovery, journey planners, staff costs and administrative or operational recoveries, are more consistent with VEK's own service structure.

187. The Tribunal is guided by the approach in ***Africa Broadcasting (U) Limited v Uganda Revenue Authority, TAT Application No. 44 of 2018***, where the Tribunal, relying on ***Celtel Uganda Ltd v Uganda Revenue Authority, No. 22 of 2006*** and ***Faaborg-Gelting Linien v Finanzamt Flensburg***, ***[1996] All ER (EC) 656***, held that, in determining whether a transaction is a supply of goods or services, regard must be had to all the circumstances in which the transaction took place in order to identify its characteristic features.

188. That approach is necessary here. The description used by the parties is not conclusive. A payment does not cease to be consideration merely because the payer calls it a reimbursement. Equally, a payment does not become taxable merely because the Respondent describes it as imported services. The Tribunal must examine the contract, the invoices, the witness testimony, the commercial purpose of the arrangement and the actual function performed by VEK.

189. On that evidence, VEK was not a passive conduit for third-party invoices. It supplied a coordinated package of facilitation, logistics, handling, financing, clearing coordination, pipeline access support, loading, dispatch and administrative services which enabled the Applicant's fuel to move through Kenya and into Uganda. Those functions required VEK's personnel, systems, premises, financing arrangements and operational capacity.

190. The characteristic feature of the arrangement was therefore a composite service supplied by VEK to the Applicant. The fuel was the subject matter in relation to which the services were performed; it was not the service supplied by VEK. The contractual supply under consideration is VEK's supply of facilitation and operational services to the Applicant, not the Applicant's subsequent supply of petroleum products to its customers.

191. The Applicant argued that the payments were disbursements. In support, it relied on ***Bank of Africa Uganda Ltd v Uganda Revenue Authority, 62 Of 2018, Prime Solutions Limited v Uganda Revenue Authority,116 Of 2019*** and ***Trustees of the Nell Gwynn House Maintenance Fund v Customs and Excise Commissioners, (1999) STC 79, 90***. The principle in those authorities is sound. In ***Nell Gwynn***, the distinction was expressed in substance as follows: where expenses paid to a third party are incurred by A in the course of making A's own supply of services to B, they form part of the consideration for A's services; but where the third-party service is supplied directly to B and A merely acts as B's known and authorised representative in paying C, the payment may be treated as a disbursement.

192. That distinction is decisive. The evidence does not support the Applicant's submission that the entire throughput fee was a pure disbursement. VEK's staff costs, premises costs, depreciation, administrative costs, financing arrangements, operational coordination and margin were costs and remuneration connected with VEK's own performance of its contractual obligations. They were not third-party services supplied directly to the Applicant with VEK merely acting as a messenger or payment agent.

193. The line-fill financing component illustrates the point. AW2 testified that VEK was required to maintain line fill in the KPC pipeline and that VEK borrowed funds from Kenyan commercial banks to finance the fuel needed to keep the pipeline wet. Although a portion of the financing cost was allocated to the Applicant, the obligation to maintain line fill arose from VEK's own participation in the Kenyan pipeline system. That financing arrangement was part of VEK's operational capacity to perform the services. It was not, without more, a third-party disbursement paid by VEK as the Applicant's known agent.

194. The same reasoning applies to distribution and supply costs. AW2 testified that these costs covered VEK's staff, rented premises, depreciation and other administrative expenses. These are internal costs of VEK's service infrastructure. They cannot be treated as disbursements merely because they were recovered from the Applicant as part of the throughput fee.

195. Clearing and forwarding costs require closer attention. AW2 testified that Kenyan clearing agents processed documents in the Kenya Revenue Authority system and that VEK paid those agents before recovering the costs from the Applicant. Invoices described as clearing and forwarding, inspection, surveyor, wharfage, demurrage, or KPC charges may, depending on the documents, appear to be third-party costs. However, the invoice description alone is not conclusive. The Applicant must show that the third-party service was supplied to the Applicant or incurred for the Applicant's account, that VEK paid it merely as agent or conduit, that the amount was passed on at exact cost, and that no mark-up, financing return, value addition or independent service element was included.

196. The Tribunal's conclusion on disbursements is therefore narrow. Genuine third-party disbursements may be excluded from the VAT base, but only where they are contractually and evidentially separate from VEK's own service fee. The burden lies on the Applicant to prove separation through primary documents, including third-party invoices, payment trails, allocation

schedules, contractual terms, and reconciliations. A broad assertion that a cost originated from a third party is insufficient.

197. The Tribunal next considers whether the services were imported services consumed or used in Uganda. The Applicant relied on ***Africa Broadcasting v URA, App No. 44 Of 2018 and Allied Beverages Company Limited v Commissioner Uganda Revenue Authority, CA No. 62 of 2025,*** to argue that the services were performed and consumed in Kenya. The Tribunal agrees with the legal proposition that the place of performance is not conclusive. The disagreement is with the Applicant's application of that principle to the evidence.

198. In ***Allied Beverages***, the High Court stated that "the determining factor is the location where the services supplied are finally consumed or used, not where they are performed from." The Court also adopted the ordinary meanings of "consume" as "to use up" and "use" as "to put to a particular purpose." The decision therefore directs attention to the place where the service is put to its commercial purpose.

199. In this matter, VEK's activities were physically undertaken in Kenya, but they were procured by a Ugandan resident company to enable the movement of petroleum products into Uganda for the Applicant's Ugandan petroleum business. The services had no independent commercial object for the Applicant in Kenya. Their value to the Applicant lay in enabling fuel to pass through the Kenyan petroleum import and pipeline system and to be dispatched into Uganda for sale and distribution.

200. ***Allied Beverages*** is distinguishable in its results. In that case, the High Court found that TCCEC consumed the services outside Uganda for its own commercial decision-making. Ugandan consumers of the advertised beverages were not the consumers of the service supplied to TCCEC. Here, the Applicant itself is the Ugandan recipient and user of VEK's services. The services were procured for the Applicant's Ugandan business

that imports and distributes fuel. The commercial benefit was realised in Uganda.

201. ***Africa Broadcasting*** also supports a substance-based inquiry. It does not establish that every service performed outside Uganda is consumed outside Uganda. It requires the Tribunal to examine the foreign supplier, the Ugandan recipient, the nature of the right or service supplied, and where it is utilised. VEK was outside Uganda; the Applicant was resident in Uganda; and the service was utilised to advance the Applicant's business in Uganda.

202. The Tribunal therefore finds that VEK supplied imported services to the Applicant and that the Applicant used those services in Uganda for purposes of sections 4(c) and 5(c) of the VAT Act and Regulation 13 of the VAT Regulations.

203. The Applicant further argued that the supply and import of petroleum products are exempt from VAT and that the throughput fees were incidental to the importation or supply of exempt petroleum products. Section 12 of the VAT Act provides that *"a supply of services incidental to the supply of goods is part of the supply of goods"; that "a supply of goods incidental to the supply of services is part of the supply of services"; and that "a supply of services incidental to the import of goods is part of the import of goods."*

204. The Tribunal recognises the principal-and-incidental supply doctrine. The decisions in ***Uganda Revenue Authority v Total Uganda Limited, Civil Appeal No. 11 of 2012, Uganda Revenue Authority v Uganda Taxi Operators and Drivers Association, Civil Appeal No. 13 of 2015***, and ***Card Protection Plan Ltd v Commissioners of Customs and Excise, [2001] UKHL*** establish that a transaction should not be artificially split where one element is merely ancillary to the principal supply and does not constitute an end in itself for the customer.

205. That principle does not resolve this issue in the Applicant's favour. The relevant supply is not the Applicant's sale of fuel to motorists or dealers in Uganda. The relevant supply is VEK's cross-border supply of facilitation,

handling, financing, clearing coordination, dispatch and operational support services to the Applicant. The Applicant paid a separate fee to a separate legal person under a separate Supply Services Agreement. Section 12 cannot be used to merge VEK's own service supply into the exempt petroleum product merely because the service relates to petroleum.

206. The petroleum exemption is relevant but not conclusive. The supply and import of qualifying petroleum products may be exempt. It does not follow that every service connected with petroleum importation is exempt. Exemptions and zero-rating provisions must be grounded in clear statutory language. The Applicant did not point to any provision that exempts or zero-rates VEK's facilitation, financing, coordination, and operational support services merely because the fuel was exempt or in transit through Kenya.
207. ***Diamond Shipping Company v Uganda Revenue Authority, TAT Application No. 21 of 2008*** is distinguishable. That case concerned services properly characterised as incidental to international transportation. VEK's throughput arrangement was broader and commercially different. It included financing, staff, premises, administration, line-fill obligations, clearing coordination, loading, dispatch and margin. Those elements cannot be treated as zero-rated international transport wholesale.

208. The Tribunal also considers its previous decisions in ***Vivo Energy Uganda Limited v Uganda Revenue Authority, TAT Application No. 268 of 2022***, and ***TotalEnergies Marketing Uganda Limited v Uganda Revenue Authority, TAT Application No. 104 of 2023***. Both decisions concerned petroleum import facilitation arrangements through Kenya. In ***Vivo v URA,TAT No. 268 of 2022***, the Tribunal distinguished third-party charges from the throughput fee paid to VEK for its own operational services and facilities, and held that the relevant costs were incurred by VEK in its own capacity to perform its contractual obligations.

209. In ***Total Energies Marketing Uganda Limited v URA, TAT No. 104 of 2023***, the Tribunal held that the exemption of petroleum products did not

automatically extend to separately contracted handling, facilitation and operational support services supplied by the Kenyan entity.

210. Those decisions are materially persuasive and should be followed. The present evidence does not justify a departure from the core principle in those cases. VEK's throughput fee was not part of the exempt petroleum itself. It was consideration for a separately contracted imported service supplied by VEK to the Applicant.

211. The invoices placed before the Tribunal reinforce that conclusion. Line items such as "throughput fees", "financing cost", "manpower cost recovery", "journey planners cost recovery", "staff accommodation/meals", and other administrative or operational recoveries reflect VEK's own service, financing, and operational structure. These are not merely external statutory charges or payments to third parties. They are part of the cost and remuneration of VEK's own supply.

212. Other invoice items, including KPC freight, wharfage, C11 processing, product marking, demurrage, surveyor and inspection charges, may be subject to different treatment if supported by underlying third-party invoices and proof that VEK acted only as an agent or conduit. However, such treatment is not automatic. The invoice label is only the starting point. The Applicant must prove the legal and accounting character of each amount.

213. The Tribunal therefore finds that the VAT assessment on throughput fees paid to VEK is valid in principle. VAT is payable on the gross amount properly characterised as VEK's contractual throughput, handling, facilitation, financing, coordination and operational service fee, including embedded cost recoveries and margin forming part of VEK's own supply.

214. Properly proved third-party disbursements, if any, shall be excluded at the threshold. To qualify, the Applicant must prove that the third-party cost was contractually and evidentially separate from VEK's service fee; that the third-party service or charge was supplied to or incurred for the Applicant's account; that VEK paid the amount merely as the Applicant's agent or

conduit; that the amount was passed on at exact cost; and that no mark-up, financing return, value addition, margin or independent service element was included.

215. On the evidence presently before the Tribunal, the Applicant has not discharged the burden of proving that the whole of the throughput payment, or any broad category within it, was a pure disbursement. The Applicant established that the fee had components. It did not establish, with sufficient documentary precision, that those components were legally and contractually separate third-party disbursements outside VEK's own supply.

216. The VAT assessment on VEK throughput fees is therefore upheld in principle. The principal VAT component assessed on the identified throughput payments is Shs.4,155,037,782, subject to final arithmetical reconciliation. The matter is remitted to the Respondent only for the limited purpose of verifying and excluding any specific third-party disbursements that the Applicant proves by primary documents within the period ordered by the Tribunal.

217. In carrying out the recomputation, the Respondent shall not treat VEK's internal staff costs, premises costs, depreciation, administrative costs, line-fill financing costs, operational coordination costs, manpower cost recovery, journey planner costs, or margin as pure disbursements merely because they were recovered from the Applicant. Those items are part of VEK's own imported service unless the Applicant proves otherwise by contract, invoice, payment trail and reconciliation.

218. If the Applicant fails to provide sufficient documents to identify a specific item as a true third-party disbursement, the Respondent shall maintain the VAT charge on that item as part of the taxable value of VEK's imported service. The recomputation shall be transparent and shall identify the amounts taxed as VEK's service consideration and the amounts, if any, excluded as proved disbursements.

219. Accordingly, the Applicant's objection to VAT on throughput fees paid to VEK fails in principle. The assessment is upheld subject only to the narrow exclusion of proved third-party disbursements, if any, and the consequential recomputation directed by the Tribunal.

Withholding Tax on throughput fees paid to Vivo Energy Kenya

220. The WHT issue is related to, but distinct from, the VAT issue. VAT applies to taxable supplies and imported services. WHT concerns whether the payment, or an identifiable part of it, is income chargeable to tax in the hands of the non-resident recipient, and whether the Ugandan payer had a duty to withhold. The Applicant submits that reimbursements are not income and therefore cannot attract withholding tax. The Respondent submits that the fees include a margin and are therefore income in VEK's hands.

221. The Applicant relied heavily on ***Jacobsen Uganda v Uganda Revenue Authority, TAT Application No. 11 of 2016***, and ***Uganda Revenue Authority v Jacobsen Uganda Power Plant Co. Ltd, High Court Civil Appeal No. 26 of 2018***, for the proposition that reimbursements are not income. The principle is sound. A payment which merely restores a payee to its original position, with no gain, profit or income element, is not income merely because it is reimbursed.

222. ***Luwaluwa Investment Limited v Uganda Revenue Authority, HC Civil Appeal No. 44 of 2021***, and ***GE India Technology Centre v Commissioner of Income Tax (2010) 327 ITR 456*** also support the proposition that withholding tax is a collection mechanism and cannot arise unless the payment is chargeable to tax. Those authorities do not mean that every amount described as a reimbursement is outside the scope of WHT. The factual inquiry remains whether the payment is a true reimbursement or consideration for services.

223. The evidence shows that the VEK throughput payments were not purely restorative. They included staff costs, premises, administration, financing,

operational coordination, clearing and forwarding arrangements, management functions, and margin. These are characteristics of a service arrangement. VEK was not merely paying third parties as the Applicant's messenger. It was performing its own contractual obligations.

224. ***Vivo Energy Uganda Limited v URA, TAT No. 268 of 2022*** is directly relevant. The Tribunal held in that matter that throughput fees paid to VEK were incurred by VEK in performing its operational obligations and were not for the exclusive use of the Applicant. The same reasoning applies here. Costs incurred by VEK in order to perform its own services do not become non-taxable reimbursements merely because VEK recovers those costs from the Applicant.

225. ***Total Energies Marketing Uganda Limited v Uganda Revenue Authority, TAT No. 104 of 2023*** is also aligned with this position. Where a Kenyan affiliate provides handling, facilitation and operational services to a Ugandan oil marketing company, the contractual service or handling fee is income in the hands of the Kenyan entity if it remunerates that entity for its own services. ***Jacobsen*** is distinguishable. In ***Jacobsen***, the impugned expenses were true reimbursement expenses and did not constitute the recipient's income. In the present matter, the VEK throughput fee is a contractual fee for a composite service. The fact that VEK's internal cost build-up includes staff, finance costs, rent, clearing and forwarding, administration and operational expenses does not reduce the fee to a non-taxable reimbursement.

226. The Applicant conceded that the margin component constitutes income to VEK. Once the payment is shown to be a contractual service or throughput fee with an income element, the withholding obligation is not limited to the net margin unless the Applicant proves that specific amounts are true third-party disbursements falling outside VEK's income at the threshold.

227. WHT therefore applies to the gross amount properly characterised as VEK's contractual throughput, handling, facilitation, financing, coordination or operational service fee, including embedded cost recoveries and margin

forming part of that fee. The Applicant cannot reduce the WHT base by separating VEK's internal costs of earning that income from the margin. This conclusion is consistent with the structure of withholding tax. WHT is applied to the payment that is chargeable to tax, not to the non-resident's net profit after deducting its business costs. Costs incurred by the non-resident in earning the income are not deducted by the Ugandan payer at the withholding stage.

228. The Tribunal preserves only one exclusion. Amounts proved to be true third-party disbursements, contractually and evidentially separate from VEK's own service fee, are excluded at the threshold because they are not income of VEK. The strict evidential test in ***Nell Gwynn, Bank of Africa*** and ***Prime Solutions*** applies.

229. The Applicant is a resident of Uganda and made a foreign payment. The income component of the VEK throughput arrangement has a sufficient Uganda-source connection to constitute income with a Uganda source under section 79 and to attract tax on international payments under section 83, with withholding effected under section 120.

230. The WHT assessment of Shs.3,462,531,485 is upheld in principle but varied to exclude only properly proved third-party disbursements that are separate from VEK's contractual service fee. The assessment is remitted to the Respondent for recomputation in accordance with these findings.

Remedies

231. Section 20 of the Tax Appeals Tribunals Act empowers the Tribunal, upon hearing an application for review, to affirm, vary or set aside the taxation decision under review and to make such consequential orders as are necessary to give effect to its decision.

232. The Tribunal has upheld some assessments, set aside others, and varied the VAT and WHT assessments on VEK throughput fees. A recomputation is therefore necessary.

233. The following amounts are upheld:

i) Income Tax of Shs.13,808,204,756 is upheld, subject only to removal of any amount, if still embedded in that figure, attributable solely to cylinder deposits which have been found not to constitute taxable income.

ii) VAT and WHT on VEK throughput fees are upheld in principle, but shall be recomputed as guided by the Tribunal in the determination above.

234. The following amounts are set aside:

i) Rental Tax of Shs.15,239,151,011 is set aside in full.

ii) VAT on cylinder deposit variances of Shs.214,376,324 for 2021 and Shs.546,772,481 for 2022 is set aside.

iii) VAT on station throughput and automation charges of Shs.4,170,933,352 is set aside.

iv) Any VAT component arising solely from alleged CODO rental income is set aside.

v) Any Income Tax component maintained solely on residual cylinder deposit variances is set aside and shall be removed from the final computation if still included.

235. The following amounts are varied and remitted for recomputation:

i) VAT on VEK throughput fees shall be recomputed by taxing VEK's contractual throughput, handling, facilitation, financing, coordination and operational service fee, including embedded cost recoveries and margin forming part of VEK's own service, and excluding only properly proved third-party disbursements that are contractually and evidentially separate from that service fee.

ii) WHT of Shs. 3,462,531,485 on VEK throughput fees shall be recomputed by applying WHT to the gross contractual service or throughput fee component, including embedded cost recoveries and

margin forming part of VEK's own service, and excluding only properly proved third-party disbursements that are contractually and evidentially separate from VEK's service fee.

236. The documents supplied must show, for each claimed disbursement:

i) the third-party supplier;
ii) the nature of the service or charge;
iii) the invoice issued by the third party;
iv) proof of payment by VEK;
v) the allocation of the cost to the Applicant;
vi) proof that the amount was passed on at exact cost;
vii) the contractual basis on which VEK acted as agent or conduit; and
viii) confirmation that no mark-up, margin, value addition, financing return or service remuneration was included.

237. The Respondent shall complete the recomputation within forty-five days from receipt of the Applicant's documents. The recomputation shall clearly identify:

i) The Income Tax upheld;
ii) the Income Tax removed, if any, in respect of cylinder deposits;
iii) the VAT set aside on cylinder deposits;
iv) the VAT set aside on station throughput and automation charges;
v) the Rental Tax set aside;
vi) the VAT set aside on alleged CODO rental income;
vii) the taxable VAT component of VEK throughput payments;
viii) the taxable WHT component of VEK throughput payments; and
ix) the amounts, if any, excluded as properly proved third-party disbursements.

238. If the Applicant fails to provide adequate documentation within the period stated, the Respondent may recompute the VAT and WHT on VEK throughput payments using the best available information. The

recomputation must be rational, transparent and communicated to the Applicant.

239. Interest and penalties shall follow the principal tax as finally recomputed. No interest or penalty shall stand on any assessment or component that has been set aside by this ruling. Interest and penalties on varied assessments shall be recomputed only on the sustained principal tax.

240. The Applicant's prayer for refund of the 30% tax paid is allowed only to the extent that the payment exceeds the tax finally sustained after recomputation. Any refundable amount shall be dealt with in accordance with the applicable tax law provisions on refunds and credits.

241. Given that each party has partly succeeded and partly failed, each party shall bear its own costs.

It is so ordered.

Dated at Kampala this 30th day of June 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. PROSCOVIA REBECCA NAMBI
MEMBER

HON. STELLA NYAPENDI CHOMBO
MEMBER

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