

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL APPEAL NO. 48 OF 2022
(Arising from TAT Application No. 68 of 2018)

APOLLO HOTEL CORPORATION LIMITED | **APPELLANT**

VERSUS

Before: Hon. Justice Thomas Ocaya O.R

The Appellant entered into an international license agreement with Sheraton International Inc. for the right to brand its hotel with the Sheraton brand and use its marks and related intangible property. The Appellant also entered into an agreement with Sheraton International Inc. to use Sheraton International Inc.'s centralized reservation system.

Consequently, the Appellant made payments to Sheraton International Inc. upon which the Respondent imposed VAT of UGX 398,418,385 (Uganda Shillings Three

- 5 Hundred Ninety Eight Million, Four Hundred Eighteen Thousand, Three Hundred Eight Five Only). The basis of the Respondent's assessment was that the Respondent treated the provision of the Centralized Reservation System ["CRS"] as an imported service which attracted VAT at standard rate.
- 10 The Respondent objected to this assessment, arguing, essentially, that the CRS was utilized by persons outside Uganda who intended to book stays at the Appellant's hotel and did not constitute an import of services, or a taxable supply under the VAT Act.
- 15 The Appellant objected to the Respondent's assessment and, the Respondent having maintained its assessment, applied to set it aside before the Tax Appeals Tribunal ["TAT"].

Decision of TAT

- 20 The TAT rendered a decision on the 21st April 2021 holding that the supply of the centralized reservation system and that the supply of the centralized reservation system was an ancillary service to the supply of the right to operate the Appellant's hotel under the name and brand of "Sheraton".
- 25 The Appellant being dissatisfied with the decision of the TAT now appeals to this court.

Representation and Submissions

- The Appellant was represented by M/s Shonubi, Musoke & Co. Advocates while
- 30 the Respondent was represented by its Legal Services and Board Affairs Department.

Both Counsel with leave of court made written submissions and oral highlights of those submissions in support of their respective cases in this appeal. I have



5 considered all the submissions of the parties before coming to the Judgment below, suffice to say that I have not felt the need to reiterate the same below.

Grounds of Appeal

10 The Appellant framed three grounds of appeal namely;

1. The Tax Appeals Tribunal erred in law when it held that the Central Reservation System was an imported service.
2. The Tax Appeals Tribunal erred in law when it held that the supply of the central reservation system was merely an ancillary service to the principal service namely the right to operate the hotel under the Sheraton brand using the system thereby attracting VAT.
3. Whether the right to operate the hotel under the Sheraton brand using “the system” amounted to an imported service therefore attracted VAT.

20 During the oral highlights of the written submissions, by consent of the parties the **third ground of appeal** was expunged as well as all submissions made in respect of it, as it arises from a point that was not contested from TAT.

Section 27(2) of the Tax Appeals Tribunal Act [“TATA”] provides thus:

25 “An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.”

In **Uganda Revenue Authority v Tembo Steels Ltd, HCCA 09/2006** Justice Christopher Madrama Izama (*as he then was*) held as follows;

30 “In the case of section 27 of the Tax Appeals Tribunal Act, the analogy of a second appeal applies because it specifically provides that an appeal will be on questions of law only. It does not have to be a second appeal for this point to be made. The statute is clear and unambiguous that every appeal to the High Court may be made

5 only on questions of law. It is clear that the intention of Legislature in the above
instance is to leave questions of fact such as assessment to professionals and
reserve to the courts only points of law for determination. With the above
authorities as a guideline the question is whether the grounds in the notice of
10 appeal disclose “questions of law” within the meaning and intent of section 27 of
the Tax Appeals Tribunal’s Act so as to confer jurisdiction on the High Court to
determine the ground ... Where there is no question of law or controversy of law,
section 27 of the Tax Appeals Tribunal does not give the High Court jurisdiction to
entertain the ground of appeal or the appeal if no other point of law is raised.”

See also **National Social Security Fund v Uganda Revenue Authority HCCA**
15 **29/2020**

A question of law is about what the correct legal test (or legal interpretation) is
while a question of fact is concerned with what actually took place. See **Elias**
Kasolo v Security Group Uganda Limited & Anor CACA 212/2020, Luwa Luwa
20 **Investments v URA HCCA 43/2022.**

The Appellant’s remaining two grounds of appeal raise points of law only and are
properly maintainable in this court.

25 Right of Appeal

The court observes that the right of appeal is a creature of statute and must be
given expressly by statute (see **Hamam Singh Bhogal T/a Hamam Singh & Co. v.**
Jadva Karsan (1953) 20 EACA 17, Baku Raphael v. Attorney General S. C Civil
Appeal No. 1 of 2005 and Attorney General v. Shah (No. 4) [1971] EA 50).

30

This Court has jurisdiction to hear and determine appeals from the decisions of
the Tax Appeals Tribunal in accordance with the provisions of **Section 27** of the
Tax Appeals Tribunal Act. Accordingly, this appeal is competently before this



5 court. See Also **Roche Transport v URA HCCA 20/2021, Luwa Luwa Investments v URA HCCA 43/2022**

Role of First Appellate Court

10 It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see **Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of 2000 [2004] KALR 236**).

15 In a case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see **Tonny Kilama & Anor v Mrs. Grace Perepetua Otim HCCA 31/2019**).

20 In exercise of its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular, this court is not bound necessarily to follow the trial courts' findings of fact if it appears either
25 that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanor of a witness is inconsistent with the evidence in the case generally. It is not every slip of a lower court that will result in an appeal being allowed: it is only those mistakes that have been shown to have affected or
30 influenced the decision appealed against that will result in the appeal being allowed.

I will now proceed to determine the appeal.



5 **Ground One: The Tax Appeals Tribunal erred in law when it held that the central reservation system was an imported service.**

In this regard, there are two questions to answer:

- (a) Whether the provision of the CRS was an import of services.
- 10 (b) Whether the provision of the CRS was an ancillary service to the principal service namely the right to operate a hotel under the Sheraton brand.

I will handle both questions concurrently. On this ground, the Appellant's arguments can be summarized as below:

- 15 (a) The provision of the CRS is not an import of services because the service is provided by Starwood, outside of Uganda, and is used by persons outside of Uganda for purposes of making bookings. Ref **Section 4(1) VAT Act, Section 1(j) VAT Act, Africa Broadcasting (U) Ltd v URA TATA 44/2018, Aviation Hangar v URA TATA 21/2019**

20

- (b) The reading of the law is plain, clear and ambiguous and therefore the words of the statute (as referenced above) should be given their natural and ordinary meaning. Ref **Cape Brandy Syndicate v IRC (1921) 1 KB 64**

- 25 (c) The right to operate the hotel and the provision of the CRS are two distinct services and the provision of the CRS is not incidental to the provision of the license to operate a hotel under the Sheraton brand. Ref **College of Estate Management v Customs and Excise Commissioners [2004] STC 15, Card Protection Plan Limited v Commissioners of Customs And Excise**
30 **[1999] 2 AC 601, URA v Total Uganda Limited CA 11/2012**

For the Respondent, the above was disputed and Counsel submitted that the decision of the Tribunal had been arrived at correctly.

- 35 (a) It is the Appellant that was supplied with the CRS and it is the Appellant who consumed the service. Therefore, there was an import of services. Ref



5 **Section 1(j) VAT Act, Section 4(c) VAT Act, Reg 13(1) VAT Regulations,
Cowi AS v URA HCCA 34/2020, Black's Law 8th Ed P 771**

(b) The destination principle underpins the interpretation and application of the VAT Act, including the interpretation of an "import" within the VAT Act.

10 The destination principle posits that the person who purchases the service is the one deemed to have consumed it. Ref **International VST/VAT Guidelines Clause 1.12, URA v COWI AS HCCA 34/2020.**

(c) A key consideration for the determination of where a supply falls is the payment of consideration. In this case, it is the Appellant who paid/pays consideration for the service and not the clients who use the service to book. Ref **Mu-Jhu Care Limited v URA TA Application No. 18/2018, URA v COWI AS HCCA 34/2020**

20 (d) The CRS is an integral part component of the principal service offered under the principal service offered under the International License Agreement ["ILA"]. Ref **Commissioner of Customs v Madgett and Baldwin (1998) ECR 6229, Card Protection Plan v Commissioners of Customs and Excise [2001] EKH 4**

25 The parties, in their submissions, also made reference to various documents on record and included in the record of appeal and supplementary record of appeal.

Franchising and Licensing in Hospitality

30 The determination of this dispute requires some underlying context on franchising and licensing in the hospitality industry. But before we explore this, it is important that we explore the software relied on by hotels to manage operations.

A typical hotel of the star rating status of the Appellant uses the following systems to run its day to day operations:

5 (a) **Property Management System [PMS]**: this is the system that assists hotel
staff in checking bookings, occupancy and other aspects of the hotel from a
day to day basis. Where a customer uses services at different billing points
during their stay, the PMS collects the purchase information from the POS
and bills it to the customer's room. This is what enables the customer to
10 have a unified bill of charges at check out even if they took services at
different billing points. For instance, if a customer had a meal at the hotel
restaurant for USD 10, used the laundry service for USD 3, had a drink at the
bar accumulating a bill of USD 30 and stayed for one night at a rate of USD
50, the total bill will be USD 93 and will be available at checkout
15 notwithstanding that it was accumulated from different service points of the
hotel. There are brand specific PMS systems and Independent PMS systems.
Brand specific PMS systems include EMMA by Radison, and Opera by Acor.
Using of the latter typically requires that the hotel has some relationship
with the brand, either by franchise, license or such similar arrangement. On
20 the other hand, independent hospitality systems companies provide PMS to
independent hotels.

(b) **Centralized Reservation System [CRS]**: The CRS manages and coordinate
all aspects of room reservations and bookings. It streamlines the booking
25 process, facilitates real-time updates, and provides a centralized platform
for managing reservations. It does the following:

i) **Room Availability and Booking**: The CRS allows hotel staff to
check the availability of rooms across different room types and
dates. It enables them to make reservations for guests based on
30 their preferences and requirements.

ii) **Real-Time Updates**: The system provides real-time information
on room availability, rates, and special offers. This ensures that
hotel staff and guests have access to up-to-date information.



- 5 iii) **Rate Management:** The CRS helps the hotel set and manage room rates, taking into account factors like seasonality, occupancy levels, and demand. It allows for dynamic pricing, promotions, and discounts to optimize revenue.
- 10 iv) **Inventory Control:** The CRS ensures efficient management of room inventory. It prevents overbooking and helps hoteliers allocate rooms effectively to maximize occupancy.
- 15 v) **Customer Profiles and Preferences:** The system stores guest information, creating profiles that include preferences and special requests. This data enables personalized service and enhances the guest experience during future stays.
- 20 vi) **Integration with Online Booking Channels:** A CRS typically integrates with the hotel's website and online travel agencies (OTAs). This integration ensures that all booking channels display accurate room availability and rates.
- 25 vii) **Channel Management:** The CRS helps manage bookings from different channels, such as the hotel's website, OTAs, travel agents, and GDS. It maintains consistency across these channels to avoid conflicting reservations.
- 30 viii) **Reporting and Analytics:** The system generates reports on key performance indicators (KPIs) such as occupancy rates, revenue, average daily rate (ADR), and booking trends. These insights help hotel management make data-driven decisions.
- 35 ix) **Payment Processing:** Many CRSs offer secure payment processing options, allowing guests to make reservations and payments confidently.



5 x) **Group Reservations and Event Management:** The CRS can handle group bookings and events, helping hotel staff manage room blocks, event details, and group rates.

10 xi) **Integration with Property Management System (PMS):** The CRS often integrates with the hotel's PMS, ensuring a seamless flow of information between reservations and front desk operations.

15 (c) Point of Sales System [POS]: The POS is a software and hardware solution that facilitates and manages various transactions that occur at various service arrears in a hotel (such as restaurant, bar, massage spa etc).

20 (d) Global Distribution System [GDS]: This is a system used to book for services (such as accommodation) at hotels that are plugged into the GDS. There are two types of GDS. There are brand specific GDS systems [For instance, Acor uses a GDS system called TARS] and non-brand specific GDS systems. The latter are made by hospitality systems companies such as Apollo, Galileo and Amadeus. The GDS is only accessible to travel agents with IATA licensees and is not a business to business ["B2B"] or ["Business to Customer"] framework. There are third party entities which charge independent hotels a fee to intergrate and link them to the GDS. Examples of this include World Hospitality Solutions.

The CRS: Detailed Operations

30 The present dispute relates to the provision of the CRS. It is important to explore in some detail what the CRS does.

Reservation Request:

35 The process commences when a guest expresses their intention to book a room at a hotel. This can be done through various channels, including the hotel's official

5 website, mobile application, dedicated phone line, or even third-party booking platforms. The guest provides essential details, such as desired check-in and check-out dates, number of occupants, room preferences (e.g., smoking or non-smoking, bed type), and any special requests or considerations.

10 Availability Check:

Upon receiving a reservation request, the centralized reservation system springs into action. It interfaces with a robust and extensive database that encompasses information about room availability across all properties affiliated with the hotel. The system performs a real-time search, cross-referencing the guest's
15 requirements with the available inventory to identify a suitable room that matches the specified criteria.

Inventory Management:

To avoid double bookings and maintain accurate availability, the centralized
20 reservation system diligently manages the inventory. Once a reservation is confirmed, the system automatically updates the inventory, reducing the number of available rooms for the specified dates. This dynamic adjustment prevents overbooking and ensures efficient allocation of resources, guaranteeing that each guest receives a room that meets their requirements.

25

Rate Calculation:

In addition to room availability, the centralized reservation system incorporates the pricing and rate structure. It takes into account various factors, such as room type, seasonality, special promotions, and loyalty programs, to calculate the
30 appropriate rate for the guest's reservation. This meticulous process ensures consistent and accurate pricing across all booking channels, providing transparency and fair pricing to guests.

35



5 Integration with Hotel Systems:

The CRS seamlessly integrates with other hotel systems, enhancing operational efficiency and promoting a cohesive guest experience. Integration with the property management system (PMS) allows for the automatic transfer of reservation details from the centralized system to the hotel's internal operations.

10 This integration facilitates a smooth check-in process, as the front desk staff can access the reservation information and prepare for the guest's arrival. Integration with the revenue management system (RMS) aids in optimizing room rates, considering factors such as demand, market conditions, and competitive pricing to maximize revenue potential.

15

Booking Confirmation and Communication:

Once the centralized reservation system identifies an available room that meets the guest's requirements and calculates the appropriate rate, it generates a comprehensive booking confirmation. This confirmation includes essential

20 details, such as reservation dates, room type, rate, guest information (name, contact details), and any additional specifications or requests. The system promptly sends the booking confirmation to the guest via their preferred communication channel, be it email, SMS, or mobile app notification. Simultaneously, the system communicates the reservation information to the
25 hotel staff, updating their internal systems and ensuring all relevant departments are informed.

Modifications and Cancellations:

Recognizing the importance of flexibility, a centralized reservation system caters
30 to reservation modifications and cancellations. If a guest wishes to modify their reservation, such as changing the check-in or check-out dates or updating room preferences, they can contact the hotel directly or use dedicated self-service portals provided by the system. The centralized reservation system processes these modification requests, updates the inventory accordingly, and handles any



5 necessary adjustments in reservation details. Similarly, if a guest decides to cancel their reservation, they can communicate their intent through appropriate channels, and the system handles the cancellation

Franchise/Licensing and Dedicated Software

10 Generally, in the hospitality industry, there are mainly two branding models. One model is the licensing/franchise model. In this model, the Hotel is presented and operated as if it is run by the licensor. The brand, presentation, processes and standards will be the same, allowing for a few differences (such as across class of hotels).

15 On the other hand, there is the alternative branding model where would be licensors (usually large hospitality corporations) enter working relationships with independent hotels. These contracts typically involve referral of clients of the large corporation to the independent hotel, in exchange for consideration. These
20 arrangements do not typically require full brand, process and standard migration. An example of these arrangements is the Radisson Individuals offering by Radisson Blu.

In the present case, we are dealing with a franchising/branding model. In the
25 hospitality industry, hotels obtaining licenses from licensors typically have to make software migrations to software systems used in the group. This is to ensure uniformity (which is the essence of the licensing/franchising) and to ensure compatibility. For instance, Acor uses The Acor Reservation System (TARS) as its CRS, Marriott uses Amadeus Central Reservations System (ACRS) and Radisson
30 uses EMMA among others.

Independent hotels do not typically have access to dedicated software systems for group hotels (that are accessed after licensing). They purchase this software from



5 independent developers such as Amadeus, Galileo, Apollo (for GDS), Protel (for PMS) and Easipos (for POS).

As far as development of the software, approaches vary. Some groups engage independent hospitality management companies to develop or update the software, while others have subsidiaries that develop this software for them, under contract.

See AltexSoft. (2023). Central Reservation System for Hotels: CRS Functionality and Software Explained. [online] Available at: <https://www.altexsoft.com/blog/central-reservation-system-hotel/>, Oracle (2020). What is a Hotel PMS (Property Management System) [online] Oracle.com

Available at: <https://www.oracle.com/be/hospitality/what-is-hotel-pms/#:~:text=Traditionally%2C%20a%20hotel%20property%20management>, Hotel Minder (2023). Global Distribution System (GDS) - The Complete Guide for Hotels. [online] www.hotelminder.com. Available at: <https://www.hotelminder.com/global-distribution-system-gds-for-hotels>.

O'fallon, M.J. and Rutherford, D.G. (2019). Hotel management and operations. Hoboken, N.J.: Wiley. Radisson Hotels (2022). Radisson Individuals | Selected for you. [online] Radisson Individuals. Available at: <https://www.radissonhotels.com/en-us/brand/radisson-individuals>.

Is there an import of services?

I agree with the decision of the TAT that it is important to explore first (1) whether there was a service provided and (2) whether that service was imported.

Section 1(t) of the VATA defines services as “anything that is not goods or money”.



5 A review of the license agreement executed between the parties reveals that it is an agreement for a license to operate the Appellant's hotel using the Sheraton name and brand. [See Clauses 2-5]

The Tax Appeals Tribunal ruled that the above was evidence of the provision of a
10 service. The tribunal found that the agreement constituted a delivery of composite rights to the Appellant which was evidence of a provision of services.

A review of the licensee agreement demonstrates that there is an agreement under which one party allows the other to use the Sheraton Brand to operate its hotel in
15 exchange for consideration. Such an agreement is not one for the provision of money or goods and therefore is a service.

Besides, it was not a contested fact that the (a) the Appellant obtain a license to operate its hotel using the "Sheraton" brand and style and (b) obtained the
20 provision of software from Starwood. This was sufficient evidence that a service was provided.

Is the service imported?

Section 1(j) of the VATA defines to import as

25 "“import” means to bring, or to cause to be brought, into Uganda from a foreign country or place;"

Section 4(c) of the VATA levies VAT on an import of services. To this end, Regulation 13(1) of the VAT Regulations provides that a person receiving an
30 imported services will account for VAT on the supply.

Import of services involves the provision of a service by a person who is resident or carries on business outside Uganda to a person that is resident or carries on business in Uganda. See **COWI AS v URA HCCA 34/2020**.



5 It must be noted that VAT is a destination based consumption tax, one levied on commercial activities, not as a charge on the business but on the consumer. It is therefore a tax on activity. So as to identify who should bear VAT, it is necessary to identify the taxable event. See **COWI AS v URA HCCA 34/2020, Coca-Cola Central East and West Africa Limited v Commissioner of Domestic Taxes**
10 **[2020] eKLR**

The OECD International VAT/VST Guidelines provide that, in respect to trade in intangibles, and in respect of business to business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded
15 services or intangibles. See OECD VAT/VST Guidelines, Guidelines 3.2 and 3.3. See also **Unilever Kenya Limited v The Commissioner of Income Tax – Income Tax Appeal No.753 of 2003, Commissioner of Domestic Taxes v Total Touch Cargo Holland [2018] eKLR**

20 It is also important to define “consumption” and related words such as to “consume” and “use”. According to the **Black’s Law Dictionary, 11th Ed**, “use” is defined thus:

“1. To employ for the accomplishment of a purpose; to avail oneself of< they use formbooks>. 2. To put into practice or employ habitually or as a usual way of doing
25 something; to follow as a regular custom to use diligence in research>. 3. To do something customarily or habitually; to be wont or accustomed< I used to avoid public speaking, but no longer>. 4. *Archaic*. To conduct oneself toward; to treat<he uses me well>. 5. To make familiar by habit or practice; to habituate or inure <she is used to the pressure>. 6. To take (an amount of something) from a supply the
30 firm uses 50 reams of paper each day>. 7. To take advantage of (someone) for selfish purposes; to make (a person) an involuntary means to one’s own ends< he uses his interns for personal errands. 8. To take usu. Improper advantage of (a situation, position etc) <she uses her board membership to threaten staffers>. 9. To regularly take; to partake of (drugs, tobacco, etc) <he uses heroin>.”



5 To “Consume” is defined as

“1. To destroy the substance of, esp. by fire; to use up or wear out gradually, as by burning or eating <the house was consumed by fire>. 2. To expend wastefully; to waste; to squander <he consumed all his resources within four months>. 3. To use up (time, resources, etc.), whether fruitfully or fruitlessly <45% of the paper we
10 consume is recycled>. 4. To eat or drink; to devour <no alcohol may be consumed on these premises>. 5. To engage the attention or interest fully; to obsess <she was consumed with guilt after her father’s death>.”

On the other hand, consumption is defined as

15 “The act of destroying a thing by using it; the use of a thing in a way that exhausts it.”

In **Coca Cola Central East & West Africa v Commissioner of Domestic Taxes HC Tax Appeal 11/2013**, “consumption” was defined as “to consume means to
20 “use up” while use means “to put to a particular purpose,” “to take up something.

Consumption or use of a service is not determined by reference to the payer of the service or location of the payer of the service or location of the person who is requisitioning for the service. What is pertinent is the location of the consumer.”
25

A similar position was arrived at in **Commissioner of Domestic Taxes v Total Touch Cargo Holland [2018] eKLR** where the court, considering Section 2 of the Kenyan VAT Act (a section in pari material with Section 2 of our VAT Act), held thus

30 “A clear reading of this provision is that for a service to be deemed an “exported service”, it matters not whether that service was performed in Kenya or outside Kenya. The determining factor is the location where that service is to be finally used or consumed. Therefore, an exported service will be one which is provided for use or consumption outside Kenya.”

5 See also **F.H. Services Kenya Limited v Commissioner of Domestic Taxes, Appeal No.6 of 2012, Panalpina Airflo Limited v Commissioner of Domestic Taxes HC Income Tax Appeal No. 5 of 2018**

Counsel for the Appellant contended that the service was provided by Starwood to
10 a person outside Uganda who intended to book the use of services of the Appellant's hotel, and which persons were outside Uganda.

In my view, the Appellant conflated the taxable activity of consumption leading to VAT. In the instant case, there is a provision of a software through which third
15 parties outside of Uganda can make bookings. The consumer of the service is therefore not the persons booking, but the Appellant which procured the service to enable prospective customers book with it. In determining who the consumer is, one does not, except otherwise provided for by law or other permissible exceptions, consider non-parties to the contract for the supply of services. See LG
20 **electronics Africa Logistics FZE Kenya branch v The Commissioner of Domestic Taxes Kenya Revenue Authority (2020) eklr**

The services were provided by Starwood which provided software remotely that was utilized by the Appellant to receive bookings. In the absence of that software,
25 direct bookings would likely have to be by direct calls or such related means of communicating booking requests that would be manually input within the Appellant's records. The service provided by Starwood allowed the Appellant to access a software which would enable it to more easily receive and record bookings.

30

In my view, the taxable point is the receipt of the access and utilization of the software provided by Starwood to the Appellant and not the use of the software to make bookings by third parties. The Appellant procured the service, consumed it (by utilizing it to receive bookings from third parties) and paid consideration for



5 the same. The service was utilized by the Appellant in respect of its hotel business in Uganda and was provided by a person not resident of or having a place of business in Uganda. It accordingly follows that there was an import of services.

Accordingly, this ground of appeal fails.

10

Ground Two: The Tax Appeals Tribunal erred in law when it held that the supply of the central reservation system was merely an ancillary service to the principal service namely the right to operate the hotel under the Sheraton brand using the system thereby attracting VAT.

15

The Respondent criticized the tribunal for holding that the supply of the CRS was merely an ancillary service to the principal service of the provision of a right to operate the Appellant's hotel under the Sheraton brand.


20 It is not a contested between the parties that the provision of a license to operate the Appellant's hotel under the brand and style "Sheraton Hotel Kampala" as an import of service attracting VAT.

Essentially, counsel contended that the right to operate the hotel under the
25 Sheraton brand was a distinct service from the provision of the CRS which was part of the centralized services provided by Starwood under Recital D, Article 6.1 of the license agreement.

For its part, the Respondent submitted that both services are provided by affiliate
30 entities, are not severable but constitute ancillary services. Counsel relied on Recitals A, B and D for evidence that the licensor, Sheraton International Limited, is an affiliate of Starwood Hotels and Resorts Worldwide Inc. which through its affiliates owns and operates, supervises, directs and controls the operation of hotels under the brand.

- 5 Where a transaction comprises a bundle of features or acts, it may be regarded as one transaction where the circumstances point to a transaction for the whole rather than the separate/divisible sub-parts. See **Card Protection Plan v Commissioners Of Customs And Excise (1999) 2 AC 601**
- 10 In that regard, the transaction will take the character of its most prominent sub-part. For instance, a transaction to purchase a car with a related contract for additional fittings may be treated as part and parcel of the contract to purchase the car, as opposed to two separate contracts, one for the purchase of the car and another for the provision of services to fit additional parts/features in the car. See
- 15 **Section 12, VAT Act**

The criteria to be applied when a single transaction comprised of a supply of several distinguishable services is as below:

- (a) Regard should be had to the circumstances of the case to determine whether
- 20 there is a single supply or different and distinct supply. Recourse must be had to a common sense approach.
- (b) Every supply of a service must be normally regarded as distinct and independent.
- (c) A supply which constitutes a single supply from an economic point of view
- 25 should not be artificially split.
- (d) The essential features of the transaction must be ascertained in order to determine whether is a typical consumer with several distinct principal services or with a single service.
- (e) Ancillary supplies take the tax treatment of the principal supplies.
- 30 (f) A service must be regarded as ancillary to the principal service if it does not constitute for customers, an aim in itself, but a means for better enjoying the service supplied.
- (g) The fact that a single price is charged may be indicative of a single service, but is not decisive.
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5 (h) If the circumstances indicate that the parties intended two different services, it is necessary to identify the parts of the single price which relate to each of the two services.

See **URA v Total Uganda Limited HCCA 11/2012, Card Protection Plan v Commissioners Of Customs And Excise (1999) 2 AC 601 and College Of Estate Management v Customs And Excise Commissioners (1999) 2 AC 601**

15 In **OA Brown v The Queen, [1998] GSTC 40 (TCC) (Canada)** a question arose as to whether a service which bought livestock according to the instructions of its customers was providing a distinct service from providing livestock (which is a zero rated supply) when in the course of providing the service the Appellant also incurred the cost of feeding, inoculation, transportation and insurance (which the Appellant sought reimbursement for) for the livestock. In attempting to characterize the supply, the Court sought to find the “essence” of the overall supply, which it found to be the buying service, due to it being integral to the overall supply of livestock. At the same time, the Court determined that only a single supply was provided as the buying service was indivisible from the other services offered.

25 In **Mesto Zamberk v Financni Reditelstvi v Hradci Kralov: C-18 /12, 2014 STC 1703** (Court of Justice of the European Union), the court sought to identify the predominant element of a supply of a waterpark in order to find whether the supply in question was connected to a sport. To answer this question, the Court held that this question needed to be assessed objectively based on the qualitative and quantitative elements of the supply, by looking at it from the perspective of a typical consumer. Could that this included looking at the facilities offered by the park, their size in relation to the park as a whole and whether these facilities were purely recreational in nature or whether they could also be used for athletic activities.



5 In **Commissioners of Revenue and Customs v Metropolitan International Schools Limited, 2017 UKUT 0431 (TCC)**, the court considered whether the supply of distance learning services should be treated as being the supply of books. The Court found that from the perspective of the students, the school provided a blended course, where books were an important but not essential element of the service being provided. Accordingly, the service being provided was not found to be the zero rated supply of books. Although it was unnecessary to go further and actually characterize the supply, the Court indicated that the supply lacked a single predominant element and instead concluded that the supply was one of educational services.

15 In **Canadian Medical Protective Association. v The Queen, 2009 FCA 115, (FCA)**, the Court was asked to answer whether investment managers used by the Canadian Medical Protective Association were the provision of a financial service. In ruling that it was a financial service, the Court found that although the research and analysis undertaken by the brokers was essential to the service that they provided, the supply being provided could not be characterized in this manner, as the research and analysis was all done in service of the end result, which was the purchase and sale of financial instruments.

25 In **Canadian Imperial Bank of Commerce v. The Queen, 2018 TCC 109** the court, reflecting on whether the provision of VISA services were financial services exempt from VAT, the court found that the services were only facilitating of financial/banking services but were not a provision of financial or banking services.

30 We now turn to the present facts. A review of the license agreement shows that the CRS is provided by Starwood, a company affiliated to Sheraton International Limited. As noted above, the provision of franchising/licensing services in hospitality is unique. A customer who accesses a Sheraton Member hotel in Cairo

5 expects to see the same presentation, aesthetic and services at a member hotel in Nairobi. To that end, the look and feel of the member hotels is virtually identical.

To this end, the member hotels will largely use the same systems, including the same CRS software. This is because the systems and software of the franchise
10 group (in this case Sheraton International) should be capable of seamlessly interacting with those of member hotels who have licenses. This enables easy receipt of bookings, customer information and so on, including the provision of all benefits and bonuses to special group customers (such as royalty members/guests).

15

To achieve this, Clauses 5.1.2, 5.2, 5.4, 5.5, 5.6, 5.7 and 6 of the licensee agreement obligated the Appellate to make modifications and obtain licensees in order to bring the hotel into compliance with Sheraton Hotel standards. Further, all provisions of the agreement set out the Sheraton Hotel standards that the
20 Appellant must comply with to run a hotel under the Sheraton brand, including negative covenants against the non-compliance. Clause 6.2 requires the Appellant to procure and keep in use the CRS from Starwood for the entire term of the license agreement. Under Clause 6.7, Sheraton has the right to inspect the use of the CRS by the Appellant. Where the Appellant fails to keep in use the CRS, Sheraton has a
25 right to terminate the license agreement in accordance with Clause 16.1. What is more, in the event of termination of the licence agreement, the Appellant is contractually bound to stop using the CRS, and all proprietary software of Sheraton, Starwood or other affiliates in accordance with Clause 16.5.2(g). It follows from the above that not only is the Appellant obligated to use the CRS in
30 their utilization of the Sheraton license, they cannot use the CRS after that license has been withdrawn.

Another key matter to note is that the CRS is provided to an associated company of the licensor. The purpose is the provision of a uniform CRS to all member hotels,



5 including hotels which are members by license. As noted above, a hotel needs a
CRS to operate. Prior to the licensing agreement, it is inconceivable that the
Appellant did not have a CRS. As noted above, the requirement to use the CRS from
Starwood was part and parcel of the licensing relationship in order to bring the
Appellant's hotel within the Sheraton Group by adopting and using the same
10 software as the other members of the group.

In my view, the provision of the CRS is inseparably linked to the provision of the
licensee by Sheraton International Limited to the Appellant, as this was part of the
effort to brand, operate and position the Appellant's hotel as a Sheraton Hotel.
15 There would be no provision of the CRS from Starwood to the Appellant without
the broad brand license relationship with Sheraton.

The commercial context of the transaction is the on the one part (a) the permission
to present and brand the Appellants hotel as a Sheraton Hotel and (b) the adoption
20 and utilization of the same software, systems and processes as hotels in the
Sheraton group. In my view, it makes no difference that the CRS was provided by
one corporate entity and the license another corporate entity.

It follows that the provision of the CRS takes the character of the principal supply
25 being the provision of the license by Sheraton Hotel International to the applicant
which attracts VAT.

I therefore, find that the Tax Appeals Tribunal correctly held that when it held that
the supply of the central reservation system was merely an ancillary service to the
30 principal service namely the right to operate the hotel under the Sheraton brand
using the system thereby attracting VAT.

This ground of appeal also fails.



5 **Conclusion**

As I have held above, both grounds of appeal are without merit. I accordingly dismiss the appeal. Having done so it follows that costs follow the event. The appellant will pay the costs of this Appeal and the costs before the TAT.


I accordingly uphold the decision and orders of the Tax Appeals Tribunal.

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I so order.

Delivered electronically this 2nd day of August 2023 and uploaded on ECCMIS

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Ocaya Thomas O.R
Judge,

2nd August 2023

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