THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 15 OF 2018

MTN UGANDA LTD ==========APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, MRS. CHRISTINE KATWE, MR. SIRAJ ALI

RULING

This ruling is in respect of a dispute on the proper application of the Standard Alternative Method under S. 28 of the VAT Act and a Value Added Tax (VAT) assessment of Shs. 20,053,441,670 issued on the applicant for the period January 2014 to April 2017.

On 3rd November 2015 the applicant applied to the Commissioner General to use the Standard Alternative Method instead of the Standard Method under the VAT Act. On 14th March 2016 the Commissioner General allowed the applicant to use the Standard Alternative Method. On 8th June 2016 the applicant requested the respondent to allow it to apply the Standard Alternative Method retrospectively from 1st January 2014. On 4th July 2016 the respondent wrote requesting the applicant to provide details of input tax, showing the categories of directly attributable input tax to exempt and taxable supplies for the requested period for the purpose of evaluating the applicant's application. This information was provided by the applicant in its letters of 11th July 2016 and 27th October 2016. On 5th April 2017 the respondent wrote advising the applicant to apportion all network related costs and company overheads between mobile money and telecom services using the ratios in S. 28(10) of the VAT Act. The respondent deferred its approval of the retrospective application of SAM pending the applicant's compliance with its letter. On 19th April 2017 the applicant informed the respondent that the proposal to apportion was unacceptable as it eliminated the advantage the former sought to gain.

On 24th November 2017 the respondent issued an assessment of Shs. 20,053,441,670 against the applicant, Shs. 15,428,723,008 being the principal tax and Shs. 4,624,718,662 being interest. On 3rd January 2018 the applicant objected to the said assessment. On 29th March 2018, the respondent issued an objection decision disallowing the objection.

The following issues were set down for determination;

1. Whether the Standard Alternative Method was applied to the applicant?
2. Whether it was applied retrospectively to the applicant?
3. Whether there are any remedies available?

The applicant was represented by Mr. Oscar Kambona, Mr. Bruce Musinguzi and Ms. Barbara Musiimenta while the respondent was represented by Ms. Gloria Twinomugisha and Mr. Daniel Kasuti.

The dispute between the parties revolves around the use of the Standard Alternative Method under S. 28 of the VAT Act. In involves the apportionment of costs between exempt and standard supplies. It involves the apportionment of costs and overheads between mobile money and telecom services using the ratio of taxable sales to total sales under with S. 28 of the VAT Act.

The applicant's sole witness, Mr. Apollo Joseph Marumbu, a tax specialist in the applicant's finance department testified that the applicant is a mobile telecommunication company that provides mobile and fixed line telecommunication services since 1998. In April 2009 the applicant introduced mobile money services which are financial services. Since March 2011 the applicant has been using the Standard Method under the VAT Act. The applicant reviewed its application of the Standard Method and decided to use the Standard Alternative Method under S. 28(10) of the VAT Act, because the use of the Standard Method was a disadvantage to it.

On 3rd November 2015 the applicant applied to the Commissioner General for permission to use the Standard Alternative Method. On 14th March 2016 a written approval to use the Standard Alternative Method was given to the applicant. On 8th June 2016 the applicant wrote to the respondent requesting to apply the Standard Alternative Method retrospectively with effect from 1st January 2014. In response to the said request the respondent asked the applicant to provide it with details of its input tax showing the categories of directly attributable input tax to exempt and taxable supplies for the period since January 2013. This information was provided to the respondent by the applicant in its letters of 11th July 2016 and 27th October 2016. On 5th April 2017 the respondent wrote to the applicant requesting it to apportion its network related costs and company overheads between mobile money and telecom services. On 19th April 2017, the applicant wrote to the respondent informing the latter that such approach took it back to the disadvantage it had prior to its application to use the Standard Alternative Method. On 7th November 2017 the respondent raised an assessment of Shs. 20,053,441,670 which the applicant objected to on 9th November 2017 and on 29th March 2018 the respondent issued an objection decision upholding its tax assessment.

Mr. Marumbu testified that the mobile money platform is distinct from that of telecom one with no shared costs. Mobile money is an electronic mobile service that allows users to store, send and receive money on their phones. He testified that mobile money uses an Unstructured Supplementary Service Data (USSD) telecommunications platform as an enabling service. The USSD is a communications protocol used by mobile telephones to communicate with the mobile network operator's computers to provide independent services like mobile money.

In cross-examination, Mr. Marumbu testified that currently mobile money is set up on an Electronic Wallet Conversion (ECW) system offered by Ericson AB. He stated that the mobile money platform operates distinct from that of telecom. The USSD is purely a messaging platform and is part of the telecommunications infrastructure. He conceded that one cannot operate mobile money without a sim card. Mobile money relies on the network and telecom infrastructure. There are services which are shared between

mobile money and telecom services such as amenities like water, electricity, advertisement, motor vehicles, computer software and security. There are office premises shared by staff of mobile money and Telecom like at Nyonyi Gardens and MTN towers, Sim cards are shared because they were used for both telecommunications and mobile money.

The respondent's first witness, Ms. Teddy Kyaligonza, a telecoms engineer and a compliance officer, attached to its Large Tax Payer's Office testified that in applying the Standard Alternative Method, the applicant ought to have appropriately apportioned costs shared between the telecom services and the mobile money services. The Telecommunication infrastructure is made up of a number of components that make telecom operators deliver services to their customers. She contended that the mobile money infrastructure which operates on Unstructured Supplementary Services Data (USSD) technology completely depends on the telecommunication infrastructure for its functionality. She testified that the USSD is a Global Systems for Mobile (GSM) communications technology which is used to send text messages between a mobile phone and an application program in the network. Ms. Kyaligonza testified that mobile money needs an external application, GSM and USSD. Mobile money interacts with GSM network for the USSD session and for messaging (Short Message Services). The USSD session is where a mobile phone user initiates a query by requesting for a service from the mobile money application which responds with the requested information and the session is terminated. Both the initiator and the recipient receive text messages in confirmation of the services. She argued that the implication was that the USSD application could only communicate with the end user through the mobile network.

Ms. Kyaligonza contended that some of the shared costs include the Site build which is a process of construction of both passive and active infrastructure of the telecommunication equipment. Passive infrastructure involves the operation and maintenance of infrastructure on a Base Transceiver Station (BTS) which includes the BTS tower, shelter, air conditioners and the power plant. The active infrastructure

comprises the core element of cellular telephony in the form of a network and contiguous radio cells. This provides coverage through dedicated radio channels of defined frequency. Elements of the active infrastructure include the basic transceiver station (BST), the base station controller (BSC), the mobile switching center (MSC), the microwave and GSM antenna. The antenna enables the transmission and receipt of radio signals permitting cellular telephony to proceed uninterrupted as the subscriber is mobile. The witness contended that the site build is a shared cost in the provision of both telecom and mobile money services because both active and passive infrastructure must be operational for mobile money services to function. Ms. Kyaligonza testified that other shared costs include roll out and maintenance of optical fiber. An optical fiber is a flexible transparent fiber made of drawing glass or plastic. Optical fibers are used because of the need for high bandwidth, longer transmission and for security purposes. The optical fiber need maintenance which maybe preventive or corrective. Telecommunication companies meet the costs which have an impact on mobile money.

She also testified that telecommunication services pay rent for towers. They also pay for network maintenance in order to keep a network up and running. They meet costs for repair of equipment and maintenance. The equipment include telephones, switching and telecommunications equipment. The companies also meet costs for site maintenance to ensure that their networks are operating fault free. The telecommunication companies meet costs for the electricity network. They use utility power, generator power, hybrid batteries and solar power. These costs are shared with mobile money services.

The respondent's second witness, Mr. Geoffrey Mujabi, a compliance officer in its large taxpayer's office, testified that the applicant was authorized to apply the Standard Alternative Method retrospectively with effect from January 2014. S. 28(7) of the VAT Act allows a taxpayer who makes both exempt and standard rated supplies to use the Standard Alternative Method. He testified that the authorization was given on the condition that the applicant would keep separate records of input tax incurred on input

tax directly related to taxable supplies, exempt supplies and input tax not directly attributable to either taxable or exempt supplies as required under S. 28(7) of the VAT Act.. He outlined a summary of how the costs are treated by each party in the tabulation below which clearly shows the dispute.

TABLE 1

	MTN POSITION	URA POSITION	JUSTIFICATION
Mobile Money	Computer support	Computer support	
	Publicity and advertising	Publicity and staff costs	
	Salaries and staff costs	Salaries and staff cost	
	General- disaster recovery ECW	General- disaster recovery ECW	
	COS mobile money	COS mobile money	
TELECOM	Interconnect	Interconnect	Specific to voice,
	Handsets	Handsets	Data
	Revenue share	Revenue share	VAT supplies
	Fiber maintenance		
	Network maintenance		
	Equipment repairs		
	Rent and utilities		
	Communication – General		
	Site maintenance – Network Costs		
	Site build		
	Electricity network		
	Hardware support and maintenance		
	Temp costs- Salaries and Cost		
	Marketing – Publicity and advertising		
	Fiber roll out		
	Computer costs		
	System support – Network support		
	Tower related BTS rent – Rent and utilities		
	Motor vehicle costs		
	Motor vehicle costs	Motor vehicle costs	
	Facilities cost	Facilities cost	
	Printing and stationery	Printing and stationery	
	Marketing – Publicity and	Marketing – Publicity	

OTHER	Advertising	and Advertising	Sharable costs
	Rent – Facilities cost	Rent – Facilities cost	
	Electricity facilities	Electricity facilities	
	Computer costs	Computer costs	
	Staff costs	Staff costs	
	Handsets	Handsets	
	Security costs	Security costs	
	Printing and stationery	Printing and stationery	
	Legal/consultancy fees	Legal/consultancy fees	
	Water	Water	
	Temp costs	Temp costs	
	Audit costs	Audit costs	
	Consumables	Consumables	

Mr. Mujabi testified that there were costs which the applicant did not apportion yet they cut across the telecom and mobile money. He argued that due to the heavy reliance by mobile money on the telecom platform it is evident that major infrastructure costs, hardware and other operational costs that give rise to input tax to be claimed are shared between mobile money and telecom services. He argued that when applying the Standard Alternative Method all network related costs and overheads should be apportioned in accordance with S. 28(10) of the VAT act.

In cross-examination, Mr. Mujabi testified that the respondent did not stop the applicant from using the Standard Alternative Method. S. 28(7) of the VAT Act gave the respondent the mandate to advise the taxpayer on how to apply the. Standard Alternative Method. The respondent may approve or disapprove the Method proposed by the taxpayer. The applicant was granted the right to use the Standard Alternative Method but the respondent spelt out what conditions it should fulfil.

The respondent's third witness, Mr. Silajji Baguma Kanyesigye, Assistant Commissioner, Large Taxpayers Office testified that the applicant applied for permission to use the Standard Alternative Method retrospectively from January 2014 which was granted conditionally. He testified that financial services are exempt from VAT. The respondent requested the applicant to provide details of input tax showing the categories attributable to exempt and taxable supplies, which information was provided. The respondent advised the applicant to apportion the services of mobile money and

telecom using the ratios under S. 28(10) of the VAT Act. The applicant later informed the respondent that using the apportionment method proposed by the latter would disadvantage it and instead proposed that the applicant be allowed 90% of the entire input tax credit. The respondent rejected the applicant's proposal as it was not within the ambit of S. 28(7) of the VAT Act. He testified that the applicant did not apportion costs which cut across both telecom services and mobile money services such as software works, network infrastructure and support. Mr. Kanyesigye also testified that when the applicant applied to use the Standard Alternative Method it provided information that indicated that it has used wrong declarations and should have paid more taxes hence the additional assessment.

In its submission, the applicant submitted that the VAT Act provided for the Standard Method for claiming credit under S. 28 (7) of the VAT Act. Ordinarily since the applicant supplies both mobile money and telecom services it may calculate its input VAT using the said Section. However applying the said Section has disadvantages. The VAT Act provides for an alternative formula known as the Standard Alternative Method under S. 28 and Regulation 14 of the Value Added Tax Regulations 1996. Under Regulation 14 of the VAT Regulations four conditions must be met by a taxable person for the Standard Alternative Method to be approved.

1) The taxable person must have a disadvantage in using the Standard Method.
2) The taxable person must as far as possible attribute the input tax separately between the exempt, taxable and other supplies.
3) The taxable person must apply to the Commissioner General for a written approval of the proposal and
4) The Commissioner General must avail a written approval permitting such taxable person to use the Standard Alternative Method.

The applicant submitted it had a disadvantage as it obtained lesser credit, and hence applied to use the Standard Alternative Method. The applicant cited **Uganda Revenue Authority v Ital Traders Ltd** *H.C.C.A 10 of 2008* and **Uganda Revenue Authority v Shoprite Checkers(U) Ltd** *HCCA 15 of 2008* where the courts agreed that if a person

has a disadvantage it is entitled to use the Standard Alternative Method. The applicant submitted that under the Regulations, input should be attributed separately between the exempt, taxable and other supplies which it did. The applicant contended that until the Standard Alternative Method is revoked it is still binding on the respondent.

The applicant submitted that the Regulations mandate the applicant to apply and the Commissioner must give written approval. On 3rd November 2015, the applicant applied to use the Standard Alternative Method. On 14th March 2016 the respondent accepted the proposal. According to a public notice of 20th March 2014 the respondent issued, after 30 days the taxpayer was entitled to elect and treat the Standard Alternative Method as having been granted if they had received no response from the Commissioner General. After the 30 days, the applicant elected and treated the Standard Alternative Method as having been granted.

The applicant submitted that when on 10th May 2017 the respondent having accepted the former to use the Standard Alternative Method it decided to make a new proposal. The applicant contended that the law does not permit the respondent to make a proposal or to recommend an alternative method. The respondent's power only extend to either accepting or rejecting a method proposed by the taxable person. The applicant submitted further that it was erroneous for the respondent to propose its own method and unilaterally apply it to the applicant's business as a basis for levying tax.

The applicant submitted that the assessment for the principal tax Shs. 15,428,723,008 should be set aside because it was for the period January 2014 to April 2017 while the applicant only began applying the Standard Alternative Method on 15th November 2015. The applicant objected to the interest of Shs. 4,624,718,662 on the ground that during the period January 2014 to October 2015 it was using the Standard Method therefore there was no basis for charging tax and interest on the applicant. For the period November 2015 to April 2017, the applicant was using the Standard Alternative Method that had been approved by the respondent therefore the applicant should not be charged interest for using a method approved by the respondent. The applicant prayed

that the assessment is vacated. It also prayed for a refund of the monies collected by agency notice dated 19th April 2018. The applicant prayed that in the event the Tribunal finds that it is entitled to use the Standard Alternative Method it is entitled to a refund of Shs. 13,451,762,247.

In its submission, the respondent admitted that it is not in dispute that the applicant was granted permission by the Commissioner General to use the Standard Alternative Method. The permission was granted subject to the applicant complying with the requirements under Regulation 14 of the VAT Regulations. The dispute between the parties lies in the applicant's refusal to apportion the costs attributable to exempt and taxable supplies. The respondent contended that its proposal advising the applicant to apportion all network related costs and company overheads using the ratio of taxable sales to total sales was not an imposition of a new method of apportionment but merely guidance to the applicant on the proper application of the Standard Alternative Method. The testimonies of the respondent's witnesses including documentary evidence adduced by the respondent proved that the mobile money network relied heavily on the telecom infrastructure giving rise to shared costs which ought to have been properly apportioned by the applicant. The respondent advised the applicant to apportion all network related and telecom services using the ratio of taxable sales to total sales in accordance with S. 28(10) of the VAT Act and to amend the tax returns accordingly. The respondent contends that the applicant failed to do so. The respondent gave a summary of the applicant's and respondent's analysis of how particular expenses are treated as stated in Table 1 above.

The respondent submitted that the figures relied on to arrive at the assessment of Shs. 20,053,441,670 were derived from the applicant's own VAT returns. It argued that the applicant cannot deny an assessment which is based on its own returns and the law. The respondent prayed that the tribunal finds that the assessment was properly raised.

The respondent contended that S. 65(3) of the VAT Act provides that a person who fails to pay tax imposed under the Act on or before the date due is liable to pay a penal tax

on the unpaid tax at a rate specified in the 5th Schedule for the tax outstanding. The respondent submitted further that S. 39 of the Tax Procedure Code Act also provides for the recovery of interest on unpaid tax. The respondent submitted that the interest of Shs. 4,624,718,662 was properly charged. In respect of the applicant's prayer for a refund of Shs. 13,451,762,247 the respondent submitted that the application before the tribunal was not for a refund claim but rather against a VAT assessment arising from the applicant's application of the Standard Alternative Method. The respondent submitted that the refund claim did not appear anywhere in the applicant's pleadings. The respondent prayed that the applicant's prayer for a refund should be ignored for being an afterthought since no evidence in its support was adduced at the trial.

In rejoinder, the applicant submitted that the issue before the tribunal was whether the Standard Alternative Method was applied to the applicant and not whether the Standard Alternative Method proposed by the applicant was viable. The applicant submitted further that for the period January 2014 to November 2015 the applicant was using the Standard Method. The applicant objected to the charge of interest and stated that while the law clearly states that there should be a charge of interest the said charge cannot apply to a period in which the applicant was applying the Standard Method.

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

The applicant is a telecommunications company that provides mobile and fixed line telecommunications services since 1998. In April 2009 the applicant introduced mobile money services which are financial services. While the supply of telecommunications service is a standard rated supply, the provision of financial services is an exempt supply under the VAT Act.

S. 28 of the VAT Act allows a taxpayer to claim credit for input tax for all taxable supplies made to that person during the tax period. The standard method prescribed by

S. 28(7) of the VAT Act is appropriate where a taxpayer makes taxable supplies. It reads:

> "Subject to subsections (8) and (9), the input tax that may be credited by a taxable person for a tax period is –
>
> (a) where all of the taxable person's supplies for that period are taxable supplies, the whole of the input tax specified in subsection (1) or (2); or
>
> (b) where only part of the taxable person's supplies for that period are taxable supplies, the amount calculated according to the formula specified in Section 1(f) of the Fourth Schedule."

Since March 2011 the applicant has been using the Standard Method under the VAT Act. However the VAT Act allows a tax payers who makes taxable and exempt supplies to apply for the Standard Alternative Method. S. 28(10) of the VAT Act reads:

> "Notwithstanding subsection (7)(b), the Commissioner General may approve a proposal by a taxable person for the apportionment of input tax credit where the taxable person makes both taxable and exempt supplies."

The applicant was making both taxable and exempt supplies. On 3rd November 2015 it applied to use the Standard Alternative Method. On 4th March 2016, the respondent allowed the applicant to use the Standard Alternative Method.

On 8th June 2016 the applicant requested the respondent to allow it to apply the Standard Alternative Method retrospectively from 1st January 2014. In **Uganda Revenue Authority v Ital Traders Limited** *HCCA 10 of 2008* and **Uganda Revenue Authority v Shoprite Checkers (U) Limited** *HCCA 15 of 2008* the High Court held that the Standard Alternative Method can be applied retrospectively. Therefore the applicant was exercising its right when it applied to use the Standard Alternative Method retrospectively.

The dispute between the applicant and the respondent started brewing when it came to how the Standard Alternative Method would be applied. On 4th July 2016, the respondent wrote requesting the applicant to provide details of input tax, showing the categories of directly attributable input tax to exempt and taxable supplies for the period commencing January 2013 for the purpose of evaluating the applicant's application.

This information was provided by the applicant in its letters of 11th July 2016 and 27th October 2016. On 5th April 2017, the respondent wrote advising the applicant to apportion all network related costs and company overheads between mobile money and telecom services using the ratios under S. 28(10) of the VAT Act. On 19th April 2017 the applicant informed the respondent that the proposal to apportion was unacceptable as it eliminated the advantage it sought to gain.

The first discontent in this matter arises from the issue when should the Standard Alternative Method (SAM) deemed to have started to apply? Was it the 1st January 2014, the date the applicant requested for? Or, in the New Vision of 20th March 2014, the respondent in a public notice stated: "In an (sic) event that the CG has not formally replied to a taxpayer's request to use the SAM within thirty days, approval is assumed." The applicant's letter to use SAM retrospectively is dated 8th June 2016. Using the public notice, would 8th July 2016 (i.e. after the 30 days) be the day the applicant is assumed to use SAM? The Tribunal notes that the respondent formally replied on 4th July 2016. Therefore the thirty days cannot run from 8th June 2016. Or, in its letter of 19th April 2017 the applicant informed the respondent that the latter's proposal on apportionment was unacceptable as it eliminated the advantage it sought to gain. The Tribunal has to ask itself: could the applicant have applied the Standard Alternative Method retrospectively when the respondent never agreed to its proposal? At this stage, the Tribunal cannot answer the question. We have to look at the proposal which brings us to the second leg of the dispute.

Regulation 14(4) states that a registered taxpayer who wishes to use to the Standard Alternative Method or any other method which is not provided for in S. 28(7)(b) of the Act the tax payer must seek written approval of the Commissioner General. There are methods other than the Standard Alternative Method which require the approval of the Commissioner General.

The second leg of the dispute arises from the portion of S. 28(10) of the VAT Act which reads: "the Commissioner General may approve a proposal by a taxable person for the

apportionment of input tax credit." It is important to distinguish the use of the Standard Alternative Method from the need to accept a proposal. A proposal is defined in Black's Law Dictionary 10th Edition p.1413 as "1.Something offered for consideration or acceptance, a suggestion. 2. The act of putting something forward for consideration." A taxpayer has to put forward a suggestion on the apportionment of input tax credit which the Commissioner General has to consider. S. 28(10) of the Act uses the word 'may', *Black's Law Dictionary* 10th Edition p.117 defines "may" as

> "1.To be permitted to.., 2. To be a possibility... 3. Loosely is required to shall, must... In dozens of cases, courts have held may to be synonymous with shall or must."

The Tribunal does not think it was the intention of the legislation that once a proposal has been made by the taxpayer it is mandatory for the Commissioner General to accept it. The word "may" requires the Commissioner General to exercise his or her discretion. In **Katamba Phillip & 3 others v Magala Ronald** (Arb. Cause No. 03 of 2007), Justice Irene Mulyagonja Kakooza defined "discretion" to mean "cautious discernment, prudence, and individual choice". It cannot be a proposal if the Commissioner General cannot consider it. The Commissioner General has the option to accept or refuse a proposal.

A commissioner may allow the tax payer to use the Standard Alternative Method but does not accept the proposal. What happens where the Commissioner General like in this case refuses to approve the proposal? Where a Commissioner General has refused to accept a proposal, a taxpayer has two options. The first one is go back and adjust the proposal till it is acceptable to the Commissioner General. The second option is for a taxpayer to challenge the refusal in court or the Tribunal. The taxpayer has to show that the Commissioner General failed to exercise his or her discretion or if so, it was done illegally, irrationally or with procedural impropriety. In **Twinomuhangi Pastoli v Kabale District Local Government Council, Katarishangwa Jack & Beebwajuba Mary** [2006] HCB Vol. 1 p. 30 Kasule J. held inter alia that:

> "1. In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety..."

2. Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or it's principles are instances of illegality.
3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
4. Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non- observance of the Rules of natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."

Matters before the Tribunal involve reviewing the decisions of the respondent and or the Commissioner General. So the Tribunal has to ask itself: Did the Commissioner General act illegally, irrationally or with procedural impropriety when it refused the proposal of the applicant in its application of the Standard Alternative Method?

This brings us to the third leg of the dispute which relates to the proper application of the Standard Alternative Method as provided for under the Value Added Tax Act and the Value Added Tax Regulations 1996. S. 28(10) of the VAT Act allows for a taxpayer to make a proposal for appointment when it makes both taxable and exempt supplies. However it is the Value Added Tax Regulations 1996 that detail the method to be used in apportionment. It allows a taxpayer to use the Standard Alternative Method or any other method. Regulation 14 reads as follows;

"(1) Where a registered tax payer who is making taxable and exempt supplies is disadvantaged by the provisions of section 28(7)(b) of the Act, the Commissioner General may approve an alternative method for calculating the input tax to be credited, as described in paragraphs (2) and (3), which shall be known as the Standard Alternative Method.

(2) The registered tax payer may directly attribute input tax separately to the exempt and taxable supplies in so far as this is possible and may claim credit for all the input tax related to taxable supplies and for none of the input tax related to exempt supplies.

(3) The balance of input tax which cannot be attributed to taxable or exempt supplies shall be apportioned under the provisions of section 28(7)(b) of the Act; However, the provisions of section 28(13) and (14) of the Act shall be complied with in respect of the non-attributable input tax.

(4) Where a registered tax payer wishes to use the Standard Alternative Method, or any other method which is not provided for in section 28(7)(b) of the Act, that tax payer must seek the written approval of the Commissioner General."

It is not in dispute that the applicant was disadvantaged. In its letter of 3rd November 2015 the applicant clearly shows that it was disadvantaged in terms of the input VAT apportioned or claimable.

What constitutes the Standard Alternative Method under Paragraphs 2 and 3 of Regulation 14 has two limbs. The first limb under Paragraph 2 requires a tax payer to directly attribute input tax separately to the exempt and taxable supplies in so far as this is possible. The tax payer may then claim credit for all the input tax related to taxable supplies and for none of the input tax related to exempt supplies. The second limb under Paragraph 3 requires the tax payer to apportion the balance of input tax which cannot be attributed to taxable or exempt supplies. The regulation requires that this apportionment be carried out in accordance with the provisions of S. 28(7)(b) of the Act and specifically requires compliance with the provisions of Sections 28(13) and 28(14) of the Act. This is where the main dispute arises from. Telecom services are taxable services. Mobile money services which are financial ones are exempt supplies. From the arguments of the parties, it seems that it was difficult for them to attribute input tax to exempt and taxable supplies separately. While the applicant contends that telecom services are distinct from mobile money services the respondent contends that they are dependent on each other and therefore should share expenses. The applicant treated all the expenses for mobile as those related to taxable supplies. The respondent contended that because some of the expenses are shared there cannot all be attributed to taxable supplies. The effect of paragraph 3 would be to push most of input tax that is

attributable to taxable supplies which is shared with exempt supplies to other 'non-attributable input tax' that is apportioned under S. 28(7)(b) of the Act. The effect of the second limb is that the taxpayer goes home with a smaller basket of input tax credit. Mr. Joseph Marumba, the applicant's witness correctly noted that the shared services would water down what the applicant takes home.

So the Tribunal has to ask itself are the services of mobile money dependent on those of telecom services. If so, it would mean some of the expenses cannot be attributed wholly to taxable supplies. While Mr. Marumbu, the applicant's witness testified that currently mobile money system is set up on an Electronic Wallet Conversion (ECW) system offered by Ericson AB, Ms. Teddy Kyaligonza, the respondent's witness contended that the mobile money infrastructure operates or depends on USSD technology which is a telecommunication infrastructure for its functionality. However Mr. Marumba admitted that mobile money only relies on the Unstructured Supplementary Service Data USSD telecommunications platform as an enabling service. From a layman's point of view, one cannot initiate mobile money services without using Short Message Services (SMS) which rely on the telecom infrastructure or the USSD platform. Mr. Mrumba further admitted that the telecom and mobile money sector shared expense such as those for amenities like water, electricity, advertisement, motor vehicles, computer software, security and premises. Sim cards are shared because they are used for both telecommunications and mobile money. This evidence was echoed in the testimonies of the respondent's witnesses who testified that shared costs include those of the Site build, roll out and maintenance of optical fiber, rent, network maintenance, costs for repair of equipment, site maintenance, electricity and other utilities bills The said evidence was not controverted. The shared costs between the applicant's telecommunications services and the mobile money services should have been apportioned in accordance with Paragraph 3 of Regulation 14 as they cannot be attributable to either taxable or exempt supplies.

For the avoidance of doubt the Tribunal therefore notes that the following expenses, some which are stated in Table 1 should be considered as not being attributable to

solely exempt and or taxable supplies: Site build, maintenance of network and optical fiber, site maintenance, equipment repair, utility bills, hard ware support and maintenance, fiber roll out, handsets, motor vehicle, utility bills like rent, water and electricity, computer costs, legal and consultancy fees. This list is not exhaustive. However the said expenses can still be attributed to taxable supplies where it is clearly evident that they were incurred in respect of only telecom services. Paragraph 3 of Regulation 14 requires for input tax that cannot be attributed to taxable supply or exempt supply for the taxpayer to comply with S. 28(7)(b), 28(13) and 28(14). S. 28(7)(b) the amount to be calculated as input tax should be in accordance with the formula specified in Section 1(f) of the Fourth Schedule. The Tribunal will not go into details.

The Tribunal notes that the applicant did not tender its proposal for the Standard Alternative Method which it gave to the respondent as evidence. Therefore we are not in a position to state whether it was correct. However the Tribunal wishes to hold that it is not automatic that when a taxpayer makes a proposal to the respondent it is adopted as the Standard Alternative Method. The proposal has to comply with S. 28(7) of the VAT Act and Regulation 14 of the VAT Regulations. Therefore the respondent was justified to ask the applicant to attribute and apportion all network related costs and company overheads between mobile money and telecom services using the ratios in S. 28(10) of the VAT Act. The respondent acted within the law. Though the respondent allowed the applicant to use the Standard Alternative Method, it cannot be said that the applicant is entitled to a refund as calculated by it because its proposal was never accepted.

The Tribunal still has to ask itself: did the respondent act rationally and with procedural impropriety when handling the applicant's proposal for the Standard Alternative Method? S. 28(7) of the VAT Act deals with a situation where a taxpayer is claiming input tax. In this matter, the applicant claimed for input tax using the Standard Alternative Method which may be applied retrospectively. The applicant claimed that it was entitled to a tax refund of Shs, 13,451,762,247. The respondent did not accept the proposal of the applicant. The applicant went to the respondent seeking for a tax

refund, instead the respondent issued an assessment, which we shall discuss later. The applicant is entitled to a VAT refund using the Standard Alternative Method. The computation used to issue an assessment may also be used to compute a tax refund. In **Birungyi, Barata and Associates v Uganda Revenue Authority** TAT 16 of 2011 the Tribunal held that the refusal by the respondent to issue a private ruling was irrational. The Tribunal thinks that the omission of the respondent to compute the input tax credit claimable by the applicant using the Standard Alternative Method or a proper method is irrational. Though the respondent acted legally, it was irrational in not computing a tax refund for the applicant or at reaching a decision on what amount is due if any. The applicant is free to challenge such decision.

The assessment arises out of a dispute relating to the proper application of the Standard Alternative Method under S. 28(10) of the VAT Act. Mr. Siraj Kanyesigye testified that the information availed by the applicant was a mis-declaration. As a result the applicant ought to have paid more taxes. Under S. 23 Of the Tax Procedure Code Act a commissioner may make an additional assessment to pay the correct amount. During the trial, the applicant did not lead any evidence to challenge the assessment. The gist of the applicant's case was confined to the proper application of the Standard Alternative Method and not whether the assessment was correct. No evidence was adduced challenging the principal tax and the interest. S. 26 of the Tax Procedures Code Act puts the burden on the tax payer to prove that an assessment is incorrect or a decision should not have been made or should have been made differently. The applicant has failed to prove that the assessment issued by the respondent is incorrect.

Taking all the above into consideration the Tribunal therefore orders

1) The matter in respect to the proper application of the Standard Alternative Method is remitted back to the respondent for reconsideration under S. 19(1)(c)(ii) of the Tax Appeals Tribunal Act with directives that
   (a) The applicant should apportion its input tax according to those that are taxable, exempt and those that are not attributable to either, in accordance with Regulation 14(3) of the VAT regulations.

(b) The applicant adjusts it proposal for the period in issue so that it is in line with S. 28 (10) of the VAT Act and the Value Added Tax Regulations.

2) The respondent computes the input VAT refund, if any, payable to the applicant using the adjusted proposal.

3) The assessment of Shs. 20,053,441,670 against the applicant is upheld.

4) Each party will bear its costs.

It is so ordered.

Dated at Kampala this 19th day of May 2020.

DR. ASA MUGENYI	MS. CHRISTINE KATWE	MR. SIRAJ ALI
CHAIRMAN	MEMBER	MEMBER