THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 77 OF 2021

GOAL RELIEF DEVELOPMENT ORGANIZATION..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. SIRAJ ALI, MS. CHRISTINE KATWE

RULING

This ruling is in respect of Withholding Tax (WHT), Pay as You Earn (PAYE), and Value Added Tax (VAT) assessed on the applicant for January 2017 to December 2019.

The applicant provides social work activities in Uganda. The respondent conducted a compliance review on the applicant's tax affairs for WHT, PAYE and VAT. The respondent assessed taxes of Shs. 650,077,662 against the applicant for January 2017 to December 2019 as follows; 52,345,885 for purported failure to withhold tax at a rate of 6% on local supplies, Shs. 263,533,867 for purported failure to withhold tax at a rate of 15% on international payments in relation to programme delivery fees, software licenses and training from head office staff; Shs. 316,240,641 for alleged failure to account for VAT on the said international payments, PAYE of Shs. 18,867,131. The applicant objected to the assessments. The respondent disallowed them and upheld the assessments.

Issues

1. Whether the applicant is liable to pay the taxes assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Oscar Kamusiime, Mr. Cephas Birungyi and Ms. Jackie Aturinda while the respondent by Mr. Donald Bakashaba, Mr. Derick Nahumuza and Mr. Samuel Oseku.

The applicant's first witness, Mr. Joseph Nail Dempsey, its financial controller, testified that the applicant, as a charitable organization, has over the last ten years obtained tax exemptions. Its software is purchased by Goal Ireland which it reimburses. The licence is managed at the head office. The software is used by Goal Ireland and organizations affiliated to it including the applicant. These contribute to the cost of the software. Mr. Dempsey stated that the applicant received remote technical support from Goal Ireland's technical team based in Dublin. It paid for the support which payments were considered as expenses. It did not withhold taxes on the costs. The respondent assessed both WHT and VAT on the transactions. He also stated that there were no payments for software licenses, but they accounted for it.

The applicant's second witness, Mr. Julius Makuma Nabunyaaka, its former financial controller, testified that the respondent audited the applicant and issued additional tax assessments of Shs. 650,077,666 which the latter objected to. He stated that the applicant is a designated WHT agent. He stated that applicant receives grants net deductions from Goal Ireland. There were payees that were WHT exempt. Amounts of Shs. 52,345,885 were taxed WHT of Shs. 3,116,777. Staff working outside stations who received allowances of Shs. 19,307,657 were taxed WHT of Shs. 1,158,459. WHT of Shs. 3,591,386 was assessed on payments of Shs. 59,856,439 for staff training. WHT of Shs. 829,471 was assessed on payments of Shs. 13,824,518 to project participants as transport refund and safari day allowances. WHT of Shs. 2,522,294 was on payments of Shs. 42,038,226 which were below Shs. 1,000,000. WHT of Shs. 11,104,082 on correction journals. There were two instances where WHT was declared at Shs. 2,280,942. He testified that the applicant's accounts were made on an accrual basis. Some transactions appeared in 2019 but payments were made in 2020. Some transactions were repeated in the respondent's working. Prior to 1st July 2021 WHT rate was 1% but the respondent charged 6%.

The respondent's witness, Ms. Teddy Kyalogonza, a tax audit officer in its domestic taxes department testified that the respondent issued the applicant with additional assessments of Shs. 650,0776,622 as follows.

a) Shs. 18,867,131 for failure to charge PAYE. She stated that the applicant is a designated WHT agent. She stated that the applicant paid Shs. 8,561,425,655 to non WHT exempt suppliers. It computed 513,685,540 but declared Shs, 464,899,960 and did not pay Shs. 51,436,023.

b) Shs. 316,240,641 for failure to account for VAT on international payments. She stated that Goal International Ireland sources grants for the applicant's programmes. It charges the applicant program delivery fees of 10% of the total grant. She contended that the applicant did not charge 15% WHT on the international payments of program delivery fees.

c) WHT of Shs. 263,533,867 for failure to withhold at rate of 15% on international payments in relation to programme delivery fees, software licenses and training from head office staff. She stated that the applicant receives software licences from the Microsoft and Sage for its use in Uganda. It reimbursed the head office costs incurred to obtain the licenses, but it did not charge WHT.

d) The applicant did not withhold 6% on payments of supply of goods and services made to non-WHT exempt suppliers. The applicant did not pay WHT of Shs. 51,436,023 on failure to withhold at a rate of 6% on local supplies.

e) She testified that the applicant made payment of Shs. 135,499,835 to head offices staff for the provision of training and monitoring services for the applicant's office in Uganda.

f) The applicant did not pay PAYE. She stated that the applicant paid tuition for its staff at institutions of learning such as Makerere University and Uganda Management Institute. It also paid tuition of Shs. 11,053,514 for staff members' children. She contended that these were employment benefits. The total tuition fees were Shs. 62,890,438 and PAYE chargeable is Shs. 18,867,131.

The applicant submitted that the respondent issued an assessment of Shs. 650,077,666; Shs. 18,867,731 being PAYE, Shs. 314,969,890 being WHT and Shs. 316,240,638 being VAT. The WHT for local supplies was Shs. 52,345,885. The international payments which were charged WHT included Shs. 1,554,123,178 for program delivery fees, Shs. 67,269,436 for software licenses and Shs. 135,499,835 for payment of head office staff.

PAYE of Shs. 18,867,131 were assessed. The applicant objected and the respondent disallowed the objection.

The applicant submitted that it is a Non-Governmental Organization (NG)) that provides humanitarian and sustainable development programmes that build community resilience and support socio- economic growth. It applied for and obtained tax exemption status under S. 2(bb) of the Income Tax Act for 2014 to 2015, 2016 to 2017 and 2018 to 2019. Under S. 21(1)(0) of the Act the income of an exempt organization is exempt from tax.

a) WHT on local supplies and agricultural supplies

The applicant submitted that the respondent computed tax of Shs. 52,345,885 against payments made to City Tyres, Computer Plaza, Digiprint Systems Uganda Limited, Floben Enterprises Ltd, Hond Uganda Ltd and Hotel Kanyero who are exempt from WHT. It submitted that this was contrary to S. 119(5)(f)(i) of the Income Tax Act which provides that "This section does not apply to a supplier or importer who is exempt from tax under this Act," The applicant referred to exhibit A7 for the local suppliers who the respondent charged WHT.

The applicant also submitted that some payments considered by the respondent were less than Shs. 1,000,000 and not subject to WHT. The payments were Shs. 42,038,226 attracting WHT of Shs. 2,522,294. It cited S. 119 of the Income Tax Act which provides for a payer paying an amount or amounts in aggregate exceeding one million shillings to any person in Uganda- a) for a supply of goods or materials of any kind; or b) for a supply of any services are subject to WHT. The applicant submitted that a Practice Notes issued by the Commissioner General on 18th June 2007 defined "aggregate".

The applicant submitted that some payments on which WHT was charged were agricultural supplies. It contended that S. 119(5) of the Income Tax Act provides that WHT on goods and services does not apply to agricultural supplies. It submitted that the WHT on agricultural goods was illegal.

b) WHT on other local supplies

The applicant submitted that the respondent charged WHT on amounts which included VAT in the financial statements of 2019 which was on an accrual basis but whose payments were made in 2020 subjecting them to double taxation since the tax was withheld and paid in 2020. The applicant submitted that the WHT of Shs. 1,511,027 and Shs. 9,121,675 was excessive because it was wrongly computed, and should be vacated.

The applicant submitted that the respondent considered correction journals in allocating expenses which attracted WHT of Shs. 11,104,082. The applicant submitted that these costs do not represent cash payments made but instead an allocation of costs and should be excluded from the transactions used to compute WHT at 6%.

The applicant submitted that there are two instances where the respondent in its workings wrongly captured Shs. 545,100 as WHT declared by the applicant yet the actual amount was Shs. 2,280,942. This resulted in an overstatement of WHT by Shs. 1,735,842. The applicant argued that this amount should be deducted from the tax assessed.

c) WHT on staff allowances and support from head office

The applicant submitted that the respondent charged WHT of Shs. 1,158,459 on Shs. 19,307,657 which were allowances to staff working outside duty stations. It submitted that these were reimbursements of transport costs and allowances to staff which are exempt under S. 19(2)(d)(i) of the Income Tax Act. Therefore, WHT of Shs. 1,158,459 was wrongly assessed.

The applicant further submitted that the respondent computed WHT on payment of Shs. 59,856,439 for staff training in Thailand. It contended that the payment does not fall under S. 119 of the Income Tax Act. Therefore, the tax assessed of Shs 3,591,386 should be vacated.

The applicant submitted that the respondent charged WHT on payments of Shs.13,824,518 on transport refund and safari day allowances to project participants. It argued that these project facilitation costs to the participants were less than Shs. 1,000,000. It submitted that the WHT of Shs. 829,471 should be vacated.

d) WHT on tuition fees

The applicant submitted that the respondent issued a PAYE assessment Shs. 18,867,131 against it for tuition paid for staff in higher institutions of learning such as Makerere University and the Uganda Management Institute (UMI). The respondent contended that tuition is a benefit to the staff and PAYE ought to have been charged. It submitted that S. 19(1)(b) of the Income Tax Act defines employment income to include the value of any benefit granted. It also cited Paragraph 2 of the Fifth Schedule to the Act provides that a benefit is provided by an employer, or by a third party under an arrangement with the employer. The applicant argued that the tuition fees are an allowable deduction under S. 33 of Act the Income Tax Act. It argued further that Practice Notes of 16th March 2009 categorizes educational institutions as schools, tertiary intuitions, and universities. According to the definition of a tertiary institution, the payments made to UMI qualify for deduction. It contended that the tuition paid by it for staff training and development program was an education grant and therefore exempt from income tax. A PAYE assessment of Shs. 18, 867,131 was raised in respect thereof

The applicant admitted liability to pay taxes of Shs. 11,053,514 arising from the tuition paid on behalf of staff member's children. It agreed that the fees do not fall within the ambit of allowable deduction.

e) WHT on international payments

The applicant submitted that Goal Ireland obtains grants for it. It deducts 10% from the grants to meet costs incurred in obtaining them and remits 90% to the applicant. It

contended that the deduction is not subject to tax. It argued that the respondent is seeking to tax grants/donations which were used to facilitate charitable activities. It submitted that S. 83(1) of the Income Tax Act imposes tax on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment, or management charge from sources in Uganda. Under S. 120 of the Act, a person making such a payment is required to withhold tax at a rate of 15%. A management charge is defined under S. 78(b) of the Income Tax Act as "Any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated. S 79 of the Act provides that; "Income is derived from sources in Uganda to the extent to which it is a management charge paid by a resident person". The applicant submitted that the said fee is neither sourced in Uganda, nor a management charge under S. 78(b) of the Income Tax Act and therefore WHT does not apply to it.

The applicant submitted that the respondent issued WHT assessments on international payments by the applicant for software licenses from Microsoft office and Sage. The applicant submitted that the said software were paid for by Goal Ireland and not by it. The payments are not income sourced from Uganda under S. 79 of the Income Tax Act. It is not international payments under S. 83 of the Act. The applicant submitted that S. 120(1) of the Act provides that "Any person making a payment of the kind referred to in S. 83, 85, or 86 shall withhold from the payment the tax levied under the relevant section".

The applicant also submitted that an income assessment was issued against it in respect of head office staff who came to provide training support and program monitoring. The head office incurs expenses that include allowances, transport, and accommodation. It contended that the payments made by the applicant are reimbursement of the expenses incurred which are exempt under S. 19(2)(d)(i) of the Income Tax Act.

f) VAT on international payments

The applicant submitted that the services offered by Goal International (Ireland) are supplied in Ireland and not in Uganda. Since Goal (Ireland) is not registered for VAT in

Uganda, it is not a taxable person under the VAT Act. It submitted that S. 4(a) of the VAT Act provides that "A tax, to be known as a value added tax, shall be charged in accordance with this Act on every taxable supply made by a taxable person." It further submitted that before imposing tax on a supply, the supply person must be a taxable supply made by a taxable person. S. 18(1) of the VAT Act provides that; "(1) A taxable supply is a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities". It submitted that S. 6 of the VAT Act defines a taxable person as a person registered under S. 7 of the VAT Act. S. 16 of the VAT Act provides that:

> "A supply of services shall take place in Uganda if the business of the supplier which the services are supplied is in Uganda."

It contended that from the above provisions, there are no taxable supplies made and therefore VAT does not arise.

The applicant submitted that the respondent issued VAT assessments on international payments by the applicant for software licenses from Microsoft office and Sage. The applicant submitted that the said software is paid for by Goal Ireland and not by it. The applicant submitted that S. 4(c) of the VAT Act provides that VAT is chargeable on the supply of imported services other than an exempt service, by any person. S. 2 (j) of the VAT Act defines an import as "To bring, or cause to be brought, into Uganda from a foreign country or place" The applicant argued there is no imported service and therefore VAT does not arise.

In reply, the respondent confirmed that the applicant is an NGO. It obtained income tax exemption rulings for 2014-2015, 2016-2017 and 2018-2019. It submitted further that S. 2(bb)(ii) of the Income Tax Act provides that.

> "An exempt organization means any company, institution or irrevocable trust -(ii) which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organization."

The respondent submitted that, for a person to be an exempt organization, one must have a written ruling setting out the terms of the exemption. The exemption rulings stipulate under Paragraphs 2, 3, 5 and 7 that.

i) the exemption does not cover any taxes other than Income Tax,

ii) income derived by employees of the organization is employment income under S. 19 of the Income Tax Act by applying PAYE rules and regulations,

iii) business income that is not related to the function constituting the basis for the organization's existence is liable to tax.

iv) Your assets should not confer a private benefit to any person.

The respondent submitted that this restricts the exemption to income tax of the applicant.

The taxes in dispute are VAT, PAYE and WHT on both local supplies and international payments. The respondent submitted that WHT imposed on international payments and local supplies is not income tax exempt under the exemption ruling. PAYE is tax on income borne by the employees of the organization under S. 19 of the Income Tax Act. The applicant is a designated WHT agent under S. 115 of the Act. Under S. 119(1) the applicant is listed as number 1591 on the designated payers in Paragraph 5 of the Schedule in the Income Tax (Designation of Payers) Notice 2018. The respondent submitted that tribunal noted in *Balore Transport and Logistics (Uganda) Limited v URA* Application 35 of 2020 that.

> "The essence of S. 119 is for one to become a payer he must have been designated in notice. Secondly, the payer is required to withhold the gross amount of the payment at the rate prescribed."

The respondent submitted that the applicant has an obligation to withhold tax. It submitted further that Sections 123 and 124 of the Act place the burden on a withholding agent who becomes liable to pay to the commissioner the amount it ought to have withheld. This is applicable regardless of the exemption status of the applicant.

a) WHT on local supplies and agricultural supplies

The respondent cited S. 119(1) of the Income Tax Act (which we shall reproduce later) and argued that the applicant ought to have withheld tax. The respondent contended that though the applicant submitted that it had no obligation to withhold tax on payments made to payees exempt from WHT it did not avail of the exemption certificates of the payees.

In respect of amounts less than 1,000,000, the respondent cited Paragraph 5 of The Income Tax (Designation of Payers) Notice which we shall also reproduce later. The respondent argued that the Section provides that a designated withholding agent has an obligation to withhold payments of an amount which in aggregate exceeds Shs. 1,000,000. This is in respect to supply of goods or material of any kind or supply of any services. However, where it is reasonably expected that the goods or services would ordinarily be supplied in a single supply for an amount exceeding 1,000,000, a payer is obliged to withhold tax on those amounts. The respondent submitted that the applicant withheld tax on some payments but not others.

The respondent submitted that the Commissioner General on 18th June 2007 issued a Practice Note which defined 'aggregate'.(which we shall reproduce later). It also quoted *Black's Law Dictionary,* 4th Edition which defines it as.

> "Entire number, sum, mass, or quantity of something; amount; complete whole, and one provision under will may be the aggregate if there are no more units to fall into that class."

The respondent submitted that where the total combination of all separate supplies of goods or services made to the applicant exceeds 1,000,000, the applicant is obliged to withhold tax on those payments. The total amounts in the contract sum are considered irrespective of whether they were paid independently or not as per the Practice Note. It submitted that the applicant did not present contracts from which the total contract sums could be determined.

The respondent submitted that exemption for agricultural supplies was effective 1st July 2019 onwards. It submitted that from July 2018 to June 2019 the WHT rate was 1% while before July 2018 agricultural supplies were subject to 6% WHT rate. The respondent contended that applicant did not fall within the exceptions to whom the Section does not apply under S. 119(5). It submitted that S. 119(5) of the Income Tax Act is only applicable where an exempt organization has made importations, or where the goods are made from a supplier or importer who is exempt from tax under the Act or who the commissioner is satisfied has regularly complied with obligations imposed on the supplier or importer under the Act or a supply of agricultural services.

c) WHT on staff allowances

In respect of WHT on payments to head office staff, the respondent submitted that the applicant made payments to head office staff for the provision of training and program monitoring services at the applicant's offices in Uganda. The staff were coming to Uganda to provide training support and programme monitoring to the applicant for capacity building. This was an imported service. This payment attracted WHT as it was rendered and exercised in Uganda.

e) WHT on tuition fees

The respondent submitted that the applicant paid tuition for its staff in higher institutions of learning such as Makerere University and Uganda Management Institute (UMI) leading to award of bachelor's and master's degrees but did not account for PAYE on the said employment benefit. The respondent contended that this was a benefit and PAYE ought to have been charged. It is submitted that S. 116 of the Income Tax Act places the burden on the employer to collect PAYE. The respondent cited S: 19(1)(a) of the Income Tax Act which defined employment income to mean any income derived by an employee from any employment and includes the value of any benefit granted. It also cited Paragraph 2 of the 5th Schedule which provides that "A benefit provided by an employer to an employee means a benefit that is provided by an employer". The respondent submitted that Part 11 of the 5th Schedule provides for all other benefits not covered by the Act. These benefits include payments made for tuition of staff members.

The respondent submitted that, *Black's Law Dictionary* 11th Edition defines the term benefit as "An advantage or privilege." It submitted that the provision of a benefit to the employees of the applicant in terms of education leading to a degree was an advantage or privilege that would be taxable in the hands of the beneficiaries, the employees. It cited Balore *Transport and Logistics (Uganda) Limited v URA* Application 35 of 2020, where the Tribunal held that.

"There is no doubt that a fuel allowance given to the applicant's employees gave them an advantage. For it not to qualify as a privilege one has to show that all employees elsewhere receive fuel allowances".

The respondent submitted that the applicant had an obligation to withhold PAYE as this benefited constituted part of the employment income of the employees under S. 116 of the Income Tax Act which provides that "(1) Every employer shall withhold tax from a payment of employment income to an employee prescribed by regulations made under S. 164". The respondent submitted that the deduction is applicable to the applicant and not the employees. The respondent argued that no deduction is allowable if it is of a domestic or private nature. It cited S. 22(2)(a) and 22(3) of the Income Tax Act. The respondent contended that the cost of education leading to a degree is taxable regardless of whether it is directly relevant to a person's employment or business. Such an income is of a private nature and cannot be allowed as a deduction.

The respondent submitted that the rule of statutory interpretation provides that specific law supersedes general law under the principle of 'Generalia Specialibus Non Derogant" meaning "general laws do not prevail over special laws" or "the general does not detract from the specifics". It cited *Stanbic Bank Holdings Limited v URA* Application 56 of 2019. It submitted that the circumstances relate to the award of degrees as opposed to S. 33 which relates to the training. The respondent relied on Practice Note of 16th March 2009 for the definition of tertiary institution to argue that the institutions in question fall under tertiary institutions. The respondent submitted that the deduction claimed by the applicant should be disallowed as it relates to a deduction of private and domestic nature under S. 22(3)(d) of the Income Tax Act. The respondent submitted that though the applicant argued that the tuition paid by Goal for its staff is an education grant that is exempt S. 21(1)(g) provides that.

"Any education grant which the Commissioner is satisfied has been made bona fide to enable or assist the recipient to study at a recognized educational or research institution."

The respondent submitted that the applicant did not provide the evidence that it had approached the Commissioner for this grant to be given an exemption status. The applicant was therefore not allowed this deduction as claimed.

The respondent further submitted that the tuition towards staff member's children of Shs. 36,845,047 constituted a benefit to the employees and therefore ought to have been taxed.

e) WHT on international payments

As regards WHT on international payments, the respondent submitted that the applicant accounted for the total grant but not expenses of 10% on the management charges on program delivery fees. It contended that the 10% was consideration for services rendered by Goal Ireland. It submitted that consideration is defined under S.2 (na) of the Income Tax Act. The respondent submitted that applicant received a management service that it paid for. It submitted further that service is defined under the *Oxford Advanced Learner's Dictionary* as; "work done or duties performed for a government, company, etc..." It submitted that the acts of Goal Ireland in negotiating and sourcing grants on behalf of the applicant amounted to services rendered.

The respondent also submitted that S.78 of the Income Tax Act covers international payments. S. 78(b) states that "management charge "means any payment made to a person, other than a payment of employment income, as a consideration for any management services, however calculated." S. 79 of the Act provides that "Income is derived from sources in Uganda to the extent to which it is a management charge paid by a resident person". The applicant was mandated to withhold tax on payment of the costs as they constituted an international payment being a management charge for the provision of the grant. The respondent submitted that Sections 83 and 120 of the Income Tax Act provide that a tax is imposed on non- residents deriving income from sources in Uganda and the person making payments has an obligation to withhold tax. It submitted that the applicant obtained grants from Goal International as evidenced by donor agreements such as the one of Master Card Foundation. It submitted that *URA v Cowi* HCCA 0034 of 2020 set the principle that where administrative costs are paid to a head office for overseas and administrative work for consideration, then such work amounts to a supply of services. It was stated that.

"Support or supervisory/administrative work rendered to a branch from a head office overseas in the course or furtherance of business of the branch, becomes a supply when it is made for a consideration. That such services were made for consideration in the instant case is proved by the fact that these services were charged to the branch as a cost. This therefore was not a mere arrangement of allocating costs to the branch as part of an arm's length share of profits and losses within the entire group, as contended by counsel for the respondent, but rather a supply of services from overseas."

It also cited *Ernst and Young v URA* Application 30 of 2020 where the Tribunal noted that the group including the applicant were charged for costs or expenses incurred according to the proportional share of the total services. The Tribunal referred to *Black's Law Dictionary* definition of cost as something paid for something or expenditure. It stated that the use of costs allowed meant that the applicant was meeting the costs. The respondent contended that the applicant incurred costs which enabled Goal Ireland to obtain grant funds. The respondent therefore rightly assessed the applicant WHT on the Shs. 1,554,123,178 for program delivery fees.

In respect of WHT on software licenses, the respondent submitted that the applicant received software licenses from Microsoft and Sage for its use in Uganda. The applicant reimbursed the head office for the costs incurred in obtaining these licenses. It is not in contention that Sage and Microsoft provide services. The respondent submitted that much as the payment is made by Goal Ireland, the applicant reimburses Goal Ireland for the amounts incurred in obtaining these licenses. This was a payment of a royalty under Sections 2 (mmm) and 79(j) of the Income Tax Act. S. 79 states that.

"a royalty-

(i) Paid by a resident person, other than as an expenditure of a business carried on by the person outside Uganda through a branch:

(ii) ...

(iii) Arising from the disposal of industrial or intellectual property used in Uganda."

The respondent submitted that S. 2 (mmm) defines a royalty as.

"(i) any payment, including a premium or like amount, made as consideration for

(a) the use of, or the right to use, any patent, design, trademark, or copyright, or any model, pattern, plan, formula, or process, or any property or right of a similar nature.

(b) the use of, or the right to use, or the receipt of, or right to receive, any video or audio material transmitted by satellite, cable, optic fiber, or similar technology for use in connection with television, internet, or radio broadcasting.

(c) The imparting of, or undertaking to impart, any scientific, technical, industrial, or commercial knowledge or information".

The respondent submitted that the software licenses from Microsoft and Sage were purchased for the use in the business of the applicant. They constituted a right to use technology in connection with internet and other services. The agreement shows Sage provided services like software support, software equipment and maintenance.

The respondent submitted that S. 83 and S. 120 provide for the taxation of royalties. It states that a tax shall be imposed on every non-resident person that derives any royalty payment from sources in Uganda. The respondent submitted that, much as the applicant did not directly pay for these royalties, they reimbursed Goal Ireland, and this reimbursement was a consideration for the software licenses. Consideration is defined under S. 2(na) of the Income Tax Act to include the total amount of money paid for the supply of goods or services and accounted for at the time of the supply or sale.

The respondent cited *Elma Philanthropies (EA) Ltd v URA* Application 46 of 2019 where reimbursement was considered as a consideration. The Tribunal stated that.

> "The applicant contends that it was a reimbursement of expenses. However, this does not change the fact that it was a consideration. How the applicant may call it does not change its nature. Shakespeare in 'Romeo and Juliet said: "a rose by any other name would smell as sweet. The reference is often used to imply that the names of things do not affect what they really are. Therefore, the Tribunal finds that what the applicant received was consideration."

The respondent submitted that the payments for the imported licenses constituted international payments to which WHT is due.

f) VAT on international payments

In respect of VAT on program delivery services, the respondent submitted that the applicant was incorporated in Uganda and registered for business purposes. Due to this registration, the Goal Relief Ireland and the applicant were distinct entities. The respondent submitted Regulation 13(3) provides that.

> "If a taxable person carries on a business both in Uganda and outside Uganda, and there is an internal provision of services from the part outside Uganda to the part in Uganda, then in relation to those services, the following applies for purposes of the VAT Act and these regulations-
>
> (a) That part of the business carried on outside Uganda is treated as if it were carried on by a person (referred to as an "overseas person") separate from the taxable person;
>
> (b) The overseas person is not a taxable person; and
>
> (c) The internal provision of services is treated as a supply of services made outside Uganda by the overseas person to the taxable person for reduced consideration"

The respondent submitted that S. 4(c) of the VAT Act imposes the liability to charge VAT on imported services, other than exempt ones. S. 5(1)(c) of the Act imposes the liability to collect the tax on imported services. It provides that.

> "(1) Except as otherwise provided in this Act, the tax payable- (c) in the case of a supply of imported services, other than an exempt service, is to be paid by the person receiving the supply."

The respondent submitted that a supply of services is defined under S.11 (a) as a supply which is not a supply of goods or money, including the performance of services for another person. It cited *Metropolitan Life Limited v Commissioner for the South African Revenue Service A 232/2007* where the court defined 'service' as follows:

> "services' mean anything done or to be done, including the granting assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of good..."

The respondent submitted that imported services' means a supply of services that is made by a supplier who is resident or carries on business outside the republic to a

recipient who is a resident of another republic to the extent that such services are utilized or consumed in the other republic.

The respondent submitted that S. 1 of the VAT Act defines 'import' to mean to bring or cause to be brought into Uganda from a foreign country or place. The respondent cited the *URA v Cowi* (supra) where it was stated that.

> "Imported services in essence involve a supply of services that is made by a supplier who is resident or carries on business outside Uganda to a recipient who is a resident of or carries on business in Uganda to the extent that such services are utilized or consumed in Uganda. Any transaction involving supply of goods or services without consideration is not a supply, barring a few exceptions, in which a transaction is deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply."

The respondent submitted that where administrative work is carried on by a branch or a separate entity, it amounts to a supply of services to the entity since a service is imported and consumed into Uganda. The service in question was the provision for program delivery upon which a fee equivalent to 10% of the total grant was deducted.

The respondent submitted that Goal Ireland sources funds from several donors and charges a program delivery fee equivalent to 10% of the total grant made to Uganda. Goal Ireland is not a resident of Uganda and while the recipient is the applicant which is resident in Uganda. The grants that are sourced and consumed in Uganda. The respondent submitted that this service is therefore imported into Uganda and therefore falls under S. 4(e) and 5(1)(c) of the VAT Act making the applicant liable to pay the VAT. It submitted that in *Ernst and Young v URA (Supra)*, it was held that.

> "It is difficult to comprehend how the applicant can withhold taxes for services received from abroad for income tax purposes but does not charge VAT unless they are exempt or zero rated. If the services are imported for income tax purposes, they should also be considered for VAT purposes unless they are exempt".

It was stated further that.

> "In any case, the applicant is in the best position to explain how it received the services. There is no evidence that the applicant went abroad to consume the services...the services were provided and procured abroad but were consumed locally..."

The respondent submitted that the applicant obtained a service of sourcing donor funds from abroad. The consideration for this service was 10% of the total grant which was deducted by Goal Ireland. This was effectively an imported service that falls within the ambits of Sections 4(c) and 5(1)(c) of the VAT Act. The applicant is therefore liable to pay VAT on the imported services obtained. The respondent submitted that Regulation 13(1) of the VAT Regulations puts the burden of accounting for VAT on imported services on the recipient of the imported services. It cited *URA v COWI* (supra) where it was stated that.

> "A person who receives imported services other than an exempt service shall account for the tax due on the supply, and the taxpayer shall account for that service when performance of the service is completed, or when payment for the service is made, or when the invoice is received from the foreign supplier whichever is the earliest."

In respect of VAT on payment to head office staff, the respondent submitted that the staff were providing training support and programme monitoring to the applicant in terms of capacity building. It contended that this was an imported service to which VAT was meant to be charged and remitted. In *URA v COWI (supra)* it was held that where services are of supervisory or administrative nature and are charged at a cost, it is service that is liable to VAT. Furthermore, it was held that.

> "Support or supervisory/administrative work rendered to a branch from a head office overseas in the course or furtherance of business of the branch, becomes a supply when it is made for a consideration. That such services were made for consideration in the instant case is proved by the fact that these services were charged to the branch as a cost. This therefore was not a mere arrangement of allocating costs to the branch as part of an arm's length share of profits and losses within the entire group, as contended by counsel for the respondent, but rather a supply of services from overseas. Since a service is imported into Uganda when it is provided for use or consumption in Uganda, these therefore were services imported into Uganda."

The respondent submitted that the applicant is liable to pay VAT on the services provided to it.

In rejoinder, the applicant submitted that it does not dispute what the exemption did not cover. It submitted that a grant is a voluntary advancement of money from a donor. It submitted that this is not business within the meaning of the Income Tax Act. It submitted that an exemption is granted because there cannot be a gain from a donation. The applicant argued that it is ingenious to tax an expenditure from an exempt source.

The applicant stated that the payments to local suppliers were one off payments for office utilities, vehicle fuel, hotel accommodation, repairs, per idem. It contended that the respondent erroneously aggregated payments that were made for different suppliers. The applicant maintained that the payments were below the WHT threshold. The applicant submitted that the local suppliers were made between January and November 2019. It submitted that the exemption took effect 1st July 2019. It submitted that from January to June 2019 it made payments of Shs. 132,294,626 attracting WHT of Shs. 1,329,820. For July to November 2019, the respondent imposed WHT at 6%. The applicant contended it resulted in an over assessment of Shs. 24,775,019 which should be vacated.

On WHT on international payments, the applicant submitted that S. 58 of the Income Tax Act is not applicable to the grant received as it is not income under the Act. The applicant argued that S. 15 of the Income Tax Act defines chargeable income as the gross income of the person for the year less total deductions. S. 17 of the Income Tax states that gross income of a person is the total income of business income, employment income, and property income. S. 18 of the Act states that business income means any income derived. The applicant submitted that the grants received are not business income and do not facilitate charitable activities and therefore should not be subject to WHT.

The applicant reiterated that Goal Ireland receives grants from different donors and deducts 10% from the total grant to meet the costs it incurs in obtaining them. It argued that funds in question are neither a supply of goods nor services. There is no consideration paid by the applicant. The applicant argued that S. 83 of the Income Tax Act is inapplicable as it deals with business income which does not apply to charities. The applicant further submitted that there were no management services provided by Goal

Ireland which was simply remitting grants received from third parties. The applicant submitted that it does not incur or pay the 10%. It is deducted at Head Office. It submitted that *URA v Cowi* (supra) and *Ernst and Young v URA* (supra) are distinguishable from this case. The first one dealt with the provision of consultancy services by a branch to a head office while the second one dealt with provision of strategy and implementation services. In this case, the applicant is a charitable organization receiving a grant from a third party through the head office.

In respect of VAT, the applicant also reiterated that there were no services provided by Goal Ireland to it. It submitted that it only received a grant in the form of money. This does not amount to a supply and therefore no VAT arose. It follows that the money received from Ireland is exempt from VAT.

The applicant also argued that there was no payment of royalty in respect of the licence. The respondent relied on S. 79(j) of the Income Tax Act which the applicant felt does not apply. The applicant submitted that the invoices are issued to Microsoft and Sage Ireland. The respondent acknowledged that the payment is made in Ireland. The applicant submitted that *Elma Philanthropies v URA* (supra) does not apply since the applicant does not conduct business. It submitted further that the grant was incidental to grant income.

In respect of WHT, the applicant submitted that the respondent's contention that WHT was due for services provided by employees from Goal Ireland was not valid. It submitted that S. 78(b) of the Income Tax Act defines a management charge as any payment made to any person, other than a payment of employment income. It argued further that S. 83 deals with business income and does not apply to charities or grant income. The applicant contended that S. 120(3) of the Act provides the any amount attributable to a branch does not apply when the payment is exempt from tax.

The applicant submitted that a supply of service by employees from the head office in Ireland cannot be a supply to the applicant. The applicant cited S. 11(2) of the VAT Act

which provides that a supply of services made by an employee to an employer by reason of employment is not a supply made by the employee.

Having listened to the evidence, perused the exhibits, and read the submissions of the parties, this is the ruling of the tribunal.

The respondent conducted a compliance review on the applicant's tax affairs for WHT, PAYE and VAT for January 2017 to December 2019. As a result, the respondent assessed taxes against the applicant as follows; 51,867,131 or allegedly 52,345,885 for purported failure to withhold tax at a rate of 6% on local supplies: Shs. 263,533,867 for purported failure to withhold tax at a rate of 15% on international payments in relation to programme delivery fees, software licenses and training from head office staff; Shs. 316,240,641 for alleged failure to account for VAT on the said international payments, PAYE of Shs. 18,867,131. The applicant objected to the assessments. The respondent disallowed them and upheld the assessments totaling to Shs. 650,077,662.

The tribunal notes that the applicant issued WHT tax assessment on both local and international supplies. WHT on international payments is provided for under S. 120 of the Income Tax Act. WHT on local supplies is provided for under S. 119 of the Act. WHT is imposed by the Income Tax Act. 123 of the Act provides that.

> "(1) Subject to subsection (2), a withholding agent shall pay to the commissioner any tax that has been withheld or that should have been withheld under this Part within fifteen days after the end of the month in which the payment subject to withholding tax was made by the withholding agent".

S. 124 of the Act provides that.

> "(1) A withholding agent who fails to withhold tax in accordance with this Act is personally liable to pay to the commissioner the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee".

a) WHT of Shs. 51,867,131 or 52,345,885 on local supplies and agricultural supplies.

The first dispute is in respect of a WHT assessment of Shs. 51,867,131 on failure to withhold tax at a rate of 6% on local supplies. In some places it is stated as Shs. 52,345,885. The respondent's witness testified that the applicant paid Shs. 8,561,425,655 to non WHT exempt suppliers. It computed 513,685,540 but declared Shs, 464,899,960 and did not pay Shs. 51,436,023. The correct WHT figure would be Shs. 3,146,153.1 on supplies of Shs. Shs 52,345,885 and Shs. 3,112,027.6 on supplies of Shs. 51,867,131

A withholding agent is a person who when making payment to another person withholds tax as provided under the law. S. 119(1) of the Income Tax Act provides that.

> "(1) Where the Government of Uganda... or any person designated in a notice issued by the minister, in this Section referred to as the "payer", pays an amount or amounts in aggregate exceeding one million shillings to any person in Uganda.
> (a) For the supply of goods or materials of any kind; or
> (b) For a supply of any services,
> The payer shall withhold tax on the gross amount of payment at a rate prescribed in Part VIII of the Third Schedule to this Act and the payer shall issue a receipt to the payee."

Though the applicant may be exempt from paying income tax, it is not exempt from withholding tax.

The applicant submitted that the respondent computed tax of Shs. 52,345,885 for payments made of City tyres, Computer Plaza, Digiprint, Floben Enterprises Ltd, Hond Uganda and Hotel Kanyero who are payees exempt from WHT. The applicant argued that the respondent ought not to have charged WHT for suppliers who were exempt. It submitted that contrary to S. 119(5)(f)(i) of the Income Tax Act which provides that exceptions to which WHT does not apply to a supplier or importer the respondent issued WHT assessment of Shs. 3,116,777 wrongly. On the other hand, the respondent contended that the suppliers did not fall within the exceptions under S. 119(5). It further submitted that the applicant did not avail exemption certificates for the suppliers.

There are people that are exempt from WHT. S. 119(5)(i) states that this section does not apply to who is exempt from tax under the Act. S. 2(bb)(ii) of the Income Tax Act provides that.

> "An exempt organization means any company, institution or irrevocable trust -(ii) which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organization."

There must be a ruling in relation to the tax exemption. These exemptions last a year and are in relation to only income tax. The applicant contended that some of its suppliers were exempt. Hence it did not charge them WHT. Exhibit A7 which showed the payments of exempt suppliers as follows:

TABLE A

No.	Supplier	Amount	WHT	Declared WHT	Underdeclared WHT	Comment
1.	City Tyres	8,270,063	496,204		496,204	
2.	Computer Plaza	6,508,052	390,483		390,483	This is on the exempt list 1/7/2019 to 31/12/2019
3.	Digiprint Systems Uganda Ltd.	4,487,601	269,256	23,976	245,280	This is on the exempt list 1/7/2019 to 31/12/1019
4.	Floben Enterprises Ltd.	14,718,076	883,085		883,085	
5.	Hond Uganda Ltd.	13,171,380	790,283		790,283	
6.	Hotel Kakanyero	5,190,712	311,443		311,443	
	Total	52,345,885	3,140,753	23,976	3,116,777	

The parties filed exhibit A 7 in the joint trial bundle from which Table A is drawn. It shows that for items 2 and 3, that Computer Plaza and Digiprint Systems Uganda Ltd. were exempt from WHT from 1st July to 31st December 2019. The WHT due is Shs. 635,763. The period for which the applicant was assessed tax was from January 2017 to December 2019. It is not clear whether the WHT assessed on the Computer Plaza and Digipring Systems Uganda Ltd. was for the period when it was not exempt i.e., January 2017 to 30th June 2019. The table does not indicate which period it is covering and whether at the time the applicant was assessed WHT the above suppliers were exempt. The Tribunal cannot work on speculation. In respect of the other suppliers, no exemption rulings were tendered in as exhibits. Therefore, the applicant has not proved that it is not liable to pay WHT of Shs. 3,146,153.1 (using the higher amount) for the local supplies.

The applicant also submitted that some payments considered by the respondent were less than Shs. 1,000,000 and not subject to WHT. These were payments of Shs. 42,038,226 attracting WHT of Shs 2,522,294. It submitted that the assessment of payments below Shs. 1,000,000 should be vacated. The respondent submitted that where the total combination of all separate supplies of goods or services made to the applicant exceeds 1,000,000, the applicant is obliged to withhold tax on those payments.

S. 119 of the Income Tax Act provides that.

> "Where the Government of Uganda, a Government institution, a local authority, any company controlled by the Government of Uganda, or any person designated in a notice issued by the Minister, in this Section referred to as the "payer", pays an amount or amounts in aggregate exceeding one million shillings to any person in Uganda- a) for a supply of goods or materials of any kind; or
>
> b) for a supply of any services,
>
> the payer shall withhold tax on the gross amount of the payment at the rate prescribed in Part VIII of the Third Schedule to this Act, and the payer shall issue a receipt to the payee."

Paragraph 5 of The Income Tax (Designation of Payers) Notice provides that.

> "(1) Where any person designated in the Schedule to this Notice as a payer and pays an amount or amounts in aggregate exceeding one million shillings to any person in Uganda-
>
> (a) for a supply of goods or materials of any kind; or
>
> (b) for a supply of any services,
>
> The payer shall withhold tax on the gross amount of the payment at the rate prescribed in Part VIII of the Third Schedule to the Income Tax Act, and the payer shall issue a receipt to the payee.
>
> (2) Where
>
> (a) there are separate supplies of goods or materials, or of services and each supply is made for an amount that is one million shillings or less: and
>
> (b) it would reasonably be expected that the goods or materials, or services would ordinarily be supplied in a single supply for an amount exceeding one million shillings, subparagraph (1) applies to each supply".

A Practice Notes issued by the Commissioner General on 18th June 2007 defines "aggregate" as follows.

"For purposes of S. 119(1) ITA, the word "aggregate" is interpreted to mean the total payments to a supplier in respect of a supply of goods or services as provided for in a contract. The threshold of one million shillings is therefore in respect of the total contract value. This implies that separate supplies which constitute one contract of one million shillings and above are subject to 6% WHT irrespective of whether the amount paid at any given time in respect of the supply is less than the threshold provided under Section 119(2)".

A Practice Note is binding on the respondent but not the taxpayer.

Our understanding of the above Section is that if a supplier makes a supply where the payment is over Shs. 1,000,000 then the WHT agent is supposed to withhold the tax. if the amount is less than Shs. 1,000,000 the agent is not supposed to withhold tax. Under the Income Tax Designation Notice, a withholding agent is expected to withhold where he reasonably expects that a single supply would exceed Shs. 1,000,000. What happens where there are multiple or aggregate supplies? Where there is an aggregate of supplies, the withholding agent is expected to withhold tax where there are separate supplies which constitute one contract of Shs.1,000,000 or above as stated in the Practice Notice (Emphasis is put on the underlined portion).

The parties filed Exhibit A7 (vii) which showed the transactions below Shs. 1,000,000. The total payments were Shs. 42,038,226 attracting WHT of Shs 2,522,294. Since the exhibit was agreed by the parties it means the respondent is not disputing the transactions and that they were below Shs. 1,000,000. However, there is no evidence that the said transactions were for separate supplies which constituted one contract or contracts of Shs. 1,000,000 or above. Where a taxpayer contends that the separate supplies were below the threshold of shs. 1,000,000 the respondent ought to have looked at the contract to establish whether the contract sum was Shs. 1,000,000 and above. Since the contracts are lacking or there is no evidence of the contract sums the Tribunal is not in a position to say that S. 119 of the Income Tax Act does not apply. There is no evidence that the respondent requested the applicant to avail the said contracts. Therefore, the WHT assessment of Shs. 2,522,294 is set aside.

The third leg was with respect to WHT on agricultural supplies. The applicant submitted that some of the payments considered by the respondent were for agricultural supplies. It submitted that S. 119(5) of the Income Tax Act provides that WHT on goods and services does not apply to agricultural supplies. It also submitted that exemption for agricultural supplies was effective 1st July 2019 onwards. It submitted that from July 2018 to June 2019 the WHT rate was 1% while before July 2018 agricultural supplies were subject to 6% WHT rate. The applicant tendered in exhibit A7(iii) on the WHT on payments related to agricultural supplies. A perusal of exhibit A7(iii) does not indicate which suppliers made agricultural supplies, not the amounts or WHT due. In fact, it has legal firms, Onyango & Co. Advocates and Shonubi Musoke & Co. Advocates as suppliers of agricultural goods. Since when have legal firms started making agricultural supplies? The applicant also referred to the attachment "Y" which was attached to its submissions. It shows the WHT of Shs. 1,329,819.99. Though the said attachment shows suppliers, it does not show the agricultural supplies. However, the said attachment was not an exhibit tendered in court or agreed to by the parties. It was not subject to cross-examination. The figures and suppliers in the attachment differ from the exhibit. The Tribunal cannot rely on it. Therefore, the assessed WHT of Shs. 2,425,896 in the exhibit is upheld.

b) WHT on other local supplies

The applicant submitted that the respondent charged WHT on amounts which included VAT in the financial statements of 2019 which was on an accrual basis but whose payments were made in 2020. It contended that this was double taxation since the tax was withheld and paid in 2020. It submitted that the WHT of Shs. 9,121,675 should be vacated. The applicant's witness, Mr. Julius Makuma Nabyuuka testified that there was an amount of Shs. 152,642,873 which was included in the financial statements of 2019 but was paid in 2020. A table of the payments was filed in the joint trial bundle as exhibit A7(ii) which means that the respondent is not disputing the amount of Shs. 9,121,675 which is stated as undeclared WHT. What was declared was Shs. 1,095,699 There is no evidence that the WHT of Shs. 9,121,675 nor the Shs. 1,095,690 were paid for the Tribunal to order a refund. The payments should have been tendered in as evidence to

show which year they were paid. The applicant has not discharged the burden placed on it. The said ground does not appear to have been objected to nor part of the objection decision.

The applicant further submitted that the respondent considered correction journals in allocating expenses which attracted WHT of Shs. 11,104,082. The said WHT the applicant is challenging was not part of its pleading nor was it stated in its application. It was not part of the objection, or the objection decision nor part of scheduling. Though the applicant's witness, Mr. Julius Makua addressed it, the respondent did not. Exhibits A7(iii) and A7(VIII) which are not titled do not clearly explain the transactions. The figures the applicant submitted are not in the exhibits.

The applicant submitted that there are two instances where the respondent in its workings wrongly captured Shs. 545,100 as WHT declared by the applicant yet the actual amount was Shs. 2,280,942. This resulted in an overstatement of WHT by Shs. 1,735,842. The applicant referred to exhibit A7(ix) which shows that Kutega Inrahim Butchery declared WHT of Shs. 545,100. It shows that the undeclared WHT was Shs. 1,121,916. The said exhibit contradicts itself when it states that the actual amount declared was Shs. 2,280,942. The applicant did not attach the WHT returns to show where the applicant declared Shs. 2,280,942 and the working of the respondent where he wrongly captured Shs. 545,100. The said issue was not addressed by the respondent. It did not arise during the objection, objection decision, pleading nor during the scheduling. The author of exhibit A7(ix) is not stated. Therefore, the Tribunal cannot say it was the working of the respondent. If so, the workings of the respondent stated that WHT was Shs. 545,100 and not Shs. 2,280, 942.

c) WHT on staff allowances and support from head office

The applicant submitted that the respondent charged WHT of Shs. 1,158,459 on Shs. 19,307,657 which were allowances to staff working outside duty stations. It submitted that these were reimbursements of transport costs and allowances to staff which are exempt

under S. 19(2)(d)(i) of the Income Tax Act. It argued that WHT of Shs. 1,158,459 was wrongly assessed. The applicant referred to exhibit A7(ii) The respondent does not dispute that WHT of shs. 1,158,459 was charged on payments of Shs.19,307,659 as allowances for staff working outside duty stations. Exhibit A7(ii0) was not challenged by the respondent as it was in the joint trial bundle. Such allowances are not liable to WHT. Therefore, the assessment of Shs. 1,158,459 should be vacated.

The applicant submitted that the respondent computed WHT on payment of Shs. 59,856,439 for staff training in Thailand. It contended that such payment does not fall under S. 119 of the Income Tax Act. Therefore, the WHT of Shs 3,591,386 assessed should be vacated. A perusal of the applicant's exhibit A7(vi) which was agreed to by the parties shows that there were two suppliers in respect of training. The first one was i.e Tade Residency Thailan which was paid Shs. 6,109,808. WHT is Shs. 366,589. The review comments show that the amount was for staff accommodation during staff training in Thailand at Spring Field. The second supplier was Springfield Centre which was paid Shs. 53,746,631 and WHT was Shs. 3,224,798. From the exhibit, which was agreed by the parties it is clear that the training by Spring Field Centre was in Thailand at Springfield. Since the training was done abroad it is not clear why the respondent wanted the applicant to withhold tax. The service was rendered abroad. Therefore, the WHT of Shs. 3,591,386 for the expense is set aside.

The respondent countered that the applicant made payments to Head Office staff for the provision of training and program monitoring services at the latter's offices in Uganda. The staff were coming to Uganda to provide training support and programming monitoring for capacity building. The applicant's witness Mr. Joseph Nail admitted that in 2019 the applicant received remote technical support from Goal Ireland's technical support. He also stated that the technical team staff costs were allocated to affiliated organization based on time allocations. The respondent referred to staff activity time sheets, exhibit A10. The respondent submitted that the applicant made payments of Shs. 135,499,835 in 2019 for the provision of training and program monitoring at its office. A perusal of the financial statement of 2019 of the applicant at p. 58 of the supplementary trial bundle

shows the applicant did not incur any expense from Goal for education and training under support. However, a perusal of the applicant's exhibit A8 shows that the applicant made payments to the head office of Shs. 135,499,835 for training support and programme monitoring. Therefore, the Tribunal will order that the applicant pays WHT of Shs. 20,324,975.26 for the training and support of Goal International which is at times referred to as Goal Ireland.

The applicant submitted that the respondent charged WHT on payments of Shs.13,824,518 on transport refund and safari day allowances to project participants. It argued that these project facilitation costs to the participants were less than Shs. 1,000,000. It submitted that the WHT of Shs. 829,471 should be vacated. The applicant referred to exhibit A7(V) which was agreed on by both parties. The Tribunal notes it does not have any legal basis for charging WHT on transport refunds and safari day allowances for district officials who participated in projects. Therefore, the WHT assessment of Shs. 829,471 is set aside.

d) PAYE on tuition fees

The respondent issued a PAYE assessment of Shs. 18,867,131 for tuition paid for staff in higher institutions of learning such as Makerere University and the Uganda Management Institute. The respondent alleged that tuition is a benefit to the staff and PAYE ought to have been charged.

S. 116 of the Income Tax Act states that "(1) Every employer shall withhold tax from a payment of employment income to an employee prescribed by regulations made under S. 164". S. 19 of the Income Tax Act defines employment income to include the value of any benefit granted. The relevant portion of S. 19(1) of the Income Tax Act provides that.

> "Subject to this Section, employment income means any income derived by an employee from any employment and includes the following amounts, whether of a revenue or capital nature-
>
> (b) the value of any benefit granted."

Paragraph 2 of the Fifth Schedule to the Act provides that a benefit –

"a) is provided by an employer, or by a third party under an arrangement with the employer or an associate of the employer.

b) is provided to an employee or to an associate of an employer; and

c) is provided in respect of past, present, or prospective employment."

Paragraph 11 of the 5th Schedule provides for other benefits not covered by the Act. It states that.

"The value of any benefit provided by an employer to an employee which is not covered by the above clauses is the market value of the benefits, at the time the benefit is reduced by any payment made by the employee for the benefit."

The payments for tuition meet the test of an employment benefit under S. 19(1)(b) and Paragraphs 2 and 11 of the Fifth Schedule of the Income Tax Act.

The applicant submitted that S. 33 of Act provides that.

"An employer is allowed a deduction for expenditure incurred during the year of income for the training or tertiary education, not exceeding in the aggregate five years of a citizen or permanent resident of Uganda, other than an associate of the employer who is employed by the employer in a business, the income from which is included in gross income."

Practice Notes of 16th March 2009 categorize educational institutions as schools, tertiary intuitions, and universities. A tertiary institution is defined as a post-secondary or post ordinary level business, technical or vocational education and training institution or a degree awarding institution duly registered and gazetted by the National Council for Higher Education. A university is defined as an institution, school, Institute or Centre of Higher Education, other than a tertiary institution, which provides post-secondary education offering courses of study leading to the award of certificates, diplomas and degrees and conducting research and publications. The applicant submitted that according to the definition of a tertiary institution, the payments made to UMI qualify for deductions. It contended that the tuition paid by it for staff training and development program was an education grant and therefore exempt from income tax. However, S. 22(3) of the Income Tax Act provides.

"(3) In this section, expenditure of a domestic or private nature incurred by a person includes—

(a) the cost incurred in the maintenance of the person and the person's family or residence.

(b) The cost of commuting between the person's residence and work.

(c) the cost of clothing worn to work, except clothing which is not suitable for wearing outside of work; and

(d) the cost of education of the person not directly relevant to the person's employment or business, and the cost of education leading to a degree, whether or not it is directly relevant to the person's employment or business."

At this time the Tribunal will not go into the argument as to whether the tuition fees were of a domestic or private nature as there is no evidence to that effect. What is important to note is that if an expense is an allowable deduction, it does not make it exempt from PAYE. The taxpayer is still expected to withhold PAYE at source unless the benefit is exempted. In the circumstances the applicant is liable to pay the tax assessed.

The Tribunal notes that the applicant admitted liability to pay taxes of Shs. 11,053,514 arising from the tuition paid on behalf of staff member's children. Therefore, we shall order that it pays the same.

e) WHT on international payments

The applicant submitted that Goal Ireland obtains grants for it. It deducts 10% to meet costs incurred in obtaining the grants and remits 90% to it. It contended that the deduction is not subject to tax as it is for donations used to facilitate charitable activities. On the other hand, the respondent argued that the deductions are administrative costs paid to the head office for work done which is a supply of service from abroad for which WHT is due. It contended that the 10% constituted consideration for the services rendered by Goal Ireland. It submitted that the applicant received a management service that it paid for. It submitted further that service is defined under the Oxford Advanced Learner's Dictionary as; "work done or duties performed for a government, company, etc..." It submitted that the acts of Goal Ireland in negotiating and sourcing grants on behalf of the applicant amounted to services that were conducted.

S 79 provides that; "Income is derived from sources in Uganda to the extent to which it is a management charge paid by a resident person." S. 83(1) of the Income Tax Act states.

> "(1) Subject to this Act, a tax is imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment, or management charge from sources in Uganda.
>
> (2) The tax payable by a non-resident person under this Section is calculated by applying the rate prescribed in Part IV of the Third Schedule to this Act to the gross amount of the dividend, interest, royalty, rent, natural resource payment, or management charge derived by a non-resident person."

Under S. 120 of the Act, a person making such a payment is required to withhold tax at a rate of 15%. It provides that.

> "(1) Any person making a payment of the kind referred to in S. 83, 85 or 86 shall withhold from the payment the tax levied under the relevant Section..."

A management charge is defined under S. 78(b) of the Income Tax Act as

> "Any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated."

Managerial services are not defined. Management is defined by *Black's Law Dictionary* 10th Edition p.1104 as "2. The act or system of controlling and making decisions for a business or department." S. 2(na) of the Income Tax Act defines consideration to include.

> "The total amount in money or of payment in kind, paid or payable for the supply of goods, services or sale of land by any person, directly or indirectly, including any duties, levies, fees, and charges other than tax paid or payable on, or by reason of, the supply, reduced by any discounts or rebates allowed and accounted for at the time of the supply or sale;"

It is not denied that the applicant paid consideration in the form of a deduction of 10% by Goal Ireland. The question is, does that payment fall under S. 83(1) of the Income Tax Act? The payment for services by the applicant. provided by the Goal Ireland cannot be said to be for dividend, rent, royalty rent or natural resource payment. Exhibit A1 shows that the applicant is an international organization. It is not denied that Goal Ireland which is the head office seeks grants for the applicant. If the applicant is one entity with Goal Ireland, then one wonders why the head office is making a deduction. The head office provides support and administrative work when it seeks grants which can amount to managerial services. The head office controls and makes decisions in respect of the

grants the applicant will receive. For rendering such services, it charges a commission of 10%. In *Uganda Revenue Authority v Cowi* HCCA 0034 of 2020 it was stated that.

> "Support or supervisory/administrative work rendered to a branch from a head office overseas in the course or furtherance of business of the branch, becomes a supply when it is made for a consideration. That such services were made for consideration in the instant case is proved by the fact that these services were charged to the branch as a cost. This therefore was not a mere arrangement of allocating costs to the branch as part of an arm's length share of profits and losses within the entire group, as contended by counsel for the respondent, but rather a supply of services from overseas."

Exhibit A8 which was agreed by both parties in the joint trial bundle shows that management fees totaling to Shs.1,554,123,178 for programme delivery services were paid. Taking the above into consideration, Ireland Head office was rendering management services to the applicant which ought to have withheld taxes. The respondent was justified to issue a WHT assessment of Shs. 233,118,476 on the management fees in respect to the commission deducted by Goal Ireland.

The second dispute on WHT on international payment was in respect of software licenses. The applicant submitted that the respondent issued WHT assessments on international payments for software licenses from Microsoft office and Sage. The applicant submitted that the said software is paid for by Goal Ireland and not by it. This is not income sourced from Uganda. S. 79 of the Income Tax Act states that.

> "Income is derived from source in Uganda to the extent which it is.
>
> (j) a royalty-
>
> (i) paid by a resident person, other than as an expenditure of a business carried on by the person outside Uganda through a branch:
>
> (ii) paid by a non-resident person as an expenditure of a business carried on by the person through a branch in Uganda or
>
> (iii) arising from the disposal of industrial or intellectual property used in Uganda."

S. 2 (mmm) defines a royalty as.

> "a royalty means-
>
> (i) any payment, including a premium or like amount, made as consideration for
>
> (A) the use of, or the right to use, any patent, design, trademark, or copyright, or any model, pattern, plan, formula, or process, or any property or right of a similar nature.

(B) the use of, or the right to use, or the receipt of, or right to receive, any video or audio material transmitted by satellite, cable, optic fiber, or similar technology for use in connection with television, internet, or radio broadcasting.

(C) The imparting of, or undertaking to impart, any scientific, technical, industrial, or commercial knowledge or information".

The software licenses from Microsoft and Sage were purchased by a non-resident person for the use of the business of the applicant, which was a branch. They constituted a right to use technology in connection with internet and other services. Sage provided services like software support, software equipment and maintenance to which the services were charged. S. 83(1) of the Income Tax Act provides that Subject to this Act, a tax is imposed on every non- resident person who derives any royalty from sources in Uganda. S. 120(1) of the Act provides that "Any person making a payment of the kind referred to in S. 83, 85, or 86 shall withhold from the payment the tax levied under the relevant section". Therefore, the applicant ought to have withheld 15% which is Shs. 10,090,415 on Shs. 67,269436 as stated in exhibit A8.

Furthermore, the applicant's witness. Mr. Dempsey stated that the applicant received remote technical support from Goal Ireland's technical team based in Dublin. It paid for the support which payments were considered as expenses. It did not withhold taxes on the costs. Under S. 83(1) of the Income Tax Act, a tax is imposed on every non- resident person who derives any management charge from sources in Uganda. We already stated that a management charge is defined under S. 78(b) of the Income Tax Act as

> "Any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated."

The applicant called the costs it paid the head office as reimbursements. the *Elma Philanthropies (EA) Ltd v URA* Application 46 of 2019, the Tribunal stated that.

> "The applicant contends that it was a reimbursement of expenses. However, this does not change the fact that it was a consideration. How the applicant may call it does not change its nature. Shakespeare in 'Romeo and Juliet said: "a rose by any other name would smell as sweet. The reference is often used to imply that the names of things do not affect what they really are. Therefore, the Tribunal finds that what the applicant received was consideration."

Therefore, whether the applicant called the charges reimbursements of expenses it ought to have withheld Shs. 20,324,975.25 on Shs. 135,499,835.

f) VAT on international payments

The first dispute on VAT on international payment was in respect of the head office seeking grants for the applicant. The applicant submitted that the services offered by Goal International (Ireland) are supplied in Ireland and not in Uganda. Since Goal (Ireland) is not registered for VAT in Uganda, it is not a taxable person under the VAT Act. It submitted that under S. 4(a) of the VAT Act that before imposing tax on a supply, the supply person must be a taxable supply made by a taxable person. S. 18(1) of the VAT Act provides that; "(1) A taxable supply is a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities". It submitted that S. 6 of the VAT Act defines a taxable person as a person registered under S. 7 of the VAT Act. S. 16 of the VAT Act provides that:

> "A supply of services shall take place in Uganda if the business of the supplier which the services are supplied is in Uganda."

It contended that from the above provisions, there are no taxable supplies made and, in the circumstances, VAT does not arise. On the other hand, the respondent submitted that Goal Ireland sources funds from several donors and charges a program delivery fee equivalent to 10% of the total grant made to Uganda. Goal Ireland is not a resident of Uganda and while the recipient is resident in Uganda. The grants are sourced and consumed in Uganda. The respondent submitted that where administrative work is carried on by a branch or a separate entity, it amounts to a supply of services to the entity since a service is imported and consumed into Uganda. The respondent submitted that this service is therefore imported into Uganda and therefore falls under S. 4(e) and 5(1)(c) of the VAT Act making the applicant liable to pay the VAT.

S.4 of the Income Tax Act imposes VAT on imported services. It states.

> "(1) A tax, to be known as a value added tax, shall be charged in accordance with this Act on
>
> (a) Every taxable supply in Uganda made by a taxable person.

(b) Every import of goods other than an exempt import; and

(c) The supply of any imported services by any person."

S. 5(1)(c) of the Act imposes the liability to collect the tax on imported services. It provides that.

"(1) Except as otherwise provided in this Act, the tax payable- (c) in the case of a supply of imported services, other than an exempt service, is to be paid by the person receiving the supply."

S. 11 of the VAT Act provides that.

"Except as otherwise provided under this act, a supply of services means a supply which is not a supply of goods or money, including-

(a) The performance of services for another person

(b) The making available of any facility or advantage."

In *Metropolitan Life Limited v Commissioner for the South African Revenue Service A 232/2007* the court defined 'service' as follows:

"services' mean anything done or to be done, including the granting assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of good..."

Therefore, an imported services' is a supply of services that is made by a supplier outside the country to a recipient in Uganda. It attracts VAT if it is a taxable supply. S. 18 of the VAT Act provides that.

"(1) a taxable supply is a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities".

In respect of services provided to a branch, Regulation 13(3) of the VAT Regulations provides that.

"If a taxable person carries on a business both in Uganda and outside Uganda, and there is an internal provision of services from the part outside Uganda to the part in Uganda, then in relation to those services, the following applies for purposes of the VAT Act and these regulations-

(a) That part of the business carried on outside Uganda is treated as if it were carried on by a person (referred to as an "overseas person") separate from the taxable person;

(b) The overseas person is not a taxable person; and

(c) The internal provision of services is treated as a supply of services made outside Uganda by the overseas person to the taxable person for reduced consideration"

S. 1(j) of the VAT Act defines an import as "To bring or to cause to brought into Uganda from a foreign country or place." In *Apollo Hotel Corporation v URA* Application 68 of 2018, this tribunal stated that.

"...The services in question were used in Uganda by the applicant. It follows that these services were imported services for the reason that they were supplies from a foreign jurisdiction and consumed in Uganda. We therefore find that there was an imported service ..."

In *URA v Cowi* (supra) where it was stated that.

"Imported services in essence involve a supply of services that is made by a supplier who is resident or carries on business outside Uganda to a recipient who is a resident of or carries on business in Uganda to the extent that such services are utilized or consumed in Uganda. Any transaction involving supply of goods or services without consideration is not a supply, barring a few exceptions, in which a transaction is deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply."

In *Ernst and Young v URA (Supra),* it was held that.

"It is difficult to comprehend how the applicant can withhold taxes for services received from abroad for income tax purposes but does not charge VAT unless they are exempt or zero rated. If the services are imported for income tax purposes, they should also be considered for VAT purposes unless they are exempt".

In most case where a taxpayer is required to withhold income tax, then it may be liable for VAT.

The Tribunal holds that the Goal Ireland, or the head office was soliciting for grants for the applicant. Since the services were provided abroad, while the applicant was in Uganda, it amounted to an import of service as the grants were used locally. The 10% commission was consideration for the provision of the imported services. Therefore, the applicant ought to have charged VAT of the said services.

The second dispute was in respect of VAT on payment to head office staff. The respondent submitted that the staff were providing training and programme monitoring for capacity building. It contended that this was an imported service to which VAT was meant to be charged and remitted. We already held that the applicant was liable to pay WHT for training and support of head office. We find that the applicant is liable to pay VAT in respect of the head office support and training.

The third dispute was in respect of software purchase by head office. The applicant submitted that S. 4(c) of the VAT Act provides that VAT is chargeable on the supply of imported services other than an exempt service, by any person. S. 2 (j) of the VAT Act defines an import as "To bring, or cause to be brought, into Uganda from a foreign country or place" The applicant argued this is not an imported service and therefore VAT does not arise. The applicant contended that the software it uses was paid for by Goal Ireland and not by it. It is not disputed that the applicant received and used the software acquired by Goal Ireland. For the software purchased in Ireland to be used in Uganda, there has to be an import. Therefore, the applicant to have used the software purchased in Ireland in Uganda, there was an import of services or goods, whichever is applicable. Therefore, VAT was due for the use of the services.

The VAT component for imported services was Shs. 316,240,641 plus interest of Shs. 63,248,128 for July 2020 to April 2021 totaling to Shs. 379,488,769 as stated in exhibit A8. The Tribunal has already stated that the applicant imported services. Therefore, it is liable to pay the VAT arising therein.

Having gone through the submissions the following Table summarizes the tax liabilities.

TABLE B

Item	Tax	Interest	Not Payable	Payable
WHT on domestic supplies				
a) Local supplies	3,146,153			3,146,153
b) Agricultural supplies	2 425,896			2,425,896
c) Accrual basis	9,121,675			9,121,675
d) Correction journals	11,104,082			11,104,082

e) Overstated in respondent's workings. f) Supplies below Shs.1,000,000	1,735,842		 2,522,294	1,735,842
WHT on training and allowances a) Training and support from head office b) PAYE for training in higher institutions c) PAYE on tuition paid for staff children. d) WHT on Staff allowance e) WHT on Training of staff in Thailand f) WHT on allowances to district participants	 20,324,975.26 18,867,131 11,053,514 3,591,386		 1,158,459 3,591,386 829,471	 20,324,975.26 18,867,131 11,053,514
WHT on International payments a) Program delivery fee or 10% commission b) Licenses (Microsoft, Sage) c) Payment to head office for support **Total**	 233,118,476 10,090,415 20,324,975.25 **263,533,867**	 **52,706,773**		 **316,240,641**
VAT on international payments or imported services	316,240,641	63,248,128		379,488,769

Taking the above into consideration, the Tribunal orders as follows:

1. The applicant is liable to pay, or the respondent was justified to assess.
   a) WHT of Shs. 3,146,153.1 for the local supplies which it alleged were exempt.
   b) WHT of Shs. 2,425,896 in respect of agricultural supplies alleged to be exempt.
   c) WHT of Shs. 9,121,675 which was purportedly paid on an accrual basis in 2019.
   d) WHT of Shs. 11,104,082 arising from correction journals.
   e) WHT of Shs. 1,735,842 which was purportedly overstated in respondent's workings.
   f) WHT of Shs. 20,324,975.26 training and support of the head office to the applicant in 2019.
   g) PAYE assessment of Shs. 18,867,131 for tuition paid for staff in higher institutions.
   h) Taxes of Shs. 11,053,514 admitted as arising from the tuition paid on behalf of staff member's children.
   i) WHT assessment of Shs. 316,240,641 in respect international payments.
   j) VAT of Shs. 379,488,769 for imported services
2. The applicant is not liable to pay

a) the WHT of Shs. 2,522,294 in respect of supplies below Shs. 1,000,000 which is set aside.

b) WHT of Shs. 1,158,459 on staff allowance which is vacated.

c) WHT of Shs. 3,591,386 for training of staff in Thailand which is set aside.

d) WHT of Shs. 829,471 for allowances for district participants in a project which is set aside.

3. The applicant will pay two thirds the costs of the application.

Dated at Kampala this 26th day of June 2023.

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