Tax Case Summary

Global Woods v URA

The Tax Appeals Tribunal has ruled in favour of the URA stating that withholding tax is payable on interest outstanding pending cessation of a business. Additionally, VAT on imported services and withholding tax on services not contracted for by the taxpayer was also payable. However, this ruling comes with a dissenting opinion.

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Introduction and Background

The taxpayer, a Ugandan branch of a German forestry company, operated under a 50-year lease of a Forest Reserve in Uganda. The Germany company faced financial difficulties due to market downturns and restructured its shareholder loans, deferring principal and interest payments to December 2025 and reducing the interest rate from 15% to 1%.

According to the taxpayer, the restructuring was intended to ease financial strain and avoid insolvency.

In 2019, the sole shareholder of the Germany company, (the parent company of the Uganda branch) decided to divest its stake and engaged a Mauritius-based advisory firm to find potential buyers.

The Mauritian firm identified a Ugandan company as a potential buyer of its shares. Although the initial sale was delayed due to the COVID-19 pandemic, the final transaction was an asset sale to a Ugandan Company in November 2020 for USD 16.7 million. The Ugandan Company deducted 10% withholding tax (WHT) from the disposal proceeds received by the Ugandan branch, which was remitted to the Uganda Revenue Authority (URA).

Following the sale, the taxpayer applied for a refund of the WHT, on the basis that there was no tax to pay in respect to the disposal of its assets.

The WHT refund triggered a comprehensive URA audit which resulted in a WHT assessment of UGX 7,508, 593,776 on interest and UGX 447,600,144 in Value Added Tax (VAT) and WHT on imported services from the Mauritian firm.

Submissions by the parties

The taxpayer argued that WHT on the outstanding interest was not due because the deferred interest was never paid. Citing section 47(2) (now 45(2))) of the Income Tax Act ("ITA"), the taxpayer argued that WHT on deferred interest is due when a payment of interest is made. In this instance, no payment of interest was made, the interest remained on the books of the branch.

The taxpayer asserted that URA's assertion of taxing deferred interest based on cessation of business was legally baseless. The taxpayer also claimed that the Mauritian firm's services were procured and paid for by its Germany parent company not the Ugandan branch, and thus VAT and WHT on imported services should not apply.

The taxpayer relied on contractual documents and financial statements to prove that no payment or benefit was conferred to it from the Mauritian firm's services.

On the other hand, the URA argued that the deferral of loan repayments was a tax avoidance scheme since the company was ceasing operations in Uganda. Accordingly, the WHT on accrued interest should be immediately collected in form of a jeopardy assessment. The URA also maintained that the Mauritian firm's services although contracted by the parent company directly benefited the taxpayer and facilitated the sale of its assets, making them taxable imported services under Ugandan law. The URA cited evidence of direct involvement and benefit to the Ugandan branch from Mauritian firm's services.

Majority Ruling of the Tribunal

While rejecting the taxpayer's argument the Tribunal ruled that the loan and interest became due for immediate repayment when the parent company divested its shares and transferred its shareholder loans to a new entity subsequently triggering the WHT liability. The Tribunal also found that the subsequent amendment to defer repayment was a sham and a tax avoidance scheme, lacking commercial substance therefore upholding the WHT assessment on the interest.

Regarding VAT and WHT on Imported Services, the Tribunal held that Mauritian firm's services were indeed imported and consumed in Uganda by the taxpayer because it was the main beneficiary and decision-maker in the asset sale hence VAT and WHT on these services were properly assessed.

Dissenting opinion

The dissenting member of the Tribunal disagreed with the majority on the basis that; economic benefit alone does not create a tax liability without a contractual or statutory obligation. The contractual relationship was solely between the Germany parent company and the Mauritian firm. With no evidence provided by the URA that the taxpayer in Uganda received or paid for the services, the services were neither received nor consumed in Uganda. Accordingly, the services do not meet the requirement of imported services and therefore the VAT assessment cannot be sustained. Similarly, in the absence of evidence that the taxpayer paid for, controlled or consumed the services, the URA failed to meet the legal and evidentiary threshold to justify imposition of WHT under the ITA.

WHT on deferred interest should only arise upon actual payment as per the clear language of the ITA. The member found that there was no need to raise a jeopardy assessment, the loan restructuring was transparently documented, commercially rational and supported by contemporaneous financial statements demonstrating the taxpayer's financial distress.

URA's attempt to recharacterize the loan deferment as a tax avoidance scheme and treat the deferred interest as constructively paid was not tenable since this was not an artificial or fictitious transaction.

Accordingly, the taxpayer was not liable to WHT until such a time when the deferred interest is paid.

We await the taxpayer's consideration to appeal or accept the findings of the rulings.

Key Takeaways

- The ruling emphasises the principle that tax liability for WHT on interest arises upon payment unless a tax avoidance scheme is proven.
- The ruling highlights the importance of substance over form in tax matters because anti-avoidance provisions allow recharacterization of transactions lacking commercial substance, but such powers must be exercised with clear evidence.
- The majority of the Tribunal members did not address the procedural concern regarding the introduction of the tax avoidance allegation—specifically related to services provided to the parent company—during submissions rather than at the audit stage. We await clarification on this issue should the matter proceed on appeal.
- Where a taxpayer indirectly benefits from services provided to its parent company, VAT and WHT on imported services may be imposed. However, this remains a contentious issue—particularly in cases where the taxpayer has no contractual or financial obligation under the parent company's agreement.

Please feel free to contact your usual PwC contact or any of our experts below should you wish to discuss this further.

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