

Ugandan Tax Appeals Court rules VAT is not due on supply of services by a branch to its head office

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Executive summary

On 30 November 2020, the Ugandan Tax Appeals Tribunal (TAT) issued a ruling in TAT Application No. 36 of 2019 *Samsung Electronics East Africa Limited versus Uganda Revenue Authority* to the effect that a branch of a company is not distinct from its head office and there is no Value Added Tax (VAT) due on a supply of services by a branch to its head office.

Detailed discussion

Facts

Samsung Electronics East Africa Limited (Appellant) is duly incorporated in Kenya and registered as a branch (foreign company) in Uganda.

The branch in Uganda provides market analysis, research on defective products as well as monitoring services on defective products. It also monitors and follows up on payment by the head office and provides liaison services in Uganda.

The Uganda Revenue Authority (URA or Respondent) raised a VAT assessment of UGX1,736,337,566 of which UGX868,165,783 was capped interest for services rendered by the branch to the head office for the period January 2013 to December 2016.

The Appellant objected to the assessment on the grounds that the services it provided were exported services and that the costs charged by the branch to the head office do not constitute taxable supplies.

The objection was disallowed, and the assessment maintained.

Dissatisfied with the objection decision, the Appellant applied for review to the Tax Appeals Tribunal.

Issues presented

Whether VAT should be paid for services to a head office, but costs remitted to the branch in Uganda.

Appellant's positions

The Appellant contended that the branch and head office are part of one and the same company.

The Appellant also contended that there cannot be a supply between it and the head office as they are one and the same person. The services provided by the branch to its head office cannot be said to be performance of services for another person.

The Appellant further claimed that the income tax concept of a branch being taxed separately from its head office does not extend to VAT.

It also claimed that the self-supply concept between a branch and its nonresident head office under regulation 13(3) of the VAT regulations does not extend to section 11(1) of the *VAT Act*.

In the alternative, the Applicant also contended that the services it provided to its head office were for use and consumption outside Uganda hence an export which is zero rated.

Respondent's positions

The Respondent contended that the Appellant is a registered taxpayer under section 4 of the *VAT Act* and is engaged in the supply of market analysis, reporting and research services.

It also relied on section 16(2) of the *VAT Act* to contend that there was a supply of services to the head office since the Appellant is duly registered in Uganda with physical presence and the place of supply is outside Uganda.

It also claimed that services are treated as exported if documentary evidence acceptable to the Commissioner General is availed in the form of a contract with a foreign purchaser and specifies the place of use or consumption of service to be outside Uganda which the Appellant did not.

The Respondent also claimed that the Tribunal should use the purposive approach in interpreting statutes to avoid tax avoidance, and it should look at substance over form to ascertain whether a branch is a taxable person.

The Tribunal's Ruling

In determining the application, the Tribunal held as follows:

- ▶ A company is not distinct from its head office and branch.
- ▶ A head office and branch are places where the company operates from.

The Respondent's decision to consider the branch in Uganda as a different entity from the head office is not grounded in law.

A supply of service by employees at the branch cannot be a supply to the Appellant as provided for under section 11(2) of the *VAT Act*.

Where words are clear they should be given their plain meaning and giving the word "company" its ordinary meaning would not extend to a branch as this is a place it operates from.

A company cannot be said to be exporting to itself and as such there is no need for documentary evidence under regulation 12 of the VAT regulations.

The application was allowed with costs to the Appellant.

The ruling is the current position on a supply by a branch to its head office. This could change however if the decision is overturned by a superior Court.

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