Trinity Term
[2026] UKPC 24
Privy Council Appeal No 0015 of 2025

JUDGMENT

Unicomer (St Vincent) Ltd (Appellant) *v* Appeal Commissioners and another (Respondents) (St Vincent and the Grenadines)

From the Eastern Caribbean Court of Appeal (Saint Vincent and the Grenadines)

before

Lord Lloyd-Jones
Lady Rose
Lady Simler

JUDGMENT GIVEN ON
11 June 2026

Heard on 15 April 2026

Appellant
Roderick Cordara KC, SC
Barrie Attzs
Mikhail Charles
(Instructed by Baptiste & Co Law Firm Inc)

Respondent
Thomas Roe KC
Duane Daniel
(Instructed by Charles Russell Speechlys LLP)

LADY SIMLER:

Introduction

1. The appellant is a company registered in Saint Vincent and the Grenadines, which engages (among other things) in the business of selling household furniture and appliances though its "Courts" branded stores. As part of the sales service it provides, the appellant offers credit financing to its customers through a standard-form Hire Purchase Agreement and provides credit protection insurance ("CPI") to its hire purchase customers. The appellant acts as an intermediary in connection with the placing and administration of this insurance. Its customers are the assureds under the CPI policy. The customers pay the premium under their CPI policy in instalments rolled up with the monthly instalments of the hire purchase price. The premium is therefore paid by the customer to the appellant in the first instance and then that part of the monthly instalment is paid over by the appellant to the insurer, having deducted a commission payable by the insurer to the appellant for introducing the customer to the insurer. Depending on the type of cover chosen by the customer, the policy protects both the asset acquired and the customer's financial liabilities towards the appellant under the hire purchase agreement.

2. The insurer under the CPI policy was (and remains) Massy United Insurance Limited (formerly known as United Insurance Company Limited) (referred to below as "United"), a Barbados-based insurer, permitted by local regulators in St Vincent and the Grenadines to conduct business through its branch in Saint Vincent and the Grenadines. United in turn reinsured with Canterbury Insurance Company Limited ("Canterbury"), an insurer incorporated in and conducting business in Bermuda. Canterbury is (and was) in common ultimate ownership with the appellant within the Unicomer group. Canterbury was not authorised to write insurance business in Saint Vincent and the Grenadines, and the appellant was not authorised to write insurance business at all, in any location.

3. When calculating its corporate income tax for the tax years 2007 to 2011, the appellant sought to deduct the CPI premiums paid by it to United for insurance coverage for its customers in those years, in the sum of EC$4,450,000.00 The appellant maintains that this was a legitimate and genuine business expense that should be allowed under section 39 of the Income Tax Act (Chapter 435) ("the ITA"). The Comptroller of Inland Revenue ("the Revenue") disagreed and disallowed the deduction based on the CPI premiums paid, acting pursuant to section 23 of the ITA and concluding that the arrangements were commercially abnormal because United was merely a "conduit" (without commercial substance) enabling the appellant to pass the CPI profits to a related party, namely Canterbury, a non-resident of Saint Vincent and the Grenadines, located in a lower tax jurisdiction (the deductibility issue, issue 1).

4. As well as disallowing the deduction of the CPI expense, the Revenue also assessed the appellant to withholding tax on this sum (at a rate of 20% in the sum of EC$890,000.00) pursuant to section 66 of and the Third Schedule to the ITA, on the basis that the sum was paid to Canterbury, a non-resident company that did not carry on business in Saint Vincent and the Grenadines. If, as the appellant maintained, the CPI premiums were legitimate business overheads paid to United, there was no basis for this assessment (the withholding tax issue, issue 2).

5. Separately, the Revenue also assessed the appellant to additional income tax on the full sale value of goods purchased on hire purchase terms from the point in time that the customer executed the hire purchase contract. In other words, pursuant to section 9(1)(b) of the ITA, the Revenue was satisfied that the appellant regularly followed a commercially recognised system of accounting other than the cash basis (ie the appellant was effectively subject to tax in the same manner for cash and hire purchase sale transactions). This is the deferred hire purchase payment issue, or issue 3.

6. The appellant's appeal against all aspects of the Revenue's assessment was dismissed by the Appeal Commissioners by a decision delivered on 29 November 2018. The appellant appealed by way of rehearing to the High Court in December 2018 (case number SVGHCV 2018/0206). By a judgment dated 29 April 2021 (albeit relying on different grounds to those relied on by the Revenue), Byer J confirmed the assessment. Byer J found that United was not a "mere conduit" and that the insurance arrangements were genuine and fulfilled a genuine business need (para 64). However, despite her acceptance that United played a genuine role as a provider for and of insurance coverage for the appellant under a genuine contract, the judge held that section 23 of the ITA was engaged by the transaction because (para 65) the insurance arrangements were "carried out by means or in a manner which would not normally be employed" in carrying out insurance arrangements of this nature (section 23(1)(a) of the ITA) and that the arrangements had the effect of reducing the appellant's liability to tax, entitling the Revenue to redetermine the liability to tax as deemed appropriate "to counteract such reduction" as would otherwise have been effected. It followed that section 66 also applied. The Board will address the High Court's reasoning in relation to the deferred hire purchase payment issue in the section dealing with issue 3 below.

7. The Court of Appeal of the Eastern Caribbean (Michel and Price-Findlay JJA, Farara JA (Ag)) dismissed the appeal on all grounds by a judgment dated 17 April 2024 (case number SVGHCVAP 2021/0010). So far as issues 1 and 2 are concerned, the court held that the application of section 23(1)(a) was not limited to a situation involving a "mere conduit" (para 30); that, having considered all the evidence before the court, Byer J was entitled to hold that the insurance arrangements were carried out in a manner which was abnormal (para 36); that there was no basis to find that the CPI payments attract the exception under the Third Schedule to the ITA (para 44); and that, therefore, Byer J was correct in finding that these payments were subject to withholding tax under section 66 (para 45).

8. The appellant appeals as of right to the Judicial Committee of the Privy Council in relation to the application by the courts below of sections 23 and 66 of the ITA (issues 1 and 2) and of section 9 of the ITA (issue 3). The appellant submits that there was no lawful basis for the Revenue's decision to assess the appellant under any of these heads. It invites the Board to set aside the orders of the High Court and Court of Appeal and quash the assessments made by the Revenue. Alternatively, in the event that the Board considers that any part of the assessment was lawfully made, the appellant invites the Board to remit the matter to the High Court for redetermination of the quantum of lawfully assessable tax in accordance with the Board's judgment.

The Revenue's concession on issues 1 and 2

9. In light of Byer J's finding that United was not a mere conduit and the arrangements were not a sham, the Revenue does not resist the appeal as it relates to issues 1 and 2. The Board considers that the Revenue is right to adopt this approach. The Revenue simultaneously disallowed the deduction of the CPI expense for corporation tax purposes ($4,450,000.00) and, in addition, imposed a withholding tax assessment on that sum ($890,000.00) on the footing that the appellant was in a direct contractual relationship with Canterbury and United had no substance but was a mere conduit. However, given her rejection of the Revenue's case on sham, the tax assessed to be due by the Revenue was (at the very least) assessed on an inconsistent basis with the judge's findings and may accordingly be excessive. Byer J did not identify the hypothetical counterfactual arrangement that replaces the actual transaction she held to be abnormal under section 23 of the ITA. Merely to disregard the role of United was an error given her findings and it is arguable that the tax assessed exceeds the restorative remedy permitted by sections 23 and 66 of the ITA in these circumstances.

10. Nonetheless, the Revenue maintains that it does not follow that the assessments should be quashed and all deductions allowed. Instead, the Revenue contends that the question of the application of sections 23 and 66 of the ITA should be remitted to the Appeal Commissioners for reconsideration in the light of the factual findings of the judge and of the material underlying those findings. The Board considers this question below.

11. The Revenue resists the appeal on issue 3.

The consequence of the Revenue's concession that the appeal should be allowed on issues 1 and 2

12. The starting point is section 23 of the ITA. This provides:

> "(1) Where any transaction, operation or scheme (hereinafter in this subsection referred to as 'a transaction') … has the effect of avoiding, reducing or postponing the liability to tax of any person for any year of assessment and the Comptroller is of the opinion that the transaction—
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> (a) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction of the nature of the transaction in question; or
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> (b) has created rights or obligations which would not normally be created between independent persons dealing at arm's length under a transaction of the nature of the transaction in question,
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> the Comptroller shall determine the liability to tax as if the transaction had not been entered into, or in such other manner as he deems appropriate to counteract such avoidance, reduction or postponement of liability as would otherwise be effected by the transaction."

13. It follows in the context of this case that there are two conditions in section 23 that must be satisfied or capable of being satisfied. First, there must be a transaction, operation or scheme that has the effect of reducing the liability to tax of any person. The second condition requires that the Revenue (the Comptroller) is "of the opinion" that the transaction was carried out by means or in a manner which would not normally be employed in carrying out a transaction of that nature. The legislation identifies the Revenue as the decision-maker: the Revenue's opinion must be subjectively held and have an objectively reasonable basis but need not be the only opinion available. A court should ordinarily be slow to interfere with the expert opinion of the Revenue Comptroller on this basis.

14. The appellant maintains that the assessments under section 23 (and it follows section 66) should be quashed. It submits that the premium paid to United for insurance coverage to be made available by United to the appellant's customers was prima facie a legitimate and genuine overhead of the appellant's business of selling furniture and white goods on hire purchase terms, along with CPI and, as such, should have been allowed as a deduction under sections 39 and 40 of the ITA. The insurance contracts disclose nothing to unseat the prima facie right to deduct, given that they create normal rights and obligations between parties to hire purchase credit arrangements and associated insurance cover, in a manner and by means which are normally employed in connection with adding such insurance cover in connection with such arrangements. In short, section 23 of the

ITA does not apply to the CPI transaction because (a) the arrangements were commercially normal, correctly recorded and lawfully carried out; (b) the trial judge found that United was not a "mere conduit" or sham; (c) the only basis for the Court of Appeal's contrary conclusion (ie that the appellant engaged in "self-insurance" and was to be treated as if it made "direct payments" to Canterbury) was not open to it, given the trial judge's unchallenged findings of fact and the evident normality of the documentation; and (d) accordingly no tax was in fact avoided.

15. If the appellant is right, and on the legitimate findings of fact made by the judge and the underlying material available, there is no basis on which section 23 of the ITA (and it follows, section 66 also) can be engaged, then there can be no basis for a remittal, and the assessments must be quashed. On the other hand, if there are legitimate findings and material sufficient to raise the possibility that section 23 (and therefore section 66) can be engaged, then the Board considers that the matter should be remitted for the appropriate body to decide if these sections are engaged.

16. Notwithstanding the rejection by the courts below of the Revenue's sham/conduit case, the Board has concluded that it cannot say that there is no basis on which an assessment under section 23 could be made in this case, and that it should not therefore close the door to the possibility of such an assessment being maintained. Rather, there are features of the evidence and the facts legitimately found by the judge that might lead to the conclusion that the section 23 conditions are met. The Board's reasons for coming to these conclusions can be shortly stated.

17. First, treating the CPI premium payments as an allowable business deduction plainly has the effect of reducing the appellant's liability to corporate income tax, and the first condition is potentially satisfied. The more controversial question is whether the CPI arrangements were implemented in a manner which would not normally be employed.

18. Secondly and contrary to the appellant's case, the judge did not find that "the arrangements were commercially normal, correctly recorded and lawfully carried out". She certainly accepted that the insurance arrangement between the appellant and United was genuine, and that United in turn entered into a reinsurance contract with Canterbury under which it paid a premium representing over 95% of the premiums it received. But she held nonetheless "that the effect of the transaction fell within the parameters of section 23". Spelling it out, the judge held that the tripartite arrangement (involving Canterbury as well) was carried out by means or in a manner which would not normally be employed and had the effect of reducing the appellant's tax burden.

19. Thirdly, there was evidence to support this conclusion, and the judge made findings that were properly available to her. In particular, it is common ground that, during the whole of the relevant period, the appellant's published financial statements,

which were audited by KPMG, did not show funds moving from the appellant to United but instead showed them moving directly from the appellant to United's reinsurer Canterbury, the latter being described in the statements as "a related party".

20. The appellant's evidence before the judge was that this was simply an error. In his affidavit of 6 December 2017, Jn Charl Miller, Regional Tax Manager of the group of companies of which the appellant is a member, said (paras 6 and 7):

> "It is not disputed that [the page of the 2008 Financial Statements exhibited by Mr Pompey on behalf of the Revenue] quite clearly suggests that the CPI premiums were made directly to Canterbury. My response … is that the CPI premium payments were incorrectly classified in the Financial Statements of the Appellant as monies payable to Canterbury. Such a classification is wholly inaccurate and does not constitute a true reflection of what actually transpired between the relevant parties. It is this incorrect classification by the Appellant's auditors which would have led Mr Pompey to mistakenly conclude that the payments for CPI were made directly by the Appellant to Canterbury, when the actual reality and legal relationship between the parties established to the contrary."

21. Mr Miller went on to say that the "incorrect classification of the CPI premium payments" in the financial statements persisted until the financial year ending 31 March 2014. He described this as being "attested to by Notes to the Financial Statements" for that year where at note 6 under the heading "Related Party Balances" Canterbury is listed as being entitled to a receivable for the year 2013 whereas in 2014 the figure is blank. He also referred to page 27 of the note 16 dealing with "Related Party Transactions" where there is a line item for CPI expense net of commission in respect of both 2013 and 2014. He said the "incorrect classification" came to an end after 2014 but provided no explanation as to the circumstances in which that is said to have occurred.

22. Beyond that evidence from Mr Miller, no supporting or substantiating evidence was adduced by the appellant. For example, there was no direct evidence about the movement of funds and there were no bank statements produced showing the CPI premium payments being paid over by the appellant to United only; nor was there any other evidence adduced to support the case that this was a simple mistake, and payments went directly to United. The appellant sought to rely on a letter dated 23 November 2016 from United to the appellant as proof of premium payments being made to United only. The letter said, "we hereby confirm the following receipts of premiums for CPI" and listed sums by reference to a financial year. It said no more. In the Board's view the letter begs more questions than it answers and does not shed light on what was actually received by

United at the time. In the first place, it gives no particulars of the date and amount of individual payments or how each transfer was made. In the second place, the letter post-dates discovery of the so-called mistake, and there is no explanation given as to its timing or why it was provided.

23. The appellant's explanation was rejected by the judge as "wholly incredulous" (para 69). The judge also found that in 2015 the appellant's then finance director "admitted to the [Revenue] that United was in fact the agent for Canterbury locally" (para 71).

24. The judge was referred to the Appeal Commissioners' decision in *Courts (Barbados) Ltd and CSC (Furnishings) Ltd v Comrs of Inland Revenue* (decision delivered on 1 November 2002), relied on by the appellant as an example of similar deductions having been allowed in a factually similar case. In that case, the taxpayer companies sold domestic furnishings and appliances on hire purchase and insured their hire purchase credit portfolio against various risks adopting similar arrangements to those used in the present case, including with Canterbury, also a related company, as reinsurer. The taxpayers' claim for deductions for the cost of the credit insurance was disallowed by the Revenue. The Appeal Commissioners accepted that the decision to insure was a business decision related to risks against which any properly administered business would insure and that the sums were reasonable. They found the transactions were all at arm's length and accordingly, the deductions were allowed. Referring to that decision, the judge in the present case observed at para 80:

> "Courts (Barbados) [unlike the appellant in the present case] had not produced financial statements showing that the said Canterbury was classified as a party to whom sums were paid directly. There was therefore no information that showed that the transaction with Phoenix [the equivalent in that case of United in the present case] and ultimately Canterbury had any other interpretation than that of independent parties."

25. The appellant objects that Mr Miller was not cross-examined or challenged on his assertion that the eight successive years of financial statements were the product of a simple mistake. The appellant further submits that it is "eminently conceivable that someone in an accounting function within the corporate group, misunderstood the precise legal nature of the retail/insurance chain" and, in these circumstances, that it was not open to the judge to reject this explanation. The Board disagrees. It was plainly open to the judge to reject Mr Miller's explanation and there was no unfairness in her doing so.

26. Once that explanation was rejected, the financial statements were evidence from which the judge was entitled to say that Canterbury was classified by the appellant for

many years as a party to whom sums were paid directly, and that this was "a clear indication by [Unicomer] themselves that for several years there was a direct payment of CPI premiums, not to United but to a related party, namely Canterbury" (paras 66, 80 and 84). A transaction under which a company organises the purchase of insurance from an insurer by arranging for its customers to purchase insurance directly from the insurer as in the present case, pays the premium not to the insurer but directly to a reinsurer, or at any rate classifies itself as doing so in its financial reporting, thereby indicating that this is the true substance of the matter, is a transaction that is being carried out in a manner that would not normally be employed in the carrying out of a transaction of that nature. The normal manner of carrying out a transaction involving the purchase of insurance alongside a hire purchase agreement is simply to pay the premiums collected from the customers over to the insurer directly.

27. Another feature of this case that may suggest abnormality is, as the judge noted at para 53, that the total paid out by United in claims to customers was 12.2% of the total premiums net of commission, with the remaining 87.8% going ultimately to Canterbury ostensibly to pay for the reinsurance. This was a feature of the arrangements raised in the courts below. It reflects a highly profitable business for Canterbury relative to the cost of claims being paid out. True it is, as the appellant contends, that there was no comparative evidence led by the Revenue to establish that this was an abnormally high level of profit made by a reinsurer. But from the perspective of the appellant, it is at least open to question whether a party in the position of the appellant would normally (absent the connection with Canterbury) have been content to sell to its customers, and to keep on selling to them without ever seeking to renegotiate, such a disproportionately expensive insurance product apparently paying for cover far in excess of anything likely to be needed. Taken in conjunction with the first feature, the inference that this arrangement was operated as a means of hiving off profits to a related company in a lower tax jurisdiction cannot simply be ignored.

28. These features are sufficient for the Board to conclude that section 23 (and it follows section 66) might be engaged, notwithstanding the fact that the Revenue's case on conduit/sham has been rejected. It follows that the assessments should not be quashed.

29. In the Board's view the appropriate course is to remit the matter to the Appeal Commissioners, and not to the High Court. The High Court's powers are limited to review for error of law (section 106 of the ITA), and it is not a specialist tax body. The determination of the tax lawfully assessable where a Revenue assessment is challenged is in principle a matter for the Appeal Commissioners as the specialist body with appropriate powers (sections 104 and 105 of the ITA). In these circumstances, the Board undoubtedly has the power to remit to the Appeal Commissioners under section 106 of the ITA.

30. It will be for the Appeal Commissioners to decide whether and to what extent it is open to the Revenue to seek to justify the assessments on the alternative basis discussed

above. The Board is not being properly seised of that question and has not heard any real argument upon it. It will also be for the Appeal Commissioners to decide whether and to what extent the parties should be permitted to adduce further evidence.

The deferred hire purchase payments (issue 3)

31. The statutory provisions in the ITA that are relevant to the deferred hire purchase payments issue are as follows. Section 8(1)(a) of the ITA provides that the assessable income of a taxpayer resident in Saint Vincent and the Grenadines shall be all amounts "accrued directly or indirectly from all sources" in or outside the islands.

32. Section 34(1) provides that "the assessable income of any person for any year of assessment, insofar as it is derived from a business, shall be the gains or profits accrued therefrom during the basis period for that year of assessment."

33. The question when income accrues is addressed by section 9 of the ITA as follows:

> "9. Income accruing
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> (1) Subject to this section, income shall accrue to a person for the purposes of this Act—
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> > (a) in the case of income from employment, when it is earned;
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> > (b) in the case of a business, in relation to which the Comptroller is satisfied that a commercially recognised system of accounting other than a cash received basis is regularly followed, when it is credited, or should be credited, in the books of account of such person;
> >
> > (c) in the case of a business where, pursuant to subsection (2), the Comptroller has accepted the preparation by that person of his accounts on a cash received basis, when it is received by him;
> >
> > (d) in the case of interest, when it is paid; and

> (e) in any other case, when it becomes due and payable to him.
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> (2) Where any person regularly prepares the accounts of his business on a cash received basis the Comptroller may, on application and in his discretion, accept such method of accounting or may direct that accounts shall be prepared on an accruals basis and the income accrued to such person shall be ascertained accordingly."

34. The Revenue contends that the applicable provision for determining when the appellant's income accrued for tax purposes was section 9(1)(b) of the ITA and assessed the appellant to tax on this basis. The Revenue's reasons for so concluding are in summary as follows. The appellant's accounting treatment in its audited financial statements for the disputed years recognised the full purchase price (including the CPI premium instalments which were rolled up in the hire purchase instalments) of the particular product sold on hire purchase as income in the accounting year in which the hire purchase agreement was entered into notwithstanding that payments of instalments would typically only be received over the following 18 to 24 month period. For the purposes of income tax reporting however, the appellant adopted a different approach: the instalments were only treated as income in the year in which they were actually received. The Revenue contends that this is impermissible. There is no common law or other rule of tax that the cash received basis is the only basis on which tax can be charged. Here, once the full purchase price was credited to the appellant's books, there is no provision in the ITA that allows for the sum to be treated as deferred for tax purposes. To the contrary, in a case like this section 9(1)(b) applies.

35. The Appeal Commissioners and the courts below agreed with the Revenue. Byer J held that the method adopted by the appellant to calculate its tax liability was in direct conflict with the ITA (para 104). She said (para 105) at its highest, "the evidence of the [appellant's] witnesses spoke to the unreasonableness of the [appellant] paying taxes that were not yet earned. However, even the expert accountant could not tell the court that the parameters of section 9(1)(b) did not capture the accounting method of the [appellant]." Byer J regarded this as telling. The Court of Appeal agreed with her conclusions.

The basis of the appellant's appeal on issue 3

36. The appellant challenges that decision, contending that section 9(1)(b) "stipulates that, when a commercially recognised accounting system is employed, prevailing commercial accounting standards for revenue recognition applicable to the specific income shall be employed to determine the profits or losses of the taxpayer." On this foundation, the appellant contends that it was entitled to have its income treated as not

accruing until sometime after it had been recorded in its books, unless the Revenue established to the court, by leading expert evidence about accounting standards, that recognised accounting standards applicable to this business had been followed by the appellant and required income to be credited on the dates when it was recorded in the appellant's books.

37. The appellant also submits that it is the "books of account" that matter for this purpose, and that the recognition in the financial statements of the full purchase price of the goods at the date of inception of the hire purchase is neither here nor there for this purpose. The appellant relies on section 86 of the ITA which requires taxpayers to maintain records including books of account and submits that this refers to the raw data entries in the business books of sums received by the business. The raw data is looked at by the auditor to produce the financial statements and published accounts, but the two are different and to be distinguished in this context. Moreover, the appellant now submits (before the Board though not below) that the books of account showed income accruing only when each instalment of the purchase price was paid.

38. The appellant also sought to rely on a distinction between finance leases and operating leases drawn in the International Financial Reporting Standard (IFRS) 16. IFRS 16 stipulates that in finance leases, the lessor recognises the full value of the lease at the commencement date (para 67) whereas for operating leases (para 81) the lease payments are recognised as income either on a straight-line basis or another systematic basis. The appellant argued that the appellant's hire purchase agreements were properly characterised in their books of accounts as operating leases so that IFRS 16 recognised it was appropriate for the instalments to be spread over the period of the lease. The appellant argued that the Revenue had not established that the hire purchase agreements were finance leases and so had not proved that they should be treated differently from how they were treated by the appellant in their accounts.

The Board's analysis of the deferred hire purchase payment issue

39. The Board does not accept the foundation for the appellant's arguments or the arguments themselves. First, section 9(1)(b) does *not* say that prevailing commercial accounting standards shall be employed to determine the profits or losses of the taxpayer, as the appellant contends. It simply says that if the Revenue is satisfied that a taxpayer is regularly following a commercially recognised accounting method other than the cash received basis, the taxpayer's income is treated as having accrued when it is entered in (or should have been entered in) the taxpayer's books. The words "should be credited" simply cover a situation in which no entry has been made in the books when it should have been.

40. Secondly, section 9(1)(b) does not mandate or even contemplate the provision of expert evidence by the Revenue of a commercially recognised system of accounting that would explain the treatment of income, although the Board does not rule out reliance on expert evidence in an appropriate case. But in a case where the taxpayer's own professional accountants say that its accounts are based on "the revenue recognition principle", in other words, a basis other than the cash received basis, the Revenue is plainly entitled to conclude that a commercially recognised system of accounting other than the cash received basis is being followed and accordingly that the terms of section 9(1)(b) are fulfilled without any need for expert evidence. In such a case it is conceivable that the taxpayer might (in theory) seek to show (by expert evidence or otherwise) that its accounts have been prepared using some idiosyncratic accounting method which no accountant would regard as a commercially recognised accounting system so that section 9(1)(b) does not apply and the default provision in section 9(1)(e) means that its income should only be treated as accruing when it became due and payable. The appellant did not do so in this case.

41. Thirdly, whether or not there is the suggested distinction to be drawn as a matter of law between "the books of account" referred to in section 9(1)(b) and the audited accounts or financial statements in this context, the Board has serious doubts. However, on any view, the Board is satisfied that on the particular facts of this case, the evidence was unequivocally clear that the appellant regularly used a commercially recognised system of accounting other than the cash received basis, both in its books and in its financial statements.

42. As the Board has explained, the appellant's business involved hiring out and eventual selling household items on hire purchase terms. It follows that, although the appellant's prospective entitlement to an amount equivalent to the sum of all the instalments under the agreement arose as soon as the customer signed the contract, its entitlement to payment (and its receipt of the money) came later, over time.

43. The appellant did not produce its books of account to show how income and/or receipts were actually credited in its books (either below or indeed before the Board).

44. However, Mr Miller gave evidence about this in his affidavit of 29 September 2017 (para 17) as follows:

> "In terms of commercial accounting practice, the Appellant treats the full purchase price of the particular product as income in the year in which the Hire Purchase agreement is entered into. However, for purposes of income tax reporting, the instalments are only treated as income in the year in which they are received."

45. Mr Miller drew no distinction between the books of account and the audited accounts or financial statements. What he said plainly suggested that the full hire purchase price was entered into the appellant's books of account at the date of inception of each hire purchase agreement but that they treated the income differently for tax purposes.

46. The appellant's accounts were audited by KPMG Eastern Caribbean. Mr Glasgow, a chartered accountant and partner of KPMG Eastern Caribbean, examined what he described as the "books and records" of the appellant, as he explained in his affidavit evidence below (para 4). He said (para 13):

> "(ii) The Appellant is a retailer of domestic furnishing, appliances and other consumer durables and operates primarily on hire purchase contracts. As a result of the hire purchase transaction, the Company recognizes revenue in accordance with the revenue recognition principle by recognizing revenue at the point it is earned or realized.
>
> (iii) Although the gross hire purchase sale is recorded in the Company's books of account, the benefits of the profit from the sale is derived over the life of the term of the hire purchase contract, typically two (2) years and cash received from hire purchase sales are received over the same period. Hence, it is not considered reasonable for the Company to pay taxes on profits which it has not yet earned."

47. Although there may be some ambiguity as to what Mr Glasgow meant when he spoke of income being earned or realised in sub-para (ii), any ambiguity is resolved by sub-para (iii). This made clear that the appellant's "books of account" recorded the gross hire purchase sale when the agreement was entered into otherwise there would be no sense in which tax might be due on profits not yet earned.

48. The appellant's audited accounts stated on their face that they had been prepared in accordance with International Financial Reporting Standards and they had been reviewed by KPMG who stated that "nothing has come to our attention that causes us to believe that these financial statements are not presented fairly, in all material respects, in accordance with International Financial Reporting Standards." KPMG did not refer to the distinction in IFRS 16 between finance and operating leases. Even if, which the Board doubts, the leases in this case are not finance leases, the reporting standard does not justify treating the income from the leases differently in the accounts from its treatment for tax purposes.

49. In light of this evidence, the Revenue concluded that section 9(1)(b) applied, and the accumulated deferred hire purchase profits as at 31 March 2011 were adjusted and reassessed accordingly. The decision was explained by letter dated 29 March 2017 as follows:

> "KPMG has confirmed that the income from the sale of goods related to hire purchase contracts is recognized in the financial statements when earned:
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> > 'Unicomer (St. Vincent) Limited is a retailer of domestic furnishings, appliances and other consumer durables and operates primarily on hire purchase contracts. As a result of the hire purchase transaction, the Company recognizes revenue in accordance with the revenue recognition principle by recognizing revenue at the point it is earned or realized'.
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> However, in computing the assessable income for the period under review, the Company has deferred a portion of the profits associated with the hire purchase contracts as 'Deferred Hire Purchase Profits'. Effectively, this practice allows the company to report its profits on a cash basis.
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> This is a direct contradiction of section 9(1)(b) of the Income Tax Act which states 'in the case of [a] business, in relation to which the Comptroller is satisfied that a commercially recognized system of accounting other than a cash received basis is regularly followed, when it is credited, or should be credited in the books of accounts of such person'."

50. It is clear from the letter that the Revenue was, in the words of section 9(1)(b), "satisfied that a commercially recognised system of accounting other than a cash received basis [was] regularly followed" by the appellant. This being so, section 9 required that the appellant's hire purchase income be treated for tax purposes as having accrued "when it [was] credited, or should be credited, in the books of account".

51. In the Board's view the Revenue was entitled on this basis, and right, to treat the appellant's income as having accrued for tax purposes when credited in the appellant's books of account, and not at any later date. It follows that the courts below were right to uphold this decision. This ground of appeal accordingly fails and is dismissed.

Conclusion

52. For all these reasons, the Board will humbly advise His Majesty that the appeal should be dismissed as it relates to issue 3. So far as issues 1 and 2 are concerned, the Board advises that the appeal should be allowed but the question of the validity of the assessments should be remitted to the Appeal Commissioners for reconsideration in the light of the findings made by the judge, the material on which they were based and any new material on which the Appeal Commissioners permit the parties to rely.