IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Appeal No LCCV2025/001
LC Civil Appeal No SLUHCVAP2022/0007

BETWEEN

THE BANK OF NOVA SCOTIA **APPELLANT**

AND

THE COMPTROLLER OF INLAND REVENUE **RESPONDENT**

Before: **Mr Justice Anderson, President**
Mr Justice Barrow
Mr Justice Jamadar
Mme Justice Ononaiwu
Mr Justice Eboe-Osuji

Date of Judgment: **4 November 2025**

Appearances

Mr Barrie Attzs and Mr Thomas Theobalds for the Appellant

Mr Seryozha Cenac and Mr George K Charlemange for the Respondent

Taxation – Withholding tax – Management charges – Head office expenses – Statutory interpretation – Purposive approach – Cost of sales – Whether payments made by a branch to its head office and regional subsidiaries for support services constitute 'management charges' subject to withholding tax – Whether interest expenses in banking operations could be classified as 'cost of sales' – Income Tax Act, Cap 15:02.

SUMMARY

This appeal arose from a dispute between the Bank of Nova Scotia ('BNS'), a Canadian financial institution operating in Saint Lucia through a branch, and the Comptroller of Inland Revenue. The disagreement concerned the legality of imposing withholding tax under the Income Tax Act ('ITA') of Saint Lucia in the sum of XCD2,142,376.80 paid by the BNS branch in Saint Lucia to its head office in Canada. The central issues were (i) whether payments made by BNS Saint Lucia to its Canadian head office and regional subsidiaries for support services constituted 'management charges' subject to withholding tax under s 76 and sch 3 of the ITA, and (ii) whether interest expenses incurred by BNS in its banking operations could be classified as 'cost of sales' under s 39(1)(b)(ii) of the ITA, thereby limiting their deductibility.

The Income Tax Appeal Commissioners upheld the Comptroller's assessment, finding that the payments were management charges and that interest expenses were part of cost of sales. On appeal, the High Court affirmed the imposition of the withholding tax but disagreed with the classification of interest expenses. Both parties appealed to the Court of Appeal (Ventose, Farara and Taylor-Alexander JJA), which dismissed BNS's appeal and partially allowed the Comptroller's cross-appeal, concluding that the payments were taxable management charges and that interest expenses did constitute cost of sales.

BNS further appealed to this Court arguing that the payments made to the BNS head office were mere reimbursements, not income, and therefore fell outside the scope of the withholding tax regime. It also contended that the term 'cost of sales' was inapplicable to banking operations and should not include interest expenses. The Respondent Comptroller maintained that the payments were for technical and management services and that interest expenses were a direct cost of providing banking services.

This Court was unanimous in rejecting the appeal. In an opinion authored by Anderson P (Barrow, Jamadar, Ononaiwu and Eboe-Osuji JJ concurring) the Court held that the payments fell squarely within the definition of 'management charges' and were subject to withholding tax under s 76(1)(b) of the ITA. Applying a purposive approach to statutory

interpretation, it was emphasised that Parliament's intent was to tax cross-border remittances from branches to head offices, even if labelled as reimbursements. The Court rejected the argument that such payments must constitute 'income' in the narrow sense of profit or gain, affirming that the ITA contemplates a broader concept of income that includes payments for services rendered, regardless of markup.

On the issue of territoriality, the Court held that s 7(5) of the ITA makes income accruing to a non-resident from any source other than employment or a permanent establishment, subject to withholding tax. The provision contains no territorial limitation, so the services need not be performed in Saint Lucia. What matters is that the income accrues to a non-resident, which brings payments like those made by BNS Saint Lucia within the withholding tax regime. The Court also upheld the Court of Appeal's correction of a drafting omission in sch 3, finding that the exclusion of the term 'branch' was a clear legislative oversight that could be judicially remedied to give effect to Parliament's intent.

On the second issue, Eboe-Osuji J (Anderson P and Barrow, Jamadar, Ononaiwu JJ concurring) held that interest expenses incurred by BNS in its banking operations were properly classified as 'cost of sales.' The Judge reasoned that the banking sector involves the sale of financial services and that interest paid on customer deposits is a direct cost of generating income. Drawing on accounting literature, industry practice, and comparative jurisprudence, Eboe-Osuji J emphasised that 'cost of sales' is not limited to the sale of goods but includes the cost of services in modern commercial contexts. He rejected the Appellant's reliance on outdated judicial dicta and affirmed that the term must be interpreted in light of contemporary business realities and the legislative purpose of s 39 of the ITA.

Accordingly, the appeal was dismissed and costs awarded to the Respondent.

Cases referred to:

Appeal Commissioners v Bank of Nova Scotia [2013] UKPC 19 (GD); *Bank of New South Wales v Commonwealth* (1948) 76 CLR 1; *Bank of Nova Scotia v Appeal Commissioners*

(GD CA, 19 September 2011); *Bank of Nova Scotia v Comptroller of Inland Revenue* (LC HC, 16 March 2022); *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2005] 1 AC 684; *Canada Trustco Mortgage Co v Canada* [2005] 2 SCR 601; *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64; *Chetwode v Inland Revenue Commissioners* [1977] 1 WLR 248; *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454; *Commissioners of Inland Revenue v Duke of Westminster* [1936] 1 AC 1; *Cruise Solutions Ltd v Commissioner of General Sales Tax* [2018] CCJ 27 (AJ) (BZ), (2019) 94 WIR 70; *Davis v Commissioners of Inland Revenue* [1923] 1 KB 370; *Ensign Tankers (Leasing) Ltd v Stokes (Inspector of Taxes)* [1992] 1 AC 655; *Hochstrasser (Inspector of Taxes) v Mayes* [1959] 3 All ER 817; *Huggins, Re* (1882) 21 Ch D 85; *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586; *Income Tax Commissioners v Blake* (1960) 2 WIR 271 (KN SC); *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 98; *Laidler v Perry* [1966] AC 16; *Lewis v Commissioner of Income Tax* (1988-89) 2 CCLR 197; *MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd* [2003] 1 AC 311; *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] 3 All ER 352; *Mills v Cooper* [1967] 2 QB 459; *Owen v Pook (Inspector of Taxes)* [1969] 2 All ER 1; *Price v Claudgen Ltd* [1967] 1 WLR 575; *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687; *Ralli Estates Ltd v Commissioner of Income Tax* [1961] 1 WLR 329; *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland* [2017] 1 WLR 2767; *Reynolds v Income Tax Commissioner* (1964) 7 WIR 154 (TT CA); *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2022] AC 690; *S v Board of Inland Revenue* 1991 TAB 3 (CARILAW), (17 October 1991); *Speednet Communications Ltd v Public Utilities Commission* [2016] CCJ 23 (AJ) (BZ); *Uber v Aslam* [2021] 4 All ER 209; *UBS AG v Revenue and Customs Commissioners* [2016] 1 WLR 1005; *WT Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300.

Legislation referred to:

Antigua and Barbuda – Income Tax Act, CAP 212, as amended by Act 4 of 2003; **Grenada** – Income Tax Act, CAP149; **Saint Lucia** – Income Tax Act, Cap 15.02, Income Tax (Amendment) Act 2006; **Saint Vincent and the Grenadines** – Income Tax Act, CAP 435, Income Tax (Amendment) Act 2019; **Trinidad and Tobago** – Income Tax Act, Chap 75:01; **United Kingdom** – Bankruptcy Act 1869 (32 & 33 Vict c 71), Employment Rights Act 1996, Finance Act 1965, Highways Act 1959, Income Tax Act 1952, National Minimum Wage Act 1998, Working Time Regulations 1998.

Other Sources referred to:

Ayto J, 'Twentieth Century English – An Overview' (Oxford English Dictionary) < www.oed.com/discover/twentieth-century-english-an-overview/ > accessed 28 September 2025; Bailey D and Norbury L, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020); Bank of Nova Scotia, *Scotiabank Annual Report 1999*; Bank of Nova Scotia, *Scotiabank Annual Report 2005*; Bank of Nova Scotia, *Scotiabank Annual*

Report 2024; Bragg S M, *The Interpretation of Financial Statements* (Accounting Tools Inc 2015); Canada Revenue Agency, 'How we Combat Tax Evasion and Avoidance' (Government of Canada, 4 June 2025) < www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/how-combat-tax-evasion-avoidance.html > accessed 28 September 2025; Canadian Imperial Bank of Commerce, *CIBC Annual Accountability Report 2005*; Canadian Imperial Bank of Commerce, *CIBC Annual Report 1998*; Canadian Imperial Bank of Commerce, *CIBC Annual Report 1999*; Cooke R A, *The McGraw-Hill 36-Hour Course: Finance for Nonfinancial Managers* (2nd edn, McGraw-Hill 2005); Denbow C H, *Income Tax Law in the Commonwealth Caribbean* (2nd edn, Bloomsbury Professional 2013); Dickey T, *Basics of Budgeting: Become a Better Business Planner* (2nd edn, Axzo Press 2010); *Elementary Banking* (American Institute of Banking 1922); *Encyclopaedia of Banking* (1922); Gowers E, *Plain Words: A Guide to the Use of English* (Penguin Books 2015); Lord Burrows, Justice of the Supreme Court of the United Kingdom, 'Some Issues in Statutory Interpretation' (Statute Law Society Conference 2025, Portcullis House, London, 6 June 2025) < https://supremecourt.uk/uploads/speech_lord_burrows_060625_abef2c5b0d.pdf > accessed 28 September 2025; Lord Sales, Justice of the Supreme Court of the United Kingdom, 'Significance of Purpose in Purposive Construction of Legislation' (Statute Law Society Conference 2025, Portcullis House, London, 6 June 2025) < https://supremecourt.uk/uploads/speech_lord_sales_06062025_30ca00cd98.pdf > accessed 28 September 2025; McCullough M, 'Stumbling Upon Success' (Canadian Business, 21 September 2011); McKeever M, *How to Write a Business Plan* (12th edn, Nolo Press 2015); Mills R and Robertson J, *Fundamentals of Managerial Accounting and Finance* (4th edn, Mars Business Associates 2003); Moody's Analytics, 'Developing High Impact Sales Culture: Best Practices for Bank Leadership' < developing-a-high-performing-sales-culture.pdf > accessed 28 September 2025; Organisation of Economic Cooperation and Development, 'BEPS Multilateral Instrument' < https://www.oecd.org/en/topics/beps-multilateral-instrument.html > accessed 28 September 2025; *Oxford Dictionary of Accounting* (3rd edn, Oxford University Press 2005); *Oxford Dictionary of Accounting* (4th edn, Oxford University Press 2010); *Oxford Dictionary of Finance and Banking* (4th edn, Oxford University Press 2010); Pavel C and Phillis D, 'Why Commercial Banks Sell Loans: An Empirical Analysis' (1987) 11 *Economic Perspectives* (Federal Reserve Bank of Chicago) 3; Royal Bank of Canada, *Royal Bank of Canada Annual Report 2000*; Royal Bank of Canada, *Royal Bank of Canada Annual Report 2005*; *Shorter Oxford English Dictionary : on Historical Principles* (6th edn, Oxford University Press 2007); *Standard Banking* (American Institute of Banking 1924); United Nations Department of Economic and Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries* (United Nations, 2021); Wood F and Townsley J, *Managerial Accounting and Finance* (Pitman Publishing 1983).

JUDGMENT

Reasons for Judgment:

ANDERSON P:

Introduction

[1] The first and main issue in this appeal is whether certain payments made by the Saint Lucia branch of a Canadian bank to its head office in Canada for services received by the branch come within the scope of withholding tax under the Income Tax Act[1] ('ITA') of Saint Lucia. A second issue that arises is whether interest expenses incurred by the branch in providing banking services are properly considered as a 'cost of sales' and therefore are excluded from the expenses that can be claimed as a deduction against assessable income under the ITA. The Court of Appeal of the Eastern Caribbean Supreme Court resolved both issues against the bank, hence this appeal to this Court.

[2] For the reasons which follow, this Court is of the opinion that the appeal must fail. A purposeful interpretation of the ITA leads to the conclusion that the intention of the Parliament of Saint Lucia was (i) to impose withholding tax on the payments made by Bank of Nova Scotia Saint Lucia to its Canadian head office; and, (ii) to treat interest expenses of the branch in providing banking services qualifies as cost of sales. This opinion deals with the first issue and that of our brother Eboe-Osuji J deals with the second.

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[1] Cap 15:02.

Background

[3] The Appellant, Bank of Nova Scotia ('BNS') is incorporated in Canada with its head office in Toronto. At all material times, it operated in Saint Lucia as an external company registered since 1998 ('BNS Saint Lucia'). BNS Saint Lucia received support services from its head office in Canada and subsidiaries in Barbados, Jamaica, and Trinidad and Tobago, for which it made payments. These payments, covering head office support and management expenses, were assessed by the Comptroller of Inland Revenue, who levied a withholding tax of XCD2,142,376.80.

Procedural History

[4] BNS disputed the assessment by the Comptroller, arguing before the Income Tax Appeal Commissioners ('the Commissioners') that the payments were reimbursements rather than income subject to withholding tax. The Commissioners rejected this argument, concluding that the payments constituted management charges in respect of BNS' banking business in Saint Lucia, other than as a result of carrying on business in Saint Lucia through BNS Saint Lucia, and were therefore taxable under the ITA. They also determined that in calculating withholding tax, sch 3 and s 39(1)(b) of the ITA should be applied. The Commissioners also considered that 'cost of sales' under s 39(1) served as a method for determining the cost of services.

[5] BNS appealed the Commissioners' decision to the High Court, where Cenac-Phulgence J upheld the Commissioners' decision that the payments were taxable income under the ITA. However, the learned trial judge disagreed with the Commissioners' conclusion that interest expenses were part of cost of sales for the purposes of s 39 of the Act or that cost of sales is merely the form of calculation in ascertaining the cost of services.

[6] Both parties were dissatisfied with the decisions made against them and appealed to the Court of Appeal. BNS appealed on seven grounds, while the Comptroller of Inland Revenue, the Respondent, submitted a counter-appeal on two points. The Court of Appeal ultimately identified two key issues: (i) whether BNS was liable to pay withholding tax on the payments and (ii) whether the Commissioners were correct in interpreting 'cost of sales' under s 39 of the ITA to include interest payments.

[7] After examining the statutory framework, the Court of Appeal dismissed BNS' appeal and partially allowed the counter-appeal. It found that the payments fell squarely within the definition of 'management charges' under para 1(1) of sch 3 of the ITA, which covers charges for management, personal, and technical services. The Court rejected BNS' claim that the payments were mere reimbursements, reasoning that such services inherently involve reimbursement and thus qualify as management charges subject to withholding tax.

[8] The court further analysed legislative amendments to the ITA and determined that prior to 2006, withholding tax applied only to payments made by a resident to a non-resident. However, the 2006 amendment expanded this obligation to include payments made by branches of non-resident companies to their head offices or other branches or associates outside Saint Lucia. This amendment, codified in s 76(1) of the ITA, demonstrated Parliament's clear intent to extend the scope of withholding tax. Additionally, the Court acknowledged a legislative drafting oversight in sch 3, where the term 'or branch' should have been included to align with s 76(1). Applying principles of statutory interpretation, the Court corrected this omission to give effect to Parliament's intent.

[9] Regarding 'cost of sales', the Court found that cost of sales in the banking sector reflects the cost related to the services that are provided by banks. The Court of Appeal held that once it is accepted that cost of sales is applicable to the banking and financial sector, it follows that interest expense is a cost incurred by BNS in providing banking services.

[10] The Court of Appeal concluded that the Commissioners were correct in their assessment, and the learned trial judge erred in rejecting their conclusion and in adopting a different approach. As a result, the appeal was dismissed, the cross-appeal was partially allowed, and the Court reinforced that withholding tax applied to payments made by BNS Saint Lucia to its head office and regional subsidiaries for management and technical services.

Appeal to the Caribbean Court of Justice

[11] BNS appealed to this Court on four main grounds but identified two primary issues in its written submissions: (1) whether withholding tax was applicable to reimbursement payments made by BNS Saint Lucia to its Head Office, and (2) whether interest expenses incurred by BNS constitute 'cost of sales' under s 39 of the ITA thus limiting their deductibility.

Appellant's Arguments

[12] BNS contends that the Court of Appeal erred in upholding the imposition of withholding tax on the head office expenses. BNS submits that the head office expenses are reimbursements, not income, and therefore fall outside the scope of s 7(5) of the ITA, given that s 7(5) charges withholding tax on 'income ascertained in accordance with Part 5' received by non-residents. The Court of Appeal's conclusion that these amounts were not income yet were still subject to withholding tax under s 76 and sch 3 is legally flawed because it severs provisions that were intended to operate in unison. Withholding tax, as a collection mechanism for income tax, cannot apply unless the underlying payment is income chargeable to tax.

[13] BNS also argues the decision of the Court of Appeal ignored the territorial limits on Saint Lucia's taxing jurisdiction. Section 8(1)(b) confines income tax liability to income derived from sources in Saint Lucia. Although s 7(5) does not explicitly

reference territoriality, BNS contends that by charging withholding tax on income 'ascertained in accordance with Part 5', which only deals with assessable income from Saint Lucian sources, the provision inherently incorporates such territorial limits. Therefore, since the head office expenses arose entirely outside of Saint Lucia, no jurisdictional basis exists for imposing withholding tax.

[14] BNS also raises a statutory interpretation argument regarding sch 3 which lists payments subject to withholding tax but presupposes a payment by one 'person' to another. BNS asserts that a branch and head office are the same legal person and thus cannot fall within this language. The Court of Appeal's reliance on a legislative amendment to s 76 (introducing withholding tax on branch-to-head office payments) to support its reading of sch 3 was an inappropriate judicial correction of an alleged drafting error. BNS maintains that legislative clarity, not judicial inference, should govern taxation, particularly where adverse financial consequences follow.

[15] On the deductibility restriction issue, BNS disputes the Court of Appeal's characterisation of interest expenses as 'cost of sales' under s 39. BNS argues that it earns no income from the sale of goods and thus has no cost of sales. Interest expenses incurred to fund lending activities are not analogous to the cost of goods sold in a traditional business. BNS submits that 'cost of sales' is a technical accounting and commercial term with a well-understood meaning, not to be broadened absent legislative definition.

[16] BNS further contends that s 39 should be strictly construed as it imposes a discriminatory restriction on deductions for cross-border payments. Broadly interpreting 'cost of sales' to include all expenses in a financial services context would unjustifiably deny deductions that reflect real business costs, contravening both the principle of legal certainty and the ordinary meaning rule. Further, the Court of Appeal's reliance on modern commercial developments and OECD commentary lacks legal foundation and departs from accepted accounting norms.

Respondent's Written Submissions

[17] On the first issue, the Respondent argues that s 76(1)(b) of the ITA explicitly authorises the imposition of withholding tax on payments from a branch to its head office located outside Saint Lucia, and that the services in question which were provided by BNS Canada to BNS Saint Lucia, fall squarely within this provision. The Respondent contends that the payments were properly classified as 'management charges' under sch 3, and that the label 'reimbursement' does not alter the substance of the transaction.

[18] The Commissioners' factual finding that the services were of a technical nature was affirmed by the Courts below, and BNS failed to provide exceptional grounds to disturb these concurrent findings. Further, the Respondent submits that s 7(5) does not override s 76. It functions in tandem, with s 76 operating as a specific charging provision governing non-resident payments.

[19] The Court's treatment of 'management charges' as capable of attracting withholding tax even if not income in the narrow sense (ie devoid of profit or gain) is defended on the basis that the ITA uses the term 'payment' broadly and income for tax purposes includes receipts of a revenue nature. Therefore, withholding tax may attach to payments which restore previously incurred expenses, such as those recorded on the books of BNS Canada.

[20] Regarding the territoriality/source argument, the Respondent rejects the assertion that Saint Lucia lacked jurisdiction to tax the payments on the basis that the services were performed abroad, arguing instead that the source of income was in Saint Lucia, where the services were utilised. The Respondent also supports the Court of Appeal's discretionary correction of any drafting inconsistencies between s 76 and sch 3, asserting that such correction aligned with Parliament's obvious intention and removed uncertainty.

[21] On the second issue, the Respondent contends that interest expenses incurred by BNS during its banking operations constitute cost of sales under s 39 of the ITA. While acknowledging that the traditional meaning of 'cost of sales' applied narrowly to the sale of goods, the Respondent submits that the term must be interpreted considering modern commercial realities, where services, particularly in the financial sector, are actively traded.

[22] The Commissioners, as a specialist tribunal comprising accounting professionals, were best placed to assess this issue and correctly found that the interest expenses were a core cost of delivering banking services. The Respondent argues that 'cost of sales' in the context of banking reflects the cost of funds, that is, the interest BNS pays on deposits which are then used to generate lending income. This expansive interpretation, endorsed by the Court of Appeal, aligns with the evolving nature of financial services and principles of commercial accounting.

Appellant's Reply Submissions

[23] BNS argues that the payments were not management charges under sch 3 of the ITA. The Court of Appeal failed to apply the correct legal test to determine whether the services were management or technical services. Instead, the Court conflated reimbursements with service charges. BNS contends that sch 3 must be read in harmony with s 7(5), and that all items listed therein must be of an income nature. Since the head office expenses were not income, they fall outside the scope of the withholding tax regime. The legislative distinction between 'head office expenses' and 'management charges' in s 39(1) supports this interpretation, and the absence of head office expenses from the withholding tax charging provisions confirms Parliament's intent not to subject them to withholding tax.

[24] BNS challenges the Court of Appeal's dynamic interpretation of the term 'cost of sales'. It argues that 'cost of sales' is a technical accounting term traditionally limited to the cost of goods sold and not intended to include interest expenses. BNS

asserts that the Court erred in extending the term to services, particularly without a clear statutory basis or evidence of changed circumstances justifying a dynamic construction. BNS maintains that Parliament, in s 39(1), explicitly excluded 'cost of sales' from deductions allowable under s 37, but not under s 38, which permits the deduction of interest. This deliberate structure, BNS submits, demonstrates that Parliament did not intend for interest to be treated as cost of sales. Accordingly, the Commissioners and Court of Appeal erred in categorising interest expenses in this way.

[25] Finally, BNS argues that no deference is owed to the Commissioners' interpretation of 'cost of sales' as this is a question of law, not a matter of accounting discretion. It contends that the interpretive exercise conducted by the Commissioners was statutory and therefore within the remit of the Court to review.

The Income Tax Act

[26] The provisions of the ITA that are relevant to this appeal are found in separate parts of the Act. Part 1 concerns the preliminary matters of the short title and application of the Act and the definition of key terms. Section 2(1) provides, among other things:

> …
>
> "**assessable income"** means assessable income as defined in section 8 and as ascertained in accordance with Part 5;
>
> …
>
> "**chargeable income"** means chargeable income as ascertained in accordance with Part 6;
>
> …
>
> **"management charges"** means charges made for the provision of –
>
> (a) management services;
>
> (b) technical services;

(c) personal services;

…

"**permanent establishment"** —

(a) means —

(i) a fixed place of business through which the business of an enterprise is wholly or partly carried on,

…

(b) includes —

(i) a place of management,

(ii) a branch,

(ii) an office,

(iv) a factory,

(v) or workshop, and

(vi) premises used as a sales outlet, (v) a building site or construction, assembly or installation project, only if such site or project continues for a period of more than 6 months, (vi) the maintenance of plan and machinery for rental, and (vii) a mine, quarry or any other place of extraction or exploration of natural resources;

"**person**" includes an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person;

…

"**withholding tax"** means any tax deducted or deductible under sections 53(5), 63(13) or 76;

[27] Part 3 concerns imposition of income tax. It begins with s 7, which is entitled CHARGE TO TAX: GENERAL. Section 7(5) provides:

Where income ascertained in accordance with Part 5, accrues directly or indirectly to a non-resident person, from any source, other than from the exercise of employment or the carrying on of business through a permanent establishment, such income shall not form part of the assessable income of

such person and the gross amount of such income is liable to withholding tax in accordance with sections 76 and 80.

[28] Part 5 concerns the ascertainment of assessable income and provides in part as follows:

> **32. ASSESSABLE INCOME: GENERAL**
>
> (1) Subject to this Part, the assessable income of any person includes the gains or profits from or by way of—
>
> (a) any business;
>
> (b) any employment;
>
> (c) rentals and royalties;
>
> (d) interest or discounts;
>
> (e) premiums, commissions, fees and licence charges;
>
> (f) annuities and other periodic receipts, including receipts by way of alimony or maintenance; and
>
> (g) any other gains or profits of an income nature which accrued to that person which are not included under any other paragraph of this subsection.
>
> (*Amended by Act 18 of 1990*)
>
> (2) Subsection (1) shall not be construed so as to bring within the meaning of assessable income liable to assessment under Part 10 —
>
> (a) any income which is exempt under Part 4; or
>
> (b) any amounts accrued to a non-resident, other than from the carrying on of a business or the exercise of employment, which are liable to withholding tax under section 76;

[29] Section 39(1) concerns restrictions on deductions in respect of management charges and certain payments by controlled companies to shareholders and is central to the second issue in this appeal. It provides as follows:

> (1) Despite section 37, where a person carrying on business in Saint Lucia incurs expenditure by way of paragraph 1(1)(a) and 1(1)(b) of

Schedule 3, or by way of head office expenses being expenditure payable—

(a) to a non-resident (such non-resident not being engaged in a business in Saint Lucia giving rise to such management charges); or

(b) by a branch of a non-resident company to its head office or to some other branch outside Saint Lucia of such company, a deduction shall be allowed of the lesser of—

(i) the aggregate of such charges, or

(ii) 10% of the deductions (exclusive of such charges) allowable under section 37 (excluding cost of sales) and the provisions of section 38(1) other than section 39(1)(a), or such higher amount as in the opinion of the Comptroller is reasonable.

[30] Section 76 concerns the deduction of tax from payments made to non-residents and is critical to the main issue in this case. It provides as follows:

(1) Where a—

(a) person makes payment to a non-resident; or

(b) branch of a non-resident company makes payments to its head office or to some other branch or associate outside Saint Lucia,

tax shall be deducted from such payments in accordance with and in the manner specified in Schedule 3 and the person or branch shall carry out such other obligations as are imposed by that Schedule. (Amended by Act 7 of 2006)

(2) For the purposes of this section, a person including a partnership, to whom any payment is made to which this section applies is presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Saint Lucia.

(3) This section does not prevent the Comptroller from directing the deduction of a lesser amount than that provided in Schedule 3 where he or she is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 60 exists which provides for a lower rate of withholding tax than that provided in Schedule 3.

(4) This section and paragraph 1 of Schedule 3 shall not be construed so as to bring within the charge to withholding tax —

(a) payments of income that are exempt from tax under Part 4;

Schedule 3 - Section 1 (Speaks to the Application of Withholding Tax)

(1) This Schedule applies to every person who makes any payment by way of —

(a) royalty;

(b) management charges;

(c) commission or fee, not being in respect of an employment to which section 77 applies;

(d) the distribution of income of a trust being income of the kind specified in subparagraphs (a) to (d);

(e) premiums including insurance premiums but excluding re-insurance;

(f) any other payments of an income nature and excludes the following payments —

(i) dividends,

(ii) lease, premium or licence,

(iii) annuities or other periodic payments such as payments by way of alimony or maintenance,

to a non-resident, and subject to subparagraph (2) does not apply to any other payments to a non-resident carrying on business or exercising employment in Saint Lucia.

(*Substituted by S.I. 59/2010*)

(2) This Schedule also applies to any payment to a non-resident person in respect of the independent personal services performed in Saint Lucia other than by way of carrying on a business in Saint Lucia through a permanent establishment in Saint Lucia.

(3) Where the accounts of a business are maintained on an accrual basis, and during a year of income any amount of the kind specified in subparagraph (1) is charged as an expense but payment is not made, tax

shall be deducted and accounted for to the Comptroller as if payment had been made on the last day of such income year.

(4) For the purposes of proviso (a) to paragraph 2, where the income accruing to a trust is of different kinds, it shall be treated as retaining such character for determining the rate of tax to be deducted therefrom by the trustee.

The Withholding Tax Issue

[31] The main ground of appeal relates to imposition of withholding tax. According to BNS, during the years 2008, 2009 and 2010, remittances were made by the Saint Lucia branch to the Toronto head office and to subsidiary companies of BNS located in Jamaica and Trinidad and Tobago (all being included in the BNS Group) to reimburse and/or contribute towards certain costs or expenses.

[32] The Court of Appeal, in agreement with the Commissioners and the High Court judge, classified these remittances or reimbursements as management charges subject to withholding tax under sch 3 of the ITA. Although being labelled as reimbursements, the Court of Appeal held that they were in substance, payments for management and technical services, satisfying the definition of management charges under s 2 of the ITA.

[33] The linchpin of this issue is s 76 of the ITA as amended in 2007 which sets out what the Government of Saint Lucia wanted to accomplish by the amendment. That objective was to subject 'payments' by a branch of a non-resident to its head office or to some other branch or associate outside Saint Lucia, to withholding tax. The critical question is whether there is something in relation to the payments made by the BNS Saint Lucia to its Head Office in Canada that takes these payments outside the scope of the legislative purpose.

[34] It may be useful to set that question against the broad rationale for imposing withholding tax. According to Denbow:

> Prior to attaining independence, the countries of the Commonwealth Caribbean could not assert a clear and unequivocal taxing jurisdiction over outward income flows in the form of dividends, interest, royalties, management charges, etc payable to non-residents out of income derived from their territories.
>
> … it took away the power of the former colonies to charge to income tax certain types of income derived from business activities within those countries over which a normal sovereign state would assert taxing jurisdiction. Hence it is little wonder that with the advent of independence not only the OECS countries, but the larger Commonwealth Caribbean countries such as Jamaica, Trinidad and Tobago and Guyana asserted taxing jurisdiction over the flows of income which were remitted to non-residents in the form of dividends, royalties, management charges, interest and other payments. The mechanism which was employed was that of withholding tax legislation which imposed a charge to income tax on various items of income at source before any payment was remitted abroad to the non-resident recipients.[2]

Principles of Interpretation of Taxing Statutes

[35] In deciding on the applicability of s 76 as amended, the principles of interpretation of taxing statutes must be uppermost in mind. According to Denbow, Caribbean courts have adhered strictly to the general principles governing the construction of taxing statutes enunciated by English Courts.[3] English law in interpreting tax statutes has been consistently applied in Caribbean courts[4] and was embellished by Wooding CJ as suggesting that the statute:

> … must be read as a whole so as to correlate its several parts. Its language, when plain, must be given its full significance. Resort may be had to special rules of construction if its terms should prove ambiguous, but there should be no such recourse simply to provide a means of entry for the fisc or a hatch of escape for the taxpayer. The imposition of tax being the prerogative of the legislature, the courts must enforce what the legislature decrees. No exaction can be maintained which is not specifically levied, and no avoidance permitted which finds support from sophistry alone. Interpretation must be strict because it is a taxing statute...[5]

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[2] Claude H Denbow, *Income Tax Law in the Commonwealth Caribbean* (2nd edn, Bloomsbury Professional 2013) 98–99.
[3] ibid 5.
[4] *Income Tax Commissioners v Blake* (1960) 2 WIR 271 (KN SC); *Reynolds v Income Tax Commissioner* (1964) 7 WIR 154 (TT CA); *Lewis v Commissioner of Income Tax* (1988-89) 2 CCLR 197. See Denbow (n 2) 5.
[5] *Reynolds v Income Tax Commissioner* (1964) 7 WIR 154 (TT CA) at 157–58.

[36] It does appear that there has been a significant and even dramatic turn in English law on the interpretation of tax statutes over the past few decades. The historical black letter approach subjected tax statutes to a literal construction without regard to the perceived purpose of the legislation. This was exemplified in the Duke of Westminster principle familiar to all students of taxation, namely that taxpayers are entitled to arrange their affairs to minimise the amount of tax payable. If the taxpayer succeeds in so ordering them, then, however unappreciative the revenue authorities may be of his ingenuity, the taxpayer cannot be compelled to pay the tax thus avoided: Commissioners *of Inland Revenue v Duke of Westminster.*[6]

[37] A change in judicial attitude began in the 1960s perhaps prompted by the growth of the tax avoidance industry. Then in 1982, the historic decision by the House of Lords was handed down in *WT Ramsay Ltd v Inland Revenue Commissioners;*[7] a case involving taxpayers engaged in intricate financial schemes to avoid their profits being subject to chargeable gain under the Finance Act 1965 (UK). It was held that courts must interpret fiscal provisions purposively, looking at the scheme or transaction in its entirety and considering the legislative objective.[8] Importantly, it was said that it is: 'the task of the court to ascertain the legal nature of any transaction to which it is sought to attach a tax or a tax consequence'.

[38] The Ramsay principle, as it has become known, is now well settled as part of English tax law. In *Rossendale Borough Council v Hurstwood Properties (A) Ltd,*[9] it was said that the Ramsay principle extended beyond tax and represented the modern purposeful approach to interpretation of all statutes. The words of Lord Bingham in *R (Quintavalle) v Secretary of State for Health*[10] were quoted as follows:

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[6] [1936] 1 AC 1 at 19.
[7] [1982] AC 300.
[8] *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2022] AC 690.
[9] ibid.
[10] [2003] 2 AC 687 at 695.

> Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

[39] A similar approach is adopted by the Canadian Supreme Court. Interpretation of tax legislation was said to be strict in an era of more literal statutory interpretation than at present. However, there is 'no doubt today that all statutes, including the Income Tax Act, must be interpreted in a textual, contextual and purposive way.'[11]

[40] This Court has made passing comments on the purposeful construction of a tax or other forms of revenue legislation.[12] In the present case, we expressly reiterate adoption of an interpretation that would promote the purpose or object of the legislative provisions in question and thus align interpretation with legislative intent. Prioritising legislative intent helps to address ambiguities and leads to more informed and just tax policies. The intent behind tax relief legislation must be examined to determine the applicable benefits. By the same token, the legislative intent behind the imposition of tax must be appreciated to determine the income that was meant to be included within the net of that tax.

Section 7 of the ITA

[41] It is useful to start with the section of the ITA which first mentions s 76. Section 7 of the ITA, which is concerned with laying out the general rules on 'charge to tax' is expressly made subject to s 7(5). That provision provides that income ascertained in accordance with Part 5 which accrues to a non-resident person from any source other than from the exercise of employment or the carrying on of business through a permanent establishment is liable to withholding tax in accordance with ss 76 and

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[11] *Canada Trustco Mortgage Co v Canada* [2005] 2 SCR 601 at [11].
[12] *Speednet Communications Ltd v Public Utilities Commission* [2016] CCJ 23 (AJ) (BZ) at [41]. See also: *Cruise Solutions Ltd v Commissioner of General Sales Tax* [2018] CCJ 27 (AJ) (BZ), (2019) 94 WIR 70.

80. It follows that assessable income does not include income that is subject to withholding tax.

[42] Part 5 commences with s 32. Section 32(1) provides general rules on the determination of assessable income while s 32(2) exempts from assessable income any income which is liable to withholding tax. Section 32(1) refers to assessable income in terms of 'gains or profits'. This appears to have been taken by BNS to mean that income must be 'mark-up' or 'gain'. Counsel for the Respondent correctly points to the use of the word 'includes' in s 32(1), which suggests that 'gains' or 'profit' may not be the only criterion to establish income. This is indeed the case although there remains a hard requirement in s 7(5) that there must be 'income' before withholding tax can be applied pursuant to s 76.

[43] Both sides agree that s 76 and sch 3, to which it refers, are critical. In accordance with s 7(5), for payments to be the subject of withholding tax, the payments must be 'income' and Counsel for BNS argues that income must be of the nature of 'gain or profit'. But, as we have seen, this does not do full justice to s 32(1) which says that assessable income '*includes* … gains or profits' thus signalling that while gain or profit is a key feature of many forms of income, it is not an essential precondition in every case. This broad legislative drafting allows for income to encompass amounts that may be revenue-neutral but nevertheless qualify as income, such as payments that arise in the course of a business or represent consideration for services rendered, even if the amount does not exceed costs incurred. The ITA does not require that the income subject to withholding tax be gain or profit.

[44] A payment may still constitute income in the broad sense if it reflects a return for value or has the character of a receipt, notwithstanding that it is not priced at a profit margin. The court in *Re Huggins*,[13] defined income broadly as any regular monetary benefit, holding that a pension granted to a retired colonial judge constituted income

[13] (1882) 21 Ch D 85.

under the Bankruptcy Act even though it was discretionary and not legally enforceable. In *Davis v Commissioners of Inland Revenue*[14] income for super tax purposes was defined as assessable income, meaning gross income before deductions, distinguishing it from taxable income which includes personal allowances. In *Chetwode v Inland Revenue Commissioners*[15] the House of Lords held that income under s 412 of the Income Tax Act 1952 refers to gross income, specifically dividends received, and rejected any interpretation that would allow deductions unless explicitly authorised, affirming that income is what is received, not what remains after expenditure. In determining whether a payment is properly characterised as income, what matters is the legal nature and context of the payment, not whether it results in net gain. Thus, the Appellant's argument does not fully account for the broader concept of income in the withholding tax regime.

[45] However, it is the case that the 'payment' under s 76 must be 'in accordance with and in the manner specified in sch 3' in order to attract WT. Paragraph 1(1) of sch 3 applies withholding tax to payments of the kind listed in para (1) if such payments do not accrue from the carrying on of business through a permanent establishment in Saint Lucia. The proviso of para 1(1) provides that withholding tax will not apply to payments to a non-resident carrying on business in Saint Lucia, other than those listed in para 1(1), with an exception not relevant to this case.

[46] Counsel for the Comptroller suggests that the payments made by the branch were in the nature of 'management charges' which is one of the categories of payments specified in para 1(1) of sch 3 that would be subject to withholding tax. The term 'management charges' is defined in s 2 of the ITA to mean:

> … charges made for the provision of –
>
> (a) management services;
> (b) technical services;
> (c) personal services;

[14] [1923] 1 KB 370.
[15] [1977] 1 WLR 248.

[47] The Appellant raises several arguments in opposition to this contention. First, it is argued that there is no sufficient distinction between 'management charges', which are subject to the withholding tax regime, and similar 'head office expenses' in s 39, which were also introduced by the amendment in 2007, and which are not subject to WT. Second, it is argued that there was no proof that the payments made by BNS Saint Lucia to BNS Canada were for services that properly fell within the term 'management services' or 'technical services'. Third, the Appellant contends that there was no management charge as the payments made were reimbursements in respect of collective services rendered by the Head Office to its branches.

Management Charges and Head Office Expenses

[48] During the argument of this case there was a tendency to use the terms 'management charges' and 'head office expenses' interchangeably but they cannot be the same, given their separate statutory treatment. 'Management charges' are defined in s 2 as the provision of (a) management services; (b) personal services; (c) technical services. Management charges are specifically enumerated in sch 3 as one of the categories of payments that attract withholding tax under s 76(1)(b). For present purposes, it may be taken that 'head office expenses' are expenditure payable by a branch of a non-resident company to its head office or to some other branch outside Saint Lucia of such company (s 39 (1)(b)). The treatment of head office expenses is addressed under s 39(1)(b)(ii) which deals with the deductibility of such expenses in computing assessable income.

[49] Denbow, SC highlights that Trinidad and Tobago's Income Tax Act, Chap 75:01 previously included a similar definition of 'management charges' to the definition in Saint Lucia's ITA. The Trinidad and Tobago definition has been broadened by amendment and the previous definition (which is the same as Saint Lucia's) is referred to as 'the original definition'. He states that:

> Under the original definition of the term, 'management charges' was quite separate and distinct from the term 'head office expenses' and there was no

> legal basis to treat the 2 terms as synonymous. Head office expenses connote the normal recurring cost of operating the head office of a parent or holding company which administers a number of branch operations or subsidiaries throughout the countries of the Commonwealth Caribbean; such a cost being allocated among the various branches or subsidiaries according to a set formula. The type of expenses which will be included under the heading of head office expenses will run the whole gamut from promotional advertising to house rental, salaries, utility bills, vehicle maintenance, office equipment rental, etc. There would appear to be no reported judicial decision in the Commonwealth Caribbean on the meaning to be attached to this term. …
>
> The original definition of the term 'management charges' is of continuing relevance in countries outside of Trinidad and Tobago. The term would normally connote a charge for the provision of technical, managerial or advisory services by an overseas parent company to its local subsidiary based in the Commonwealth Caribbean pursuant to an agreement between parent and subsidiary referable to the carrying on of the business of such subsidiary.[16]

[50] The distinction was the subject of inconclusive analysis by the High Court of Trinidad and Tobago in *S v Board of Inland Revenue.*[17] In the Eastern Caribbean Court of Appeal case, *Bank of Nova Scotia v Appeal Commissioners,*[18] the Court of Appeal held that:

> The payments in question, having been a reimbursement of expenses and not having been of income, are not subject to deduction of withholding tax. The provisions of the Act dealing with withholding tax are an integral part of the Act and constitute no more than a mechanism for the purpose of collecting taxes on income flows to non-resident persons from income earned within Grenada. The withholding tax provisions do not create some special form of taxation which can be levied upon payments which are not of an income nature. Withholding tax is not a separate and discrete form of taxation which is not governed by the fundamental principles of income tax law.

[51] However, in the Privy Council, Lord Carnwath was more cautious as regards both the nature of the withholding tax and of the payments that might be subject to it.

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[16] Denbow (n 2) 107–108.
[17] 1991 TAB 3 (CARILAW), (17 October 1991) at 7.
[18] (GD CA, 19 September 2011) at 2.

He considered that the view that withholding tax was not a separate form of taxation but merely a mechanism for the collection of income tax was 'not self-evident' given the distinction between income tax chargeable on 'assessment of income' and withholding tax applicable to 'payments'. On the question of whether the payments or reimbursements in that case were properly subject to WT, he noted the submission by the appellant that part of the purpose of the separate treatment of withholding tax may be to avoid arguments about the precise nature of the payments. Lord Carnwath referenced the contrary argument that in any event there was an objection to imposing tax on something which did not show an element of profit or gain. The judge referenced s 50(1) of the Income Tax Act of Grenada which provides for withholding tax in respect of 'payment to a non-resident person of interest… discounts, commissions, fees, management charge, rent, lease premium, license charge, royalties or other payment…' He then offered the tentative view that:

> 21… It may be said that the common feature of the items listed in section 50(1) is that they arise from income generating activities in Grenada, and do not naturally extend to repayment of expenses necessarily incurred in generating income. To that extent *Owen v Pook*, though on different statutory words, can be said to provide some persuasive support.
>
> 22. In the Board's view, since it is not necessary to decide this point, it is preferable not to do so without a more thorough exploration of the issues and of their implications in this and other jurisdictions. We note that in Antigua, following the decision to which we have referred, the statute was amended to bring such payments expressly within the scope of withholding tax. By the Income Tax (Amendment) Act 2003, section 39 was amended by substituting a direct reference to "expenses allocated to a resident branch or agency by a non-resident company" and inserting a new subsection (5):
>
> > "for the purposes of this section a resident branch of a foreign company and its headquarters and other non-resident branches shall be regarded as separate persons carrying on separate businesses."
>
> Without reaching a final view on the meaning of the unamended Grenadian statute, the Board observes that, if payments of this kind are to be brought within the scope of withholding tax, it is preferable that it should be done

> by specific legislation in order to avoid disputes of the kind that have arisen in this case.[19]

[52] Evidently, it seems to have been judicially thought that the 2003 legislative amendment in Antigua and Barbuda sufficed to bring the contested payments within the scope of withholding tax. That legislation makes clear that: (1) payment of expenses allocated to a resident branch by a non-resident company[20] and (2) a resident branch was considered a separate person from its foreign head office.[21] By that standard, the 2007 amendment in Saint Lucia by necessity must be taken to have been intended to bring within the scope of withholding tax payments by the resident branch to its foreign head office by way of management charges.

Were the Services Provided Management or Technical Services?

[53] The question here is primarily one of fact. Did the services provided by BNS Canada to BNS Saint Lucia fall within either category of 'management' or 'technical' services for the purpose of satisfying the definition of a management charge? The evidence of BNS before the Commissioners was that the payments made by BNS Saint Lucia were 'in order to reimburse and/or contribute towards, *inter alia*, certain internal back-office costs incurred in the respective countries, without any mark-up whatsoever, for the benefit of the BNS Group inclusive of loan credit review, analysis of credit risk, computer support, legal services, audit assistance with ATM capital expenditure funding and compliance and treasury support ('Head Office Support Services' or 'HOSS')'.

[54] The three tribunals before whom the issue was litigated all held that the services fell into the category of management services and/or technical services. The Commissioners opined at [57] that:

> Management services in the banking sector could have a very wide definition to include, but not limited to compliance and risk, information

[19] *Appeal Commissioners v Bank of Nova Scotia* [2013] UKPC 19 (GD) at [21]–[22].
[20] Income Tax Act, CAP 212, as amended by Act 4 of 2003, s 5 (amending s 39 of the principal act).
[21] ibid, s 6 (amending s 40 of the principal act).

> technology services, procedures and policies, etc. These services would attract necessary charges. In the case at bar, the Appellant asserts that these charges were incurred for the provision of management, technical and/or other services in the form of legal services, audit services, computer support, among other things. If, as the Tribunal concludes, these services were provided for BNS Saint Lucia, then they are fully captured by the schedule and attract withholding tax.

[55] In the High Court, Cenac-Phulgence J at [74] accepted the Commissioners' classification but went into considerably more detail in enumerating the precise services provided to the Saint Lucia branch. These included processing support services which include reconciliation and settlement of the general ledger, SWIFT processing, term deposits and loan maintenance, operations support services related to real estate and equipment requirements, policy and procedure guidance, operational reviews, and project implementation support; contact center services related to inbound and outbound service calls and making sales calls in order to drive business; credit card operations, operations support and international employee-relations services. The Judge concluded at [75] that these services all fell within the categories of technical services and/or management services and that the payments for them were therefore management charges to which withholding tax applied. The Court of Appeal was similarly convinced, noting that it could not be disputed that some of the services provided by the BNS head office and the BNS Caribbean subsidiaries fell within the categories of management and technical services.

[56] It cannot be said that the conclusion reached by the three tribunals on classifying the services received by the Saint Lucia Branch as management and/or technical services was clearly wrong. Due regard must be had to the specialised knowledge of the Commissioners who first made that determination. Courts normally defer to the expert judgment of specialist bodies unless there is a clear error of law, fact or discretion. Regard must also be paid to the concurrent upholding of that conclusion by the two courts below. Further, the conclusion is consistent with the Denbow

taxonomy which considers that 'management charges' connote a charge for the provision of technical, managerial or advisory services by an overseas parent company to its local subsidiary.

Management Charge

[57] The Attorney for BNS contends that there was not a charge for the services received by the branch and relies on the meaning of the term 'charge' which suggests payment for a service, out of pocket as seen in *Owen v Pook (Inspector of Taxes)*[22] citing *Hochstrasser (Inspector of Taxes) v Mayes*[23] at 821:

> … in my judgment not every payment made to an employee is necessarily made to him as a profit arising from his employment. Indeed, in my judgment, the authorities show that, to be a profit arising from the employment, the payment must be made in reference to the service the employee renders by virtue of his office, and it must be something in the nature of a reward for services past, present or future.

[58] Counsel for BNS cited this paragraph and argues that if the head office simply allocates costs to its branch without any specific request, invoicing, or evidence of a service-for-fee arrangement, then such allocations lack the character of a 'charge' and resemble internal cost reimbursements. Counsel insisted that these are not 'payments' in the taxing sense, nor do they arise from a bilateral or commercial arrangement between distinct legal persons. As BNS Canada and its Saint Lucian branch are the same legal entity, any intra-entity cost apportionment, unless coupled with independent service provision or commercial intent, does not meet the threshold of a 'charge.' Therefore, absent evidence of a specific, compensable service, the application of withholding tax under the rubric of 'management charges' cannot be sustained merely because an expense was booked or transferred internally.

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[22] [1969] 2 All ER 1 at 4.
[23] [1959] 3 All ER 817.

[59] It is the case that Saint Lucia retained its unamended definition of management charges in sch 3 and did not indicate: (1) that these management charges applied to reimbursements, (2) that reimbursements were to be considered payments, or (3) that head office allocations fall within the category of chargeable services. In contrast, other Caribbean jurisdictions have been more explicit in their legislative steps to define the range covered by management charges. The 2019 amendment to the ITA of Saint Vincent and the Grenadines[24] makes clear that 'management charges' mean, among other things, 'head office charges or allocations … shared costs and other similar charges'. Similarly, the 2006 ITA of Trinidad and Tobago[25] the meaning of 'management charges' includes 'head office charges … other shared costs charged by head office.'

[60] Given the clarity of these amendments in sister Caribbean jurisdictions it is obvious that the drafting of the provision in Saint Lucia seeking to subject 'payments' to withholding tax could have been improved upon. However, a couple things are tolerably clear. Even if the payments by BNS Saint Lucia to its Canadian head office were not invoiced with a profit margin, the element of 'payment' within the meaning of s 76(1)(b) is satisfied. The word 'payment' does not impute a markup on the cost of services provided. The legislative design of that provision is to capture outbound flows from branches of non-resident companies to their head offices or related parties, recognising that such cross-border remittances, regardless of formal labels, can serve as vehicles for profit extraction and tax base erosion. Viewed purposively, the legislature could not have intended for substantial amounts remitted from the local branch to escape withholding tax merely because they are described as 'reimbursements' which did not involve any 'mark-up'.

[61] Further, the ITA, particularly s 76 and sch 3, reflects an intention to tax not only clear-cut contractual service charges but also financial flows that operate as de facto compensation for centralised services or support rendered by the parent to its

[24] CAP 435 (VC).
[25] Chap 75:01 (TT).

branch. This interpretation is reinforced by the deeming language in s 76(1)(b), which bypasses the single-entity legal fiction and treats such intra-entity transactions as taxable events. In this light, requiring a 'charge' to be evidenced by something in the nature of an invoice or commercial profit margin would seem to impose a higher standard than the statute demands. It would also be inconsistent with the approach adopted in the legislative provisions of other Caribbean countries quoted earlier, which appear to consider 'shared costs' to be 'charges'.

[62] In sum, the intention of the legislature in passing the 2007 amendment to the ITA seems clearly to have been the capture of payments of the kind involved in this case. The approach taken by the Court of Appeal, that these payments fall within the withholding tax net because they are functionally equivalent to fees for services, therefore aligns with the legislative policy of taxing non-resident earnings at the point of remittance, particularly where those remittances reflect ongoing centralised support that benefits the branch's income-earning activities in Saint Lucia.

Territorial Aspect

[63] A second ground of appeal, ground (a), is that the Court of Appeal erred in concluding that there was no territorial restriction in the application of withholding tax.

[64] Section 8 deals with the scope of charge to tax. In determining the scope of assessable income to tax, s 8(1)(b) refers to 'all amounts … from all sources in Saint Lucia'. Counsel for BNS argues withholding tax was simply a method of collecting income tax and s 8(1)(b) required a territorial link to Saint Lucia for payments to be made liable to withholding tax.

[65] This argument faces two significant difficulties. First, s 8(1) is expressly made subject to s 7(5), which has no territorial restriction, but which makes liable to withholding tax 'income from any source'. This can be contrasted with s 50(1)(b) of the Trinidad and Tobago Income Tax Act, Chap 75:01 under which there is a

proviso which imposes a territorial restriction. The proviso states that '…so however that in the case of a payment arising outside Trinidad and Tobago to such person or company withholding tax shall not be payable.' According to Dr Denbow[26]:

> What is of crucial importance [in Trinidad and Tobago] is whether the transaction or activity which has given rise to the payment has been effected or performed outside of Trinidad and Tobago… so as to come within the terms of the proviso set out above with the result that no withholding tax is chargeable.

[66] There is no such territorial proviso in s 76 of the Saint Lucia ITA so there is no territorial restriction and s 8(1)(b) of the ITA is subject to s 7(5), making clear the intention of the legislator that the territorial source of the income is irrelevant to the imposition of withholding tax.

[67] Second and relatedly, there is no principle of international taxation that renders liability to withholding tax inapplicable to the payments in issue. Taxation is entirely dependent on the tax statute in the individual taxing jurisdiction. BNS admits that if Parliament was clear that head office expenses/shared costs were covered by the definition of management charges under sch 3, then such charges would be subject to withholding tax (as would have been the case on a similar withholding tax regime in Trinidad and Tobago and Saint Vincent and the Grenadines). In this case there is sufficient certainty in s 76(1)(b) to overcome any common law presumption against what may be called extra-territorial taxation.

Drafting Error

[68] A third ground of appeal, ground (b), is that the Court of Appeal erred in exercising its judicial discretion to correct a purported omission from the ITA**.** The Court of Appeal found that sch 3, through a drafting error, failed to reflect the 2006 legislative amendment that inserted s 76(1)(b) to tax branch-to-head office

[26] Denbow (n 2) 103.

payments. Exercising interpretive discretion, it read in 'or branch' after 'person' to correct this omission. BNS argues that this correction was erroneous because sch 3 is clear on its face, referring only to 'person' and Parliament did not include 'branch' despite having amended s 76(1)(b).

[69] It is widely acknowledged that the Court has power to correct obvious drafting errors. The Court of Appeal properly relied on *Inco Europe Ltd v First Choice Distribution*[27] for the proposition that '[i]n suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words' but that, '[t]his power is confined to plain cases of drafting mistakes.' Clearly caution must be exercised and the court must be vigilant to remain within the confines of its judicial role. But a plain drafting mistake may be corrected by the Court without endangering these core principles.

[70] The amendment of s 76 (through s 76(1)(b) was plainly intended to impose withholding tax on payments from a branch to its head office or other branch or associate outside Saint Lucia 'in accordance with … Schedule 3'. We agree with the Court of Appeal that there was plainly an omission by the legislature to add the word 'or branch' after the word 'person' in para 1(1) of sch 3 to give effect to the legislative intention to impose withholding tax on payments by the branch to its overseas head office. Without the addition of these words the clear legislative intention contained in the amendment would be thwarted. We therefore do not find that the Court of Appeal erred in this regard.

EBOE-OSUJI J:

[71] If all there is to the judge's work when applying tax statutes is to give effect only to words and phrases whose meanings are beyond dispute, then there would be very little left of the claim that judges do 'interpretation.' There was a time when that irony was lost on common law judges. The collective mindset was that discerning

[27] [2000] 1 WLR 586 at 592.

the *legislative purpose* was not what judges might do when interpreting tax legislation. The legislature, the expectation went, must keep amending the tax code—in an endless game of cat-and-mouse—every time a reasonable debate attended the meaning of a provision in the tax code. Those days are gone. The modern view is that judges must ascertain the legislative purpose even in a tax statute and consider how that purpose shines light on the statutory language, helping the judge to see whether the facts reasonably 'fall within the net of the tax regime',[28] notwithstanding material imprecision in the wording.

[72] There is no heresy in saying that judges must apply the tax regime to the facts that reasonably fall within it regardless of imprecision in the statutory language. Although legislation must be couched in words and phrases, what a statutory provision amounts to is not the same thing as the meaning of the discrete words and phrases used to draft it. As Lord Hoffmann correctly explained:

> The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax.[29]

[73] The hologram that results, so to speak, from the interacting union of lights from the sources of legislative purpose, context and language, will often suggest the right interpretation of a provision, especially given the perennial possibility of imperfection of phrases and words. It is for that reason that the correct approach to statutory interpretation is always to keep an eye on the purpose and the context of the statute in trying to make appropriate sense of its composite words and phrases.

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[28] I adopt here the helpful phrasing of Lord Burrows in a recent off-the-bench commentary: Lord Burrows, Justice of the Supreme Court of the United Kingdom, 'Some Issues in Statutory Interpretation' (Statute Law Society Conference 2025, Portcullis House, London, 6 June 2025) 4 < https://supremecourt.uk/uploads/speech_lord_burrows_060625_abef2c5b0d.pdf > accessed 28 September 2025.

[29] *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 98 at 115. See also *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] 3 All ER 352 at 375–376.

Introduction

[74] I have read in draft the opinion of my highly esteemed friend and brother, Anderson P. I fully join both his explicit endorsement of the doctrine of purposive interpretation of tax legislation (to which I shall return later) and his elegant resolution of the withholding tax issue in that light.

[75] My part now is to deal with the 'cost of sales' issue. On that, I must say right away that I find that the Comptroller, the Tax Appeal Commission and the Court of Appeal came to the right conclusion. The banking business involves 'sales' in various ways, and the interest that banks pay on their customers' bank accounts may reasonably be regarded as 'cost of sales.' Therefore, the Comptroller did not act unreasonably in disallowing the Appellant Bank's desire to deduct that 'cost of sales,' given the restriction imposed against it in s 39(1)(b)(ii) of the Income Tax Act of Saint Lucia. I shall explain the reasons for these findings.

[76] I must stress at the outset that the limited question before this Court on the subject is whether a bank's interest payments on its customers' bank accounts may be considered as 'cost of sales' within the meaning of s 39(1)(b)(ii) of the Income Tax Act of Saint Lucia. The Court is not called upon to provide—nor is it my ambition to provide—definitive guidance on the meaning of 'cost of sales' as a technical term in the banking business or accounting profession at large, nor on how banks or other service providers should represent or report 'cost of sales' in their financial books.

[77] It should be clear by now that the dispute in this part of the appeal stems from the provisions of s 39(1)(b)(ii) of the Income Tax Act which precludes 'cost of sales' from allowable income tax deductions of certain persons carrying on business in Saint Lucia.

[78] I shall come to that provision very soon. But, first, the lead up. The immediate background to the provision requires bringing into view not only s 37, which is referred to directly in s 39 as we shall see, but also s 32, which is, in turn, referred

to in s 37. Section 32 sets out a general map of what is termed 'assessable income.' This means income from all sources—with the exception of such income as is liable to withholding tax (which Anderson P has dealt with) as indicated in ss 7(5), 32(2), 76 and 80(2). In that mapping of 'assessable income,' s 32(1) provides that 'the assessable income' of any person 'includes the gains or profits' from any business, any employment, rentals, royalties, interests, discounts, premiums, commissions, fees, licence charges, annuities and other periodic receipts (including receipts by way of alimony or maintenance), and 'any other gains or profits of an income nature which accrued to that person which are not included under any other paragraph of this subsection.' In s 32(2), any income that is reserved for withholding tax under s 76 is removed from the map of 'assessable income' drawn in s 32(1).

[79] It is against that background that ss 37 and 39 operate. Section 37 is the general provision that allows taxpayers to deduct expenses from their global assessable income within the year from any of the sources listed in s 32, where the expenses in question have been incurred by the taxpayer 'wholly and exclusively … during that year of income for the purpose of producing [the] assessable income from that source'. But then, s 39 imposes certain restrictions on allowable deductions—despite s 37. For our purposes, 'cost of sales' is not an allowable deduction under s 39(1)(b)(ii). In the words of the provision:

> 39(1) Despite section 37, where a person carrying on business in Saint Lucia incurs expenditure by way of paragraph 1(1)(a) and 1(1)(b) of Schedule 3, or by way of head office expenses being expenditure payable—
>
> (a) to a non-resident (such non-resident not being engaged in a business in Saint Lucia giving rise to such management charges); or
>
> (b) by a branch of a non-resident company to its head office or to some other branch outside Saint Lucia of such company, a deduction shall be allowed of the lesser of—
>
> (i) the aggregate of such charges, or

(ii) 10% of the deductions (exclusive of such charges) allowable under section 37 (*excluding cost of sales*) and the provisions of section 38(1) other than section 39(1)(a), or such higher amount as in the opinion of the Comptroller is reasonable.

(Amended by Act 7 of 2006)(emphasis added).

[80] The Appellant Bank informs that its 'practice in the income years 2008 and 2009 in calculating the restriction on the deductibility of management fees/head office expenses under s 39 of the [Income Tax Act] was to treat all of its interest expense as ''cost of sales".'[30] It ceased that practice in 2010. But the Comptroller of Inland Revenue insisted that the practice must continue and that the Appellant Bank's interest costs are part of its 'cost of sales'.[31] The Appellant Bank objected on grounds that it doesn't engage in 'sales', therefore there could be no 'cost of sales' to speak of in its operations.[32]

[81] Now, considering that the tax value of the deduction would be 10 per cent of the item of expense claimed, the average person may be tempted to consider it seemingly small when compared to the quantum of the overall tax liability of the business taxpayer. But that would not be the appropriate way to look at it: not only as a matter of applicable legal principle, but also as a matter of appreciable public policy pertaining to public revenue collection. The popular maxim that 'every penny counts' has obvious application to revenue collection, too. Every revenue penny counts even in the largest economies, let alone in smaller developing ones like Saint Lucia. Reflections of that public policy are apparent in the following observations of the Canadian Revenue Authority: 'Taxes support government services and programs. They also support economic development within Canada through investments in several areas, such as infrastructure and employment. As such,

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[30] See Record of Appeal, 'Notice of Appeal' 68, at [31]; See also Record of Appeal, 'Amended Notice of Appeal' 165, at [42].
[31] See Record of Appeal, 'Notice of Appeal'68, at [31].
[32] See Record of Appeal, 'Notice of Appeal' 70, at [34]; See also Record of Appeal, 'Amended Notice of Appeal' 167 at [45].

ensuring that everyone pays the taxes they owe through compliance activities is crucial for all Canadians'.[33] The same, no doubt, goes for Saint Lucia.

[82] Indeed, the importance of the issue to the revenue authorities is correlatively proportional to the taxpayer's interest in resisting the associated tax burden—even going as far as fighting the case, as here, all the way to the jurisdiction's highest court.

[83] In discussing the 'cost of sales' issue, I shall begin with recalling certain highlights of the doctrine of purposive interpretation. I shall next consider the question whether the banking business involves 'sales', because it had preoccupied the Appellant Bank's submissions. From there, I shall address the question whether 'cost of sales' is a concept reasonably applicable to the banking business and in that vein whether interest payments on customers' bank accounts may be treated as 'cost of sales' for purposes of s 39 of the Income Tax Act.

Purposive Construction of (Tax) Legislation

[84] In employing the purposive approach to the resolution of the 'cost of sales' issue, I shall begin with a brief recap of the essence and value of that approach to the interpretation of statutes. This recap is a further elaboration on the helpful summary of the essential principles set out in the opinion of Anderson P.

[85] Weeks before the hearing of this appeal, Lord Burrows and Lord Sales of the UK Supreme Court gave talks about purposive interpretation of statutes.[34] The texts of their discourse are valuable compendiums of modern trends in English case law on the subject. I gratefully and generously draw on them in this part of my opinion.

[86] Lord Bingham's dictum in *R (Quintavalle) v Secretary of State for Health* has become a familiar modern précis on purposive interpretation, much quoted in the

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[33] Canada Revenue Agency, 'How we Combat Tax Evasion and Avoidance' (Government of Canada, 4 June 2025) < www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/how-combat-tax-evasion-avoidance.html > accessed 28 September 2025.

[34] See Burrows (n 27); Lord Sales, Justice of the Supreme Court of the United Kingdom, 'Significance of Purpose in Purposive Construction of Legislation' (Statute Law Society Conference 2025, Portcullis House, London, 6 June 2025) < https://supremecourt.uk/uploads/speech_lord_sales_06062025_30ca00cd98.pdf > accessed 28 September 2025.

case law and academic commentary. I too shall start there. 'Every statute' he wrote, 'other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose.'[35] As Ribeiro PJ put the essence of the principle in a pithy dictum that Lord Reed quoted with approval at the UK Supreme Court: 'The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.'[36]

[87] Outcomes can be strikingly different between cases decided according to the purposive approach and those that are not. The possible contrast is adequately illustrated by the judgments of the UK apex court in *Price v Claudgen Ltd*[37] and *Uber v Aslam*.[38]

[88] In *Price*, the House of Lords gave literal interpretation to a building safety code meant to enhance the safety of persons engaged in the 'repair or maintenance of a building.' The respondent company sent its employee, the appellant electrician, to repair a neon lighting installation on the front of a cinema. The installation was a fixture to the building and was easily removable without affecting the building. The appellant knelt on the roof of the cinema, leaning down over its front, to do his work. Whilst so engaged, someone inside the cinema switched on the neon lighting installation not knowing that the appellant was working on it. The appellant thus suffered an electric shock resulting in his fall onto a canopy 30 feet below, with serious personal injuries. The question for determination was whether the neon lighting installation was part of the cinema building, thus attracting the safety requirements imposed by the code. In a unanimous decision, the House of Lords answered the question in the negative. Remarkably, in the reasoning of Lord Morris of Borth-y-Gest, the entire focus of analysis was on whether the neon lighting installation was part of a building strictly speaking for purposes of the regulation.

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[35] *R (Quintavalle)* (n 9) at [8].
[36] See *UBS AG v Revenue and Customs Commissioners* [2016] 1 WLR 1005 at [66] (Lord Reed) quoting *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454 at [35] (Ribeiro PJ).
[37] [1967] 1 WLR 575.
[38] [2021] 4 All ER 209.

From the law report, it appears that no thought whatsoever was paid to the purpose of the regulation: whether that purpose was the protection of buildings or the protection of human beings working on, in or at buildings.

[89] In *Uber*, on the other hand, Lord Legatt of the UK Supreme Court began the judgment of an equally unanimous UK Supreme Court with the following words: 'New ways of working organised through digital platforms pose pressing questions about the employment status of the people who do the work involved'.[39] For purposes of our own judgment in this appeal, those opening words of Lord Legatt must resonate significantly because *Uber* dealt with whether the Employment Rights Act of 1996, the National Minimum Wage Act of 1998 and the Working Time Regulations of 1998 governed employment status between drivers and Uber which, as a business enterprise, was founded only in 2009.[40] In determining the question, the UK Supreme Court did not require the legislature to amend the statute to be sure that the operations of Uber were clearly covered by the existing legislative framework. Rather, the court considered the purpose of the Act and determined that it covered Uber's 'new ways of working' organised through a digital platform. The primary question for the Court was whether drivers whose work is arranged through Uber's *smartphone app* are considered as working for Uber under workers' contracts thus qualifying for the national minimum wage, paid annual leave and other workers' rights; or whether, according to Uber, those drivers do not have these rights because they are independent contractors, performing services under contracts made with passengers through Uber as their booking agent. The Supreme Court answered that question affirmatively in favour of Uber drivers, in line with the 'modern approach to statutory interpretation,' which, according to the Court 'is to *have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose*'.[41] Adverting to the purpose of the employment legislation, the Court considered that

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[39] ibid at [1].

[40] See Michael McCullough, 'Stumbling Upon Success' (Canadian Business, 21 September 2011) < https://web.archive.org/web/20121231080942/https://www.canadianbusiness.com/business-strategy/stumbling-upon-success/ > accessed 28 September 2025.

[41] *Uber* (n 38) at [70] (emphasis added).

the 'general purpose of the employment legislation … is to protect vulnerable workers from being paid too little for the work they do, required to work excessive hours or subjected to other forms of unfair treatment …' [42]

[90] In the area of tax law, the purposive approach was given purposeful emphasis by the House of Lords in *W T Ramsay Ltd v Inland Revenue Commissioners*,[43] resulting in an outlook of judicial interpretation of taxing legislation known as the '*Ramsay* doctrine.' It rests on two main limbs, enunciated in the leading speech of Lord Wilberforce. The first stresses the message that the ascertainment of the meaning of 'clear words' in tax legislation does '*not confine* the courts to *literal interpretation*. There may, indeed should, be considered the *context and scheme* of the relevant Act *as a whole*, and its *purpose* may, indeed should, be regarded.'[44] And the second limb stresses 'the task of the court to *ascertain the legal nature of any transaction to which it is sought to attach a tax or a tax consequence* and if that emerges from a series or combination of transactions, intended to operate as such, it is that series or combination which may be regarded.'[45]

[91] The *Ramsay* doctrine has been repeatedly reiterated and clarified in modern English case law. In *MacNiven (HM Inspector of Taxes) v Westmoreland Investments Ltd*, for instance, Lord Nicholls of Birkenhead reiterated that the 'paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case.'[46] And also in *Barclays Mercantile Business Finance Ltd v Mawson*, the House of Lords unanimously restated that the 'essence of the new approach was to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description.'[47] Following that restatement, the UK law lords clarified

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[42] ibid at [71].
[43] *W T Ramsay Ltd* (n 6).
[44] ibid 323 (emphasis added).
[45] ibid 323–324 (emphasis added).
[46] *MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd* [2003] 1 AC 311 at [8].
[47] *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2005] 1 AC 684 at [32].

that 'this does not mean that the courts have to put their reasoning into the straitjacket of first construing the statute in the abstract and then looking at the facts. It might be more convenient to analyse the facts and then ask whether they satisfy the requirements of the statute. But however one approaches the matter, the question is always whether the relevant provision of statute, upon its true construction, applies to the facts as found.'[48]

[92] The House of Lords did not see the *Ramsay* case really as 'introduc[ing] a new doctrine operating within the special field of revenue statutes. On the contrary, … it rescued tax law from being "some island of literal interpretation" and brought it within generally applicable principles.'[49] Its overarching value was to eschew the 'particular vice of formalism' in the area of tax law, which came in the form of 'the insistence of the courts on treating every transaction which had an individual legal identity … as having its own separate tax consequences, whatever might be the terms of the statute.'[50]

[93] In sum, the *Ramsay* doctrine holds that judges are to ascertain the real substance of the transaction they are dealing with and to see whether it falls within the intended regime of the taxing legislation considered as a whole. Judges are not to allow austere legalism to control the interpretive outcome. Nor does the doctrine readily allow judges to wash their hands like Pontius Pilate whenever a difficult question of interpretation of statutory words and phrases rears its head and declare that only the legislature can provide clarity; even though the purpose of the legislation can adequately provide the needed clarity. In that sense, the *Ramsay* doctrine stands in sharp contrast with the literal approach favoured in the 1921 dictum in *Cape Brandy Syndicate v Inland Revenue Commissioners* upon which the Appellant Bank has relied in its submissions on the 'cost of sales' aspect of the case now before this Court. In that case Rowlatt J said: '[I]n a Taxing Act one has to look *merely* at *what is clearly said*. There is no room for any intendment. There is no equity about a tax.

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[48] ibid.
[49] ibid at [33].
[50] ibid at [28]. See also *Rossendale Borough Council* (n 8) at [9]; Burrows (n 27) 4–5.

… Nothing is to be read in, nothing is to be implied.'[51] As Lord Steyn would say in 1997: 'The law has moved on.'[52]

[94] It is a welcome development that this Court has, by virtue of this appeal, accepted the persuasive value of the *Ramsay* doctrine and unanimously given explicit endorsement to purposive interpretation of tax and other revenue legislation that is associated with the doctrine. It is in that light that I examine the contested restriction on the tax deductibility of 'cost of sales' in relation to the banking business in Saint Lucia.

'Cost of Sales'

'Sales' in the Banking Business

[95] As I noted earlier, the Appellant Bank argued the 'cost of sales' issue as if it turns on whether banks 'sell anything.' In my view, the issue doesn't truly turn on that point. If the stalk of banking business is provision of services in exchange for money, just as goods are the stock in trade of a grocery store, then consistent distribution of the national tax burden requires equivalent tax treatment for the bank's services as for the grocery store's goods, whether or not it is accepted that banks 'sell anything.' However, because of the prominence given to the 'selling' point in this litigation, I shall deal with it now.

[96] The central argument deployed by the Appellant Bank, which defines this aspect of the issue, challenges the Comptroller's refusal to allow as deductions from assessable income the Bank's expenses in the manner of interest it paid on customer's bank accounts. As the Appellant Bank's Manager put it in their opening salvo:

> The position adopted by the [Comptroller of Inland Revenue] is founded on the mistaken assumption that the interest expense which a Bank incurs in making a loan out of monies deposited with it on which it has to pay interest to the depositor amounts to a sale, so that the interest expense is to be regarded as the cost of sales. There is absolutely no legal basis for that

[51] *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 at 71 (emphasis added).
[52] See *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] 3 All ER 352 at 371.

> assumption because as a matter of law, the essential characteristics of *a sale involves the presence of a buyer, a seller, something sold and a price or consideration for what is sold. The ordinary business of banking does not involve the sale of anything*. Instead it involves the making of loans to its customers.[53]

[97] That argument together with the case law used to support it were repeated virtually verbatim by counsel for the Appellant Bank in their actual legal submissions.[54] The primary judicial precedent cited in support, on which the trial judge also relied in her reasons, was the dictum of Latham CJ in the Bank Nationalisation Case[55] that the High Court of Australia decided in 1948. In the relevant part, Latham CJ said this:

> The argument of the plaintiffs is that a banker buys and sells credit and that for this reason banking is trade and commerce. But a banker does not buy or sell credit in the same way as a trader buys or sells goods. When it is said that a banker deals in credit the fact is that he receives deposits which he engages to repay or that he lends or agrees to lend money. A loan transaction is a business transaction, but is not therefore itself trade or commerce—unless all business transactions, from building a house to pulling out a tooth, are to be described as trade or commerce simply because they are business transactions. The fact that a business is carried on for profit or that an occupation is pursued for profit does show that it is trade or commerce.[56]
>
> The word "sale" is used in various metaphorical senses. When a man enters into a contract of employment he is sometimes said to "sell his labour," but really there is no transaction of sale; the contract is a contract of employment, not a contract of sale. Similarly, when a banker "deals in credit" he makes loan contracts and does not sell anything. [57]

[98] As a matter of evidence, it was not investigated or established that the term 'cost of sale' had any specific meaning that precluded application to the service side of business such as banking. The best evidence in that regard might be the opinion of the Comptroller and the Tax Appeal Commissioners who may be presumed to be quite familiar with the world of accounting, finance and commerce.

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[53] See Record of Appeal, 'Notice of Appeal' 70, at [34] (emphasis added).
[54] See Record of Appeal, 'Appellant's Legal Submissions' 325, at [73].
[55] *Bank of New South Wales v Commonwealth* (1948) 76 CLR 1.
[56] ibid at 234.
[57] ibid.

[99] On the merits of the point, I am less than confident that the concept of 'cost of sales' was ever understood as limited in application to the commerce of goods. Even Latham CJ himself alluded to the ubiquity of the word 'sale', noting its application even to labour. But the virtual irony of hiding boldly in plain view cannot, as an elementary proposition, afford reasonable refuge even to the error of limiting so protean a concept as 'sales' to goods alone.

[100] For purposes of this appeal, Latham CJ's dictum (assuming he was right) is as remote to the present question as it must be that he spoke at best to a past era in the evolution of a living language.[58] To begin with, the subject matter in the case before him was the constitutional validity of a statute challenged on grounds that it violated the constitutional guarantee of inter-state trade and commerce in the Australian federation. The case had nothing to do with the tax treatment of 'cost of sales' in the banking business. Even then, Latham CJ's dictum was based solely on his own intellectual preferences: he did not proceed on any evidence which ruled out the possibility that banks considered themselves at the time as engaged in trading or 'sales'. That, of course, is the issue before us.

[101] 'A century and a half later it is sometimes necessary to consider the force of reasoning in decided cases', said Lord Steyn.[59] I agree. But it is not always necessary, in my view, to wait that long. Half that time is amply long for outlooks and attitudes to change in our fast-paced world.

[102] Relevant data in usage of the word does not justify precluding the word 'sale' from the service side of commerce. According to the *Shorter Oxford English Dictionary*, sales means '[t]he action or an act of giving or agreeing to give *something* to a person in exchange for money' (emphasis added).[60] The 'something' given for

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[58] Even Latham CJ was correct in his short shrift to the application of 'sales' to the business of banking in 1948—a highly doubtful proposition—there can be no assurance that his point of view would be supported by the evolutionary phenomenon of the English language. It is a phenomenon according to which the *Oxford English Dictionary* recorded 'about 185,000 new words, and *new meanings of old words*' in the English language between 1900 and 1999. See John Ayto, 'Twentieth Century English - An Overview' (Oxford English Dictionary) < www.oed.com/discover/twentieth-century-english-an-overview/ > accessed 28 September 2025. As will become apparent in this opinion, there is every reason that the application of 'sale' to the business of banking must be at least one of those evolutionary changes.

[59] See *Mannai Investment Co Ltd* (n 52) at 371.

[60] *Shorter Oxford English Dictionary on Historical Principles* (6th edn, Oxford University Press 2007).

money can undoubtedly be 'goods.' But it is not established that 'services' had never similarly qualified as 'something' bought and sold or traded, such that it must now remain excluded until evidence of its inclusion is shown or until Parliament sees fit to make that crystal clear. Care is certainly necessary in determining where to draw the appropriate line on a spectrum of possibilities, to avoid overreaching characterisation as 'sales' all incidents of provision of services in exchange for money. Even so, it may be a matter of lexical fussiness rather than of practical outcomes. Some may see no difficulty whatsoever in applying the term 'sales' to the services of a medical surgeon—especially if he were a plastic surgeon in the business of making money—if to do so would only ensure that he is not treated more favourably by the tax authorities than they would treat the owner of the roadside roti kiosk. Still, the need for care need not involve inordinate anxiety in allowing that recognition in the appropriate case. Much depends on the context, especially where there is a general acceptation within the relevant sector—as is the case in banking—that their business involves trading and 'sales' of 'products' and services.

[103] An encyclopaedia of banking published in 1922 informed readers about 'sale of bonds', 'preferred and common stock,' 'dividends,' 'sale of stocks'.[61] And in a subsequent section titled 'Bank's service aids depositors', the following information is provided: 'Your bank will *buy* or *sell* securities of this character through reputable brokers without additional charge. It is part of their *service* and a valuable protection to their depositors.'[62] In another early banking primer published by the American Institute of Banking (AIB) in 1922, the notion of 'brokerage account' is explained as representing 'the amount due to brokers for their commissions earned on *purchase and sale transactions made by the bank* through them.'[63] In yet a further AIB publication of the same vintage, one of the functions of the investment bankers is explained as follows:

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[61] *Encyclopaedia of Banking* (1922) 52–53.
[62] ibid 55 (emphasis added).
[63] *Elementary Banking* (American Institute of Banking 1922) 427 (emphasis added).

> It is one of the functions of the investment banker to determine the inherent soundness of corporate undertakings which are to be financed through the *sale* of securities. All possible sources of information are consulted. The expert accounting firm will be requested to prepare a statement of the financial condition of the borrowing corporation. Engineers will be called in to make technical analysis of the plant and the product. Financial experts and experienced business men will furnish information covering the management and business policy. When all this information is assembled it is analyzed by experts trained in this field of banking. The amount of the securities to be issued, the nominal rate of interest bonds are to bear, the *price* at which securities are to be *sold* to investors are largely determined by the investment banker. When these details have been arranged, the banker may consent to advance the needed funds, while the corporate mortgage is being drawn and the bonds are being prepared and *sold*.[64]

[104] In a contemporary publication by Moody's Analytics titled 'Developing High Impact Sales Culture: Best Practices for Bank Leadership,' the question is posed: 'Haven't all banks adopted cross-selling as a business imperative?' The answer is given as follows:

> Of course. You'd be hard-pressed to find a bank that hasn't targeted cross-*selling* as pivotal to its success. It's well-established that acquiring new customers *costs much more* than retaining and deepening relationships with existing ones, and that the more *products* and *services* customers use, the less likely they are to leave. Banks have capitalized on this information by requiring employees to cross-*sell* during their interactions with customers and prospects.
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> In fact, banks often tout their products per customer ratio as evidence of their cross-*selling* success. Many have exceeded their six *products* per household range.[65]

[105] As part of developing high impact sales culture, bank leaders are encouraged to incorporate five best practices. The first three are:

1. Communicate the importance of *sales*
2. Incorporate *sales* into job descriptions

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[64] *Standard Banking* (American Institute of Banking 1928) 244 (emphasis added).
[65] Moody's Analytics, 'Developing High Impact Sales Culture: Best Practices for Bank Leadership'< developing-a-high-performing-sales-culture.pdf > accessed 28 September 2025 (emphasis added).

3. Train managers to have effective *sales* conversations (emphasis added).

[106] It is evident that one sense of the verb 'sell' or 'cross-sell' and its derivative noun 'sale' revealed in the Moody's Analytics publication entails advertising, solicitation or persuasion. There, however, is no denying that, even in that context, the concept of 'sales' ultimately entails also a successful outcome in such advertising, solicitation or persuasion effort: that is to say, provision of bank services or 'product' in exchange for the customer's money. Thus, the transaction begins with advertising, solicitation or persuasion and culminates in the provision of that which is advertised, solicited or urged in exchange for money.

[107] As also seen of the concept of 'sales' in the banking business as reviewed thus far, 'sales' means the exchange of services for money, not just advertising, solicitation or persuasion. Additional evidence of that sense of the word in the banking business is a piece published in 1987 by two economists who worked at the Federal Reserve Bank of Chicago. They inform the reader as follows:

> Banks are increasingly *selling* loans, either outright, through participations and syndications, or through "securitization." Loan *sales* are not a new phenomenon. Commercial loan participations and overlines are quite common, but there is some evidence that commercial loan *sales* are increasing. In 1984, commercial banks *sold* roughly $148 billion of loans. By 1985, loan *sales* by commercial banks jumped nearly 75 percent to $258 billion. *Sales* of other types of loans are also picking up. The *market* for mortgage-backed securities has mushroomed from a $500-billion industry in 1981 to a $2-trillion industry in 1985. In addition, in the last year or so, the *market* for "securitized" consumer instalment loans has been expanding. Packages of auto loans and credit card receivables are increasingly being *sold* to third-party investors. In 1985, for example, only about $1 billion of auto loans were securitized, but in 1986, $10 billion were *sold* under this method.[66]

[108] As it is, the corporate attitude of the Appellant Bank is to see itself as engaging in 'sales', notwithstanding the arguments made on its behalf in this case claiming that 'BNS does not have any sales or cost of sales, as reflected by its financial

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[66] Christine Pavel and David Phillis, 'Why Commercial Banks Sell Loans: An Empirical Analysis' (1987) 11 *Economic Perspectives* 3.

reporting'[67] and that the 'ordinary business of banking does not involve the sale of anything.'[68]

[109] That argument is starkly contradicted by the following information from the Appellant Bank itself. At p 122 of the Appeal Record, there's a letter dated 27 April 2012 under the letterhead of Scotiabank (Managing Director's Office for Caribbean East), written by Margaret Stuart, Senior Manager, Finance.[69] At p 2 of that letter, Ms Stuart informed that on behalf of the Appellant, the 'Jamaica subsidiary operates as a contact centre in relation to inbound and outbound service calls. The personnel also make *sales* calls in order to drive business' (emphasis added).

[110] Regarding particularly the written submission that 'BNS does not have any sales or cost of sales, *as reflected by its financial reporting*',[70] it is impossible to ignore certain obvious contradictions in the Appellant Bank's 2024 Annual Report. First, it proclaims its 'product bundle' and 'Scotiabank products'.[71] It may be observed that whenever a commercial enterprise sees itself as dealing in 'products', the next obvious step becomes to 'sell' them. Second, as with 'products' so too 'markets'. In his opening message, the Appellant Bank's Chief Executive Officer announces: 'We will continue to reallocate capital from developing to developed *markets* …'.[72] It is not necessary to inquire here into any implications of the message about '*reallocat*[ing] capital from developing to developed markets' (emphasis added), in the sense of asking whether outlooks of that kind might excite a broader concern on the part of states in those 'developing … markets' regarding base erosion and profit shifting ('BEPS'), a 'serious concern' now recognised internationally,[73] which entrenches the need to collect withholding taxes on the capital that is being

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[67] See Bank of Nova Scotia, 'Written Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 17 February 2025, [63.3].
[68] See Record of Appeal, 'Appellant's Legal Submissions' 325, at [73]. See also Record of Appeal, 'Notice of Appeal' 70, at [34] (emphasis added).
[69] Record, 122.
[70] See Bank of Nova Scotia, 'Written Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 17 February 2025, [63.3].
[71] Bank of Nova Scotia, *Scotiabank Annual Report 2024*, 4.
[72] ibid 9.
[73] See United Nations Department of Economic and Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries* (United Nations 2021) 393. Also, see generally Organisation of Economic Cooperation and Development, 'BEPS Multilateral Instrument' < https://www.oecd.org/en/topics/beps-multilateral-instrument.html > accessed 28 September 2025.

reallocated out of their regions. For present purposes, we must constrain ourselves to the immediate and limited significance of the occurrence of the word 'markets' in the CEO's message. It primarily connotes a place where things are bought and sold. Third, the word 'Repos' is defined (in the Glossary of terms used in the Annual Report) in ways that stress the selling of things:

> **Repos**: Repos is short for "obligations related to securities *sold* and *repurchase* agreements"—a short-term transaction where the Bank *sells* assets, normally government bonds, to a client and simultaneously agrees to *repurchase* them on a special date and at a specified price. It is a form of short-term funding.[74]

[111] Similarly, at p 151, the reader is given a sense of what the bank calls 'assets.' Again, indicating sales of assets. Under the subheading 'Financial assets and liabilities,' the process of 'Recognition and initial measurement' of assets and liabilities is described as follows:

> The Bank, on the date of origination or purchase, recognizes loans, debt and equity securities, deposits and subordinated debentures at the fair value of the consideration paid or received. Regular-way purchases and sales of financial assets are recognized on the settlement date. All other financial assets and liabilities, including derivatives, are initially recognized on the trade date at which the Bank becomes a party to the contractual provisions of the instrument.
>
> The initial measurement of a *financial asset* or liability is at fair value plus *transaction costs* that are *directly attributable to its purchase or issuance*. For instruments measured at fair value through profit or loss, transaction costs are recognized immediately in profit or loss.[75]

[112] Other instances of the Appellant Bank's use of the term 'sale' or associated terminology in its operations include:

- 'Net gain on *sale* of investment securities'[76]

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[74] *Scotiabank Annual Report 2024* (n 71) 133 (emphasis added).
[75] ibid 151 (emphasis added).
[76] ibid 31 (emphasis added).

- ‘specialized *sales* teams’[77]

- ‘**2025 Priorities’** include ‘*Sales* and channel effectiveness: Improve overall *sales* infrastructure in *Retail*, Small Business and Commercial Banking to drive consistency’[78]

- ‘2024 Achievements’ include ‘Built strong momentum in broadening investment advice to *retail* clients with mutual funds *gross sales* increasing significantly over the same period last year.’[79]

[113] Notably, the Appellant Bank is not alone in announcing itself as engaged in the business of sales. A similar review of the annual reports of peers—particularly, CIBC and Royal Bank of Canada (RBC)—evidently shows that such self-description is something of a current custom in the banking sector. It has been so since at least the turn of the century and certainly so immediately before the latest amendment—in 2006—of the Saint Lucian ITA.[80]

[114] There is, then, nothing perverse about the Comptroller similarly recognising that reality. The tax consequences of that reality include the Comptroller’s refusal to allow tax deductions for the costs of sales of such products and services, in accordance with s 39(1)(b)(ii) of the ITA of Saint Lucia.

Applicability of Cost of Sales Concept to the Banking Business

[115] Before the Tax Appeal Commission, counsel for the Appellant Bank submitted that as a matter of international accounting practice the tribunal should take judicial notice that banks do not, and never have, reported ‘Cost of Sales’ in their financial statements.[81] That argument was essentially repeated in their written submissions before this Court.[82] I’m not persuaded. As we have seen, banks, including the Appellant Bank in particular, are widely known to hold themselves out as ‘selling’,

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[77] ibid 41 (emphasis added).
[78] ibid 42 (emphasis added).
[79] ibid 48 (emphasis added).
[80] See generally Canadian Imperial Bank of Commerce, *CIBC Annual Report 1998*; Canadian Imperial Bank of Commerce, *CIBC Annual Report 1999*; Bank of Nova Scotia, *Scotiabank Annual Report 1999*; Royal Bank of Canada, *Royal Bank of Canada Annual Report 2000*; Bank of Nova Scotia, *Scotiabank Annual Report 2005*; Canadian Imperial Bank of Commerce, *CIBC Annual Accountability Report 2005*; Royal Bank of Canada, *Royal Bank of Canada Annual Report 2005*.
[81] Record of Appeal, ‘Appellant’s Legal Submissions’ 324, at [72].
[82] See Bank of Nova Scotia, ‘Written Submissions on behalf of the Appellant’, Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 17 February 2025, [63.4].

or have ‘sales’ of, ‘products’ and services. For tax purposes, then, it cannot matter that it is their general practice as an industry to refrain from ‘report[ing] ‘‘cost of sales’’ in their financial statements.’ It cannot matter as long as an objective appreciation of those sales (which they advertise themselves as engaging in) are transactions the ‘true nature’ of which, according to principles of purposive interpretation, are transactions that come at costs equivalent to costs that would produce for other businesses the same tax consequence that the Appellant Bank now seeks to escape. Lord Denning rightly addressed this point in *Ralli Estates Ltd v Commissioner of Income Tax*. He observed that ‘courts are not bound by the description [that parties prefer for their transactions.] The parties cannot alter the true nature of the payments by giving a different label to them. … Everything depends in the last resort on the true nature of the payments as determined by the courts …’.[83] Similarly in*, Ensign Tankers (Leasing) Ltd v Stokes (Inspector of Taxes)*, Lord Templeman observed that ‘in every case actions speak louder than words and the law must be applied to the facts.’[84] Although Lord Templeman was speaking in another context, that formulation aptly describes what Lord Denning was driving at, which serves the point I labour to make here.

[116] Against that background, I see pronounced difficulties in the learned trial judge’s reasoning that accepted the Appellant Bank’s submissions under consideration, the culmination of which is her declaration at [86] that ‘[w]hen I examine what cost of sales is, I am unable to understand how interest expenses could [be classed] as cost of sales.’ Hence, she concluded at [88], that ‘there is no basis for the conclusion that interest expenses are included in ‘‘cost of sales’’ for the purposes of section 39(1) of the Act or that it is merely a form of calculation in arriving at the cost of service … That is attributing an expanded meaning to cost of sales which as has been seen does not apply to banks or financial institutions which are not engaged in sales.’

[117] With respect, I do not see the difficulty that the learned trial judge saw. At [83], she correctly observed: ‘It is instructive to note that the term ‘cost of sales’ is not defined

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[83] *Ralli Estates Ltd v Commissioner of Income Tax* [1961] 1 WLR 329 at 334.
[84] *Ensign Tankers (Leasing) Ltd v Stokes (Inspector of Taxes)* [1992] 1 AC 655 at 677.

in the Act. Cost of sales as I understand it is a term used in accounting. It has a specific meaning within that sphere.' That observation follows a general run of a definition she noted at [81], which is widely available on the internet: 'The ''cost of sales'' also known as ''cost of goods sold'' is the accumulated total of all costs used to create a product or service, which has been sold to a customer. The cost of sales is a key part of the performance metrics of a company, since it measures the ability of an entity to design, source, and manufacture goods at a reasonable cost. The term is most commonly used by retailers. Cost of sales leaves interest expenses out of the equation.'

[118] Indeed, the main thrust of that definition is generally consistent with the definitions set out in reliable works in the accounting, finance and banking world. Notably, the *Oxford Dictionary of Accounting* defines *'cost of sales (cost of goods sold; COGS)'* as follows:

> A figure representing the cost to an organization of supplying *goods or services* for sale, excluding administration and other general overheads. In a sales organization, it is the *opening stock at the beginning of an accounting period plus the purchases for the period, less the closing stock at the end of the period. In a manufacturing organization, the purchases for the period would be replaced by the *production cost of finished goods for the period. In a service providing organization, the cost of sales would be calculated as *direct costs adjusted by the opening and closing values of *work in progress. The cost of sales figure is deducted from the *sales revenue to obtain the *gross profit for the period. See also DIRECT COST OF SALES.[85]

[119] Similarly, the *Oxford Dictionary of Finance and Banking* defines *'cost of sales (cost of goods sold; COGS)'* as '[a] figure representing the cost to an organization of supplying goods or *services* for sale, excluding the costs of finance, administration, and general overheads. The cost of sales is deducted from the sales revenue to obtain the *gross profit for the period.'[86]

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[85] *Oxford Dictionary of Accounting* (4th edn, Oxford University Press 2010) 118–119 (emphasis added). See also *Oxford Dictionary of Accounting* (3rd edn, Oxford University Press 2005) (emphasis added).
[86] *Oxford Dictionary of Finance and Banking* (4th edn, Oxford University Press 2010) (emphasis added).

[120] In *Fundamentals of Managerial Accounting and Finance* by Mills and Robertson, the fourth edition of which was published in 1999, 'cost of sales' is explained in these words:

> COST OF SALES: The cost of sales includes wages and the depreciation of equipment, as well as the value of the materials and *services* the companies in the group have bought during the year in order to make the goods or provide the *services* that *they sell*. These materials and services will include such items as raw materials, components, power for machinery and heating, maintenance bills and fuel for vehicles.[87]

[121] It is immediately evident in these definitions that the concept of 'cost of sales' is not limited to the business of those who deal in chattels, as the Appellant Bank persuaded the learned trial judge to accept. It also applies to the business of those who supply 'services for sale.' Other notable reference materials that explain 'cost of sales' as 'expense for producing goods and services' are set out at this footnote.[88] Perhaps, the point of the matter should be obvious, at the barest minimum, from the following sensible explanation of cost accounting: 'The Management of a business in addition to wanting explanations for variations in the gross profit will also want to know in detail how the other expenses have changed between the gross profit and net profit levels.'[89] I'm not persuaded that this all makes sense for all other businesses except banks: especially when it is clear that 'cost of sales' is a convenient terminology for the general idea. That 'cost of sales' is only a convenient terminology is sufficiently clear from the pointed explanation of the concept in *The McGraw-Hill 36-Hour Course: Finance for Nonfinancial Managers* written by a certified public accountant:

> Indeed, there is something to be said for the fact that the Appellant Bank was, as we A business that sells products must buy or manufacture those products. … [T]hat expense is called *cost of goods sold*. An enterprise that provides services will find that the people it hires to perform the services

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[87] Roger Mills and John Robertson, *Fundamentals of Managerial Accounting and Finance* (4th edn, Mars Business Associates 2003) 94 (emphasis added).
[88] Terry Dickey, *Basics of Budgeting: Become a Better Business Planner* (2nd edn, Axzo Press 2010) 68; Robert A Cooke, *The McGraw-Hill 36-Hour Course: Finance for Nonfinancial Managers* (2nd edn, McGraw-Hill 200) 37, 49–50; Steven M Bragg, *The Interpretation of Financial Statements* (Accounting Tools Inc 2015) 99; Mike McKeever, *How to Write a Business Plan* (12th edn, Nolo Press 2015) 129.
[89] See Frank Wood and Joe Townsley, *Managerial Accounting and Finance* (Pitman Publishing 1983) 181.

> expect to be paid for their efforts. That labor usually is called *cost of sales* or *cost of services*.[90]

[122] Indeed, there is something to be said for the fact that the Appellant Bank was, as we have seen, in the 'practice' of treating interest paid on customers' bank accounts as non-deductible 'cost of sales' in the income years 2008 and 2009 before it reversed course in 2010 thus resulting in this litigation.[91]

[123] The extended confusion in the learned trial judge's reasoning begins, in my view, with the last sentence in her definition at [81], ie that 'Cost of sales leaves interest expenses out of the equation,' together with the following observations in [82]: 'Interest expense is a non-operating expense shown on the income statement. It represents interest payable on any borrowings—bonds, loans, convertible debt or lines of credit.' The combined message of those two features of her reasoning materially miscarried her analysis, leading her to conclude that 'cost of sales' is a concept with no valid application to banks and other financial institutions.

[124] The confusion involves her failure to recognise that what 'interest' means to the business of a dealer in chattels is entirely different from what it means in relation to a bank customer's account. To a greengrocer, for instance, the loan that occasions the interest obligation upon her will result typically from a start-up loan (to buy or lease premises, equip it and stock her initial inventory) or occasional loans (to maintain the premises or restock inventory). And once her business gets off to a running start and becomes profitable, she may no longer need further loans, as she may plough back a portion of her profits to her business operations. In that sense, the loans she took would be treated as capital expenses—or, at best, indirect cost of sales—spread out over time. It thus makes sense to 'leave [such interest obligations] out of the equation' as 'cost of sales.'

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[90] Robert A Cooke, *McGraw-Hill 36-Hour Course: Finance for Nonfinancial Managers* (2nd edn, McGraw-Hill 2004) 37, 49–50 (emphasis added).
[91] See Record of Appeal, 'Appellant's Legal Submissions' 68, at [31]. See also Record of Appeal, 'Amended Notice of Appeal' 165, at [42].

[125] The same is not true of the operations of a bank. Banks deal in money for profit. That basic business model entails taking money from their customers (often requiring customers to maintain a minimum level of cash supply to the bank), paying interests (when they do) to customers at a comparatively low rate on such bank accounts, then turning around and lending that money to third parties at higher interest rates. The difference between the two types of interest rates comprises the profit margin for the bank, rather than for the customer. It is in that sense that the business of banks is to deal in money for profit, in the same way that the grocer's business is to deal in milk and cheese and other grocery items for profit. In that scenario, interest payments on customers' bank accounts are not an occasional feature of the banking business: it is the daily and very grist of it. Hence, such interest payments comprise neither capital expenditure nor an indirect cost of business, but a mainstay of the revenue mill, a most 'direct cost of sale' so to speak.

[126] Notably, the inherent error of failing to recognise the difference in the illustration above—the outcome of which is that the chattel trader is denied tax deduction for 'cost of sale' for her goods while the bank is allowed to deduct the equivalent in the form of the interests it pays on customers' bank accounts—is not merely hypothetical in the context of income taxation in Saint Lucia. There is evidence in the records of this case that the Saint Lucian taxing authorities do deny chattel sellers tax deductions for 'cost of sales' that are notionally equivalent to the bank accounts interest that the Appellant Bank seeks to deduct. As the Comptroller put in an exchange with the Appellant Bank, '[t]he above measure of cost of sales has been the practice by the Department with all taxpayers when applying Sections 39(1) of the Income Tax Act, Cap. 15.02.'[92] The inequity of the outcome speaks for itself. A judicial acceptance of that outcome by allowing this appeal would upset the rule of

[92] See Record, 69.

construction against absurdity,[93] as well as the rule that favours coherence and self-consistency in the statutory scheme.[94]

[127] The literature reviewed above—coming from the world of accounting, finance and banking—radically undermines the Appellant Bank's arguments: (a) that the OECD literature to the effect that services are a major part of the global economy 'does not in any way support the proposition that "cost of sales" should be interpreted in the context of s 39 to include more broadly any costs incurred in providing services'[95]; and, (b) that '[t]here does not appear to be any good reason to depart from the meaning ascribed to a term that, even in modern times, is so clearly understood in the business world and the world of commercial accounting that no reasonable person would consider it meant anything more than that.'[96]

[128] A burning flaw in the Appellant Bank's argument, and in the reasoning of the learned trial judge that accepted it, came with the assumption that the term 'cost of sales' as employed in s 39(1)(b)(ii) was, in the absence of a statutory or common law definition, limited to goods only and not to services, because the acceptation of

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[93] Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020) correctly explained the rule against absurdity in the following way:

> 13.5 The presumption against absurdity means that the courts will generally avoid adopting a construction that creates an anomaly or otherwise produces an irrational or illogical result.
> *Comment*
>
> An effective legal system seeks to avoid unjustified differences and inconsistencies in the way it deals with similar matters. As Lord Devlin said, 'no system of law can be workable if it has not got logic at the root of it.'

One example cited by *Bennion* in the application of this rule of construction was *Mills v Cooper*. The Highways Act 1959, s 127, made it an offence if 'without lawful authority or excuse . . . a hawker or other itinerant trader or a gipsy pitches a booth, stall or stand, or encamps, on a highway.' It was urged that the word 'gipsy' should be given its dictionary meaning, as being 'a member of the Romany race.' But Lord Parker CJ was 'quite satisfied' that 'gipsy' in the context could not bear that meaning. As he put it: 'That a man is of the Romany race is, as it seems to me, something which is really too vague of ascertainment, and impossible to prove; moreover it is difficult to think that Parliament intended to subject a man to a penalty in the context of causing litter and obstruction on the highway merely by reason of his race.' In the context, then, it was held that '"gipsy" means no more than a person leading a nomadic life with no, or no fixed, employment and with no fixed abode.' *Mills v Cooper* [1967] 2 QB 459 at 466–467.

[94] ibid. This rule has been explained as follows:

> 26.8 It is a principle of legal policy that law should be coherent and self-consistent. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account.
> *Comment*
> The law should be coherent and as simple and straightforward as possible. The courts will therefore tend to prefer a construction that avoids inconsistency, overlapping rules or arbitrary distinctions.

[95] See Bank of Nova Scotia, 'Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 23 May 2025, 935, at [61].

[96] See Bank of Nova Scotia, 'Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 23 May 2025, 935, at [62].

the concept was universally so limited in the accounting and finance world. That assumption is palpable in the quite optimistic plunge that the Appellant Bank took with this run of submissions: since 'cost of sales' is not defined in the Income Tax Act, 'We must assume, therefore, that the drafters anticipated that its meaning will be derived from its technical usage in the accounting industry from which the phrase originates.'[97] Next in that movement came the submission that '[a]s a matter of industry practice and generally accepted accounting principles, financial institutions more generally, also, do not have any costs of sales.'[98] Consequently, it was argued, 'the term ''cost of sales'' should be interpreted through its plain meaning and should not be given a liberal interpretation that contravenes all commercial and legal principles that underlie the banking sector and the accounting standards that are adopted by the industry on a consistent and modern basis.'[99]

[129] In the light of the approach of purposive interpretation, the assumption (reprised above) upon which the foregoing argumentation was built was always risky. As Lord Hodge sensibly said in the *Rangers FC* case: 'The breadth of the wording of the tax charge and the absence of any restrictive wording in the primary legislation, do not give any support for inferring an intention to exclude from the tax charge such a payment to a third party which the employer and employee have agreed as part of the employee's entitlement. Both sums involve the payment of remuneration for the employee's work as an employee.'[100] Purposive interpretation should make the essential point of that observation readily adaptable to an inquiry into the 'breadth of' the term 'cost of sales,' given the 'the absence of any restrictive wording' that precludes the application of the concept to the service side of commerce.

[130] But, as would have become clear by now, the fatal blow to the Appellant Bank's argument comes in earnest in the form of the impressive body of literature from the

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[97] See Record of Appeal, 'Appellant's Legal Submissions' 324, at [70].
[98] See Bank of Nova Scotia, 'Written Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 17 February 2025, 936, at [63.4].
[99] See Bank of Nova Scotia, 'Written Submissions on behalf of the Appellant', Submission in *Bank of Nova Scotia v Comptroller of Inland Revenue,* SLUHCVAP2022/0007, 17 February 2025, 936, at [64].
[100] *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland* [2017] 1 WLR 2767 at [39].

accounting and finance world some of which I have reviewed in this opinion. They inescapably establish that 'cost of sales' is a concept that also applies to the provision—or 'sale', as it were—of commercial services.

[131] Without a doubt, the conclusions of the Comptroller, the Tax Appeal Commission, and the Court of Appeal regarding the meaning of 'cost of sales' are amply borne out by that literature in the absence of its definition in the *Income Tax Act*. It is the position of the Appellant Bank that is not.

Applying the Principles to the Facts

[132] In *Plain Words*, a classic text on the 'use of English,' Sir Ernest Gowers observed that 'words, with their penumbra of meaning, are an imperfect instrument for expressing complicated concepts with certainty.'[101] That phenomenon gives strong value to the approach of purposive interpretation of statutes. It directs judges to ascertain the purpose of the legislation and give it effect in cases that fall reasonably within that purpose notwithstanding imprecisions in language. This is so because what a provision amounts to is not the same thing as the meaning of discrete words and phrases used to draft it. Slippages in words and phrases can occur without derailing the legislative direction relative to the facts of a given case. It was essentially in recognition of that phenomenon that we held by virtue of Anderson P's opinion that sch 3 of Saint Lucia's Income Tax Act clearly contemplates the phrase 'or branch' notwithstanding the legislative omission of that phrase after the word 'person.' A parity of reasoning requires us to accept that s 39(1)(b)(ii) clearly contemplates the words 'or cost of services' notwithstanding the legislative omission of that phrase after 'cost of sales.' This is because it is now clear that the general notion of 'cost of sales' is also understood in the accounting and finance world to apply to the service side of business.

[133] Considering that the basic unit of the bank's service is to hold money for customers, which it then lends to third parties at a profit for itself, the notion of cost of sales or

[101] See Sir Ernest Gowers, *Plain Words: A Guide to the Use of English* (Penguin Books 2015) 12.

cost of services operates at that level, in the form of the interests that the bank pays to its customers for the privilege of using their money to generate its own profits.

[134] For these reasons, I would dismiss this ground of the appeal.

Postscript

[135] Notwithstanding my reasoning and disposition on the question discussed in this opinion—and indeed Anderson P's opinion—it is important that the legislature should endeavour to reduce the scope for debate in these matters. The system cannot reliably depend on what has been awkwardly described as the 'judicial gloss.' As UK Supreme Court's Lord Hodge put it in the *Rangers FC* case: 'the courts at the highest level have repeatedly warned of the need to focus on the words of the statute and not on judicial glosses, which may clarify or illustrate in a particular case but do not replace the statutory words.'[102] In the earlier case of *Laidler v Perry*, Lord Reid at the House of Lords (as it then was) had similarly observed:

> There is a wealth of authority on this matter and various glosses on or paraphrases of the words in the Act appear in judicial opinions, including speeches in this House. No doubt they were helpful in the circumstances of the cases in which they were used, but in the end we must always return to the words in the statute …[103]

Disposition and Order

[136] The appeal is dismissed. Based on the proposals on costs submitted in the parties' respective case management checklists and with reference to r 17.15 and sch 2 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024, costs in the sum of XCD58,061 (being 2 per cent of the value of the appeal) is awarded to the Respondent against the Appellant.

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[102] *RFC 2012 plc* (n 99) at [11].
[103] *Laidler v Perry* [1966] AC 16 at 30.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji