



TC07977

INSURANCE PREMIUM TAX – liability to be registered – assessment – supply of a hired car and insurance by the appellant to drivers who reimbursed the appellant for the cost of taking out insurance to cover risks associated with the vehicle – whether provision of insurance to the drivers – yes – whether contract of insurance – no – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/05978

BETWEEN

GB TAXI SERVICES LIMITED

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE NIGEL POPPLEWELL

The Tribunal determined the appeal on 11 December 2020 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because of the Covid-19 pandemic. The documents to which I was referred are detailed in the decision and included two sets of written submissions from Giselle McGowan on behalf of the Respondents and two sets of written submissions from Nigel Gibbon on behalf of the Appellant.

DECISION

INTRODUCTION

1. This appeal concerns Insurance Premium Tax (“**IPT**” or “**the tax**”). The appellant owns a fleet of black taxi cabs which it leases to drivers or to businesses. It insures these vehicles under a fleet policy with an insurance company. The appellant’s position is that it hires these vehicles to those drivers under a contract for the provision of a fully insured vehicle for which the drivers pay a rent. It does not provide separate insurance to the drivers under a contract of insurance. HMRC think otherwise. They think that the appellant provides firstly a vehicle and secondly (and separately) insurance for that vehicle, under a contract of insurance, which thus brings it within the ambit of the tax.

2. They consider that the appellant was liable to have been registered for IPT with effect from 22 June 2011 (the date of the appellant’s incorporation) and they have assessed the appellant to IPT of £58,508.12 for the period 1 December 2012 to 31 December 2016 (the “**assessment**”).

3. The issues that I have to determine is whether the appellant was liable to be registered for IPT, and liable too for the tax assessed. As far as the assessment is concerned, the appellant has not submitted, for example, that it was not made to best judgment, or that it is numerically incorrect. It says that it does not meet the statutory conditions for being charged to tax in the first place, nor is it liable to be registered for the tax.

4. The relevant law relating to registration for IPT is set out in more detail below, but, in a nutshell, the appellant is only liable to be registered if it carries on a business which includes the provision of insurance and receives a payment under a contract of insurance in the course of that business.

5. For reasons given later in this decision it is my view that the appellant does carry on a business which includes the provision of insurance for which it receives payments, but those payments are not made under contracts of insurance. In these circumstances the statutory requirements for compulsory registration for IPT are not made out. The appellant is not liable to be registered for IPT, nor is it liable for tax under the assessment, and I allow this appeal.

BRIEF BACKGROUND

6. This appeal stems, ultimately, from an application for a refund of VAT made by the appellant’s then representative in February 2017. This refund was claimed on the basis that the appellant had been incorrectly accounting for VAT on the insurance element of the vehicle hire to the drivers. Their view was that the insurance element should have been treated as a non VATable disbursement. HMRC rejected that claim in November 2017 but following further correspondence in which the appellant’s representative asserted that the appellant made two supplies to the drivers, one of vehicle hire and one of insurance, HMRC took the tentative view, in February 2018, that the appellant was supplying insurance and was thus liable to be registered for IPT. Further correspondence ensued, following which, in April 2018, HMRC confirmed that tentative view and registered the appellant for IPT with effect from 22 June 2011, and issued the assessment.

RELEVANT IPT LEGISLATION.

7. There appears to be no dispute between the parties as to the relevant legislation which I set out below. These provisions are all in the Finance Act 1994.

“49 Charge to tax.

Tax shall be charged on the receipt of a premium by an insurer if the premium is received—

- (a) under a taxable insurance contract, and
- (b) on or after 1st October 1994.

53 Registration of insurers.

(1) A person who—

- (a) receives, as insurer, premiums in the course of a taxable business, and
- (b) is not registered,

is liable to be registered.

70 Interpretation: taxable insurance contracts.

(1) Subject to subsection (1A) below, any contract of insurance is a taxable insurance contract.

72 Interpretation: premium.

(1) In relation to a taxable insurance contract, a premium is any payment received under the contract by the insurer, and in particular includes any payment wholly or partly referable to—

- (a) any risk,
- (b) costs of administration,
- (c) commission,
- (d) any facility for paying in instalments or making deferred payment (whether or not payment for the facility is called interest), or
- (e) tax

73 Interpretation: other provisions.

(1) Unless the context otherwise requires—

(2) “insurance business” means a business which consists of or includes the provision of insurance;

- (3) “insurer” means a person or body of persons (whether incorporated or not) carrying on insurance business;
- (4) “legislation relating to insurance premium tax” means this Part (as defined by subsection (9) below), any other enactment (whenever passed) relating to insurance premium tax, and any subordinate legislation made under any such enactment;
- (5) “tax” means insurance premium tax;
- (6) “taxable business” means a business which consists of or includes the provision of insurance under taxable insurance contracts;
- (7) “taxable insurance contract” shall be construed in accordance with section 70 above.”

THE EVIDENCE AND FINDINGS OF FACT

8. I was provided with a significant bundle of documents. This included a witness statement and exhibit of Derek Hull, on behalf of the respondents, and a witness statement of Simon Georgiou who is a director of the appellant on behalf of the appellant. I accept their evidence and from these documents I find the following facts:

The correspondence and the contracts with the drivers

- (1) The appellant was registered for VAT with effect from 22 June 2011.
- (2) By letter dated 20 February 2017 the appellant’s representative wrote to HMRC stating that the appellant had overstated the VAT on its returns throughout its filing history. The letter stated that: (i) the appellant rented black cabs to its customers on a weekly basis and paid for insurance on behalf of each of the drivers; (ii) the drivers repaid the amount of the insurance (‘insurance cost’) on a weekly basis along with their weekly rental amount (‘rental cost’); and (iii) the appellant had been declaring the payments made by the drivers of both insurance costs and rental costs on its VAT returns; but (iv) that the insurance cost was a disbursement and should have been treated as such and therefore not had VAT applied to it. The appellant claimed a refund of the VAT said to have been overpaid as a consequence of this of £58,508.12. The letter enclosed amendments to the appellant’s VAT returns for the period 1 December 2012 to 31 December 2016 to correct this error.
- (3) Correspondence ensued between HMRC and the appellant’s representative which culminated in a decision by HMRC on 3 November 2017: (i) that the insurance cost was not a non VATable disbursement; and (ii) that the appellant was providing a single standard rated supply of car hire rather than two separate supplies of car hire and insurance (where the car hire would be subject to VAT and the insurance exempt from VAT). The rationale for this view was that the key to determining whether a single or separate supply is made is based on whether the drivers have an option to insure themselves. Given the terms of the appellant’s representative’s letter set out below, HMRC had concluded that the drivers had no such option and the supply therefore was a single standard rated supply Accordingly, HMRC rejected the repayment claim made in the appellant’s representative’s letter of 20 February 2017.
- (4) As part of that correspondence, in an email dated 10 April 2017, the appellant’s representative confirmed that “I can confirm that the drivers do not have the option to

get their own insurance, as the taxis belong to GB Taxi Services Limited and particularly as some of them are on finance, they cannot allow the drivers to insure themselves, just in case they do not do it - and the finance companies need to know that their assets are adequately insured.”

(5) The representative also sent HMRC five invoices and the corresponding contracts, with the drivers, together with confirmation that in the event of an accident, a driver would contact the appellant as first port of call.

(6) Each of these invoices identifies the registration number of the vehicle, and describes the services provided. For example, in the invoice relating to Martin Sorrell, the description is “18th January 2016 One Week”, underneath which there is a line notated “Insurance”, and underneath that a line notated “Rental”. There are three columns, one headed “Unit Price”, the second headed “VAT”, and the third “Total”. In the case of the Martin Sorrell invoice, the Unit Price for Insurance is £25.48, the VAT is £0.00, so the Total is £25.48. The Unit Price for Rental is £162.10, the VAT is £32.42, and the Total is £194.52. At the bottom of the “Total” column is a box notated “Sub Total” in which the figure £187.58 is included. Below this is an item identified as “Sales Tax”, which is £32.42, and the final box underneath that entitled “Total Due” in which the sum of £220 is included.

(7) The corresponding contract with Martin Sorrell, dated 20 July 2014, is a single page document. It defines Mr Sorrell as the “hirer” and contains approximately 16 paragraphs, over and above identifying the parties, the registration number of the vehicle, and the period of hiring (in the case of this contract, the start date was 12 July 2015 and the end date 2 July 2019). All the paragraphs, bar one, deal with terms relating to the hire of the vehicle, and payment of rent for that hire. However, the final paragraph reads thus:

“GB Taxi Services Ltd will pay the vehicle insurance and the I.P.T on the hirer’s behalf annually and to be repaid by the hirer on a weekly basis as a disbursement, therefore there will be no V.A.T charged.”

(8) Following HMRC’s decision of 3 November 2017, further correspondence ensued between HMRC and the appellant’s representative.

(9) By letter of 24 November 2017 the appellant’s representative accepted that the insurance costs were not ‘disbursements’ but asserted that the appellant made two distinct supplies – one of vehicle rental (which would be subject to VAT) and one of insurance (which would be exempt from VAT). The letter provided that in all cases (i) the drivers were aware they were purchasing two distinct services – insurance and vehicle hire, (ii) the prices were shown separately on the invoices and (iii) the driver agreements did not stipulate any mandatory payment of insurance. The representative also said that:

“I don’t think it can be questioned that the drivers hiring vehicles from GB understand that they are required by law to obtain insurance cover in order to be able to drive a taxi. Of course, GB also knows that drivers require such cover and price their own insurance product accordingly. However, it is only a combination of economic forces, common sense and convenience which dictates that drivers purchase their insurance via GB.”

(10) By letter dated 20 December 2017 HMRC set out two possible ways in which the appellant's supplies to the drivers could operate. Either as a single VATable supply of taxable car rental services (if the insurance cost was not optional) or two separate supplies, one of taxable car hire and one of exempt insurance (if the insurance cost was optional) in which case the appellant would be partially exempt. HMRC also observed that it appeared at that time that the appellant, contrary to the previous information it had been given in the email of 10 April 2017, did give the drivers an option as to whether they could purchase their insurance from the appellant or from a third party and therefore the appellant was making an optional supply of insurance. HMRC asked the appellant's representative to confirm whether this was indeed the case.

(11) By email of 23 January 2018 the appellant's representative stated that (i) the drivers must carry insurance in order to be able to drive the appellant's vehicles on UK roads, (ii) there was no stipulation that drivers must purchase insurance through the appellant and (iii) contracts had not been changed in respect of that particular issue. The email further provided that it "note[d] [HMRC's] point that [the Appellant] was partly exempt".

(12) By email of 14 February 2018 HMRC queried the appellant's representative's assertion that the drivers were not required to purchase insurance through the appellant as being inconsistent with a previous assertion to the contrary and stated that, if HMRC accepted that the insurance cost was optional, it would be a separate supply of insurance and the appellant would need to register for IPT.

(13) By email of 28 March 2018 the appellant's representative stated:

"GB Taxis is of course required by law to ensure its vehicles. However, drivers also require cover to insure their use of the vehicles. It does not matter how the assets are financed. Drivers are still required to ensure that they have cover. GB will naturally demand to see the drivers are sufficiently covered before a vehicle may be hired. On that basis a driver who satisfied GB Taxis that he had sufficient cover to drive one of their vehicles would be permitted to hire a vehicle.

To reiterate the points made in my last letter, drivers are not inclined to obtain their own cover simply because it is both impractical and more costly than doing so through GB - not because they cannot do so."

(14) By email of 9 April 2018 HMRC replied stating that based on the explanation that drivers could take out their own insurance, their understanding was that the appellant had the choice to treat their supplies as a single supply but that this would mean that the appellant would have to register for IPT.

(15) By email of 9 April 2018 the appellant's representative replied stating that the appellant understood what its obligations were as per IPT and requested that HMRC process the VAT repayment claim.

(16) By email of 16 April 2018 HMRC replied stating that (i) the IPT team would register the appellant for IPT, (ii) that an IPT assessment for £58,508.12 would be raised (based upon the figures provided with the appellant's letter of 20 February 2017 in which it claimed the equivalent VAT refund) and (iii) that the VAT refund due as a consequence would be offset against this IPT debt.

(17) On 16 April 2018 HMRC registered the appellant for IPT with effect from 22 June 2011.

(18) On 19 April 2018 HMRC issued an assessment to the appellant of IPT for the period 1 December 2012 to 31 December 2016 in the sum of £58,508.12.

(19) By letter dated 1 May 2018 the appellant's representative requested that HMRC review the decision to register the appellant for IPT.

(20) Further correspondence ensued between HMRC and the appellant's representative which culminated in a letter dated 6 August 2018 in which HMRC upheld the decision to register the appellant for IPT.

(21) On 17 September 2018 the appellant lodged an appeal against HMRC's decision to register it for IPT seeking that its IPT registration be cancelled. By its notice of appeal the appellant claims that (i) it is a block policy holder and recharges part of the cost of this policy to its customers and (ii) that it does not supply insurance to its customers under a taxable contract of insurance. The only IPT due is that which has been paid to the block policy insurance provider.

The witness statements

(22) Mr Simon Georgiou provided a witness statement on behalf of the appellant. He is a director and co-owner of the appellant. The fleet of taxi cabs is insured against loss, damage, theft, injuries to drivers and third parties and accidents through a comprehensive policy with its insurers, New India Assurance Company Ltd ("**New India**"). IPT is charged by New India on the premiums paid on this policy. Persons or classes of persons entitled to drive under that policy means "any driver" which the appellant permits to drive and holds the appropriate DVLA driving licence. The insurance is designed to protect the appellant and its drivers against the eventualities and risks associated with the ownership and use of the vehicles. New India's agent is Walsingham Motor Insurance Ltd, and the appellant's dealings with the insurance providers are conducted principally through its broker. It pays the drivers insurance premiums to New India and recovers those costs from the drivers. In the event of a claim, the appellant would supply all the relevant details to New India via its insurance broker, and the two of them would then handle the matter thereafter. The appellant has no authority to settle claims or make payments to compensate or to cover the costs of third parties. The appellant is not regulated by the FCA and is not required to be.

(23) Mr Derek Hull, Higher Officer of HMRC, provided a witness statement on behalf of the respondents. He explained the difference between a block policy and a fleet policy by reference to an insurance arrangement underwritten by Royal and Sun Alliance Insurance called the Motability scheme. Under a block policy (and it was accepted that the Motability scheme was something of a hybrid) the "insured person" includes both the policyholder (the vehicle owner) and the hirer (the driver). So, insurance is provided directly to the driver. It will be the vehicle owner (i.e. Motability) who will procure that insurance policy. But they do so with, in effect, delegated authority to put the insurance company on risk for anyone within the group (the drivers) who meet the eligibility criteria laid down by the insurance company. Any excess is paid by the hirer/driver (rather than the policyholder). The hirer/driver is required to notify the insurers of any changes in circumstances. So there is a single contract of insurance under which the insurer provides insurance cover directly to the drivers, and

for this reason a block policy is treated, for IPT purposes in a different way from a fleet policy. The appellant's policy with New India is a fleet policy. Under this policy any excess is payable by the vehicle owner (i.e. the appellant) and there is no direct contract between the hirer/driver and the insurance company. There are, therefore, two arrangements under a fleet policy. The first between the policyholder and the insurance company, and the second between the policyholder and the hirer/driver. It is this which justifies the different IPT treatment for a fleet policy. IPT is charged at the standard rate on fleet policies but at the higher rate on block policies. The commercial benefit of a fleet policy is that a single policy helps in reducing the administrative burden compared with having multiple policies covering individual vehicles. Changes to the vehicles can be notified to the insurer as and when they occur and there is no need to take out a new policy for that vehicle.

The insurance policy documents

(24) Under the insurance policy with New India:

Defined Terms

“Insured” means the person, company or trading name shown as the policyholder or insured in any certificate of motor insurance or schedule applying to this policy.

“Insured Vehicle” means any motor vehicle and any attached trailer, if applicable, as described in any certificate of motor insurance bearing the number of this policy.

“Policyholder” means the person, company or trading name shown as the policyholder or insured in any certificate of motor insurance or schedule applying to this policy.

Section 1 – Loss of or Damage to the Insured Vehicle

Under clause 1.1.1,

“If the insured vehicle and/or its accessories are:

- (a) damaged; or
- (b) damaged as a result of fire, lightning, explosion, theft or attempted theft;

the insurer will at their discretion repair or replace the insured vehicle or make a cash settlement not exceeding the market value of the insured vehicle and its accessories at the time of the loss or damage or the purchase price of the insured vehicle and its accessories whichever is the less”.

Section 2 – Liability to Third Parties

Under clause 2.1.2, entitled “Indemnity to the Insured”

“The Insurer will indemnify the Insured against liability at law for damages and claimants’ costs and expenses in respect of death or bodily injury to any person or damage to property caused by or through or in connection with the insured vehicle including the loading or unloading of any Commercial Vehicle covered by this policy”

Under clause 2.1.3 entitled “Indemnity to Other Persons”

“Where the certificate of motor insurance permits, the insurer will also indemnify under the terms of this Section the following persons;

- (a) any person driving or using the insured vehicle with the permission of or on the order of the insured;
- (b) any person driving or using a Private Car not belonging to the insured or said person or hired to the insured or the said person under a hire purchase or leasing agreement;
- (c) any passenger mounting or alighting from the insured vehicle who is not driving or in charge for the purpose of driving;
- (d) in the event of the death of any person entitled to indemnity under this Section, their personal representatives in the terms of this policy and subject to the exclusions, conditions and limitations which applied to such person.

Any persons indemnified shall as though they were the insured observe, fulfil and be subject to the terms, exclusions, conditions and limitations of this policy insofar as they can apply and shall in no respect be in a better position than the insured.”

(25) The certificates of insurance include a certificate number and the registration number of a vehicle. The policyholder is named as the appellant, the date of commencement and expiry of the insurance are included, and the “Persons or Classes of Persons entitled to drive:” is identified as “Any Driver provided that such person is driving on the order or with the permission of the policyholder [and] provided that the person driving holds a licence issued by the DVLA to drive the vehicle or has held and is not disqualified from holding or obtaining such a licence and holds any other driving licence required by law to drive the vehicle for the purpose for which it is being used”. Under “Limitations as to Use”, these limitations are “social, domestic and pleasure purposes including travel between the drivers home and permanent place of work and including use for the conveyance of passengers or goods for public hire or reward and to include letting on hire providing such complies with the laws and regulations of the appropriate licensing authority but excluding use for racing, pacemaking, speed testing, rallies, trials or competitions or for any purpose in connection with the motor trade”

MY APPROACH TO THE EVIDENCE

9. Neither party made submissions as to the approach I should take towards evaluating the evidence and testing that evidence against the legal principles set out above and below. Evidence has been given through documents and in witness statements, regarding the insurance policy which the appellant has with its insurer and the relationship which the appellant has with the drivers. I intend to approach that evidence in the same way that the Upper Tribunal has recently done in the case of *All Answers Ltd v HMRC* [2020] UKUT 0236.

“22. That therefore leads to the secondary question of how to determine relevant aspects of the legal relationships between the parties in order to determine whether the £240 is consideration for a taxable supply made by the appellant. The CJEU determined this question in *HMRC v Paul Newey* (Case C-653/11) [2013] STC 2432 where one of the questions referred was:

In circumstances such as those in the present case, what weight should a national court give to contracts in determining the question of which person made a supply of services for the purposes of VAT? In particular, is the contractual position decisive in determining the VAT supply position?

23. The answer to that question was given in paragraphs 42 to 44 of the CJEU's judgment as follows:

42 As regards in particular the importance of contractual terms in categorising a transaction as a taxable transaction, it is necessary to bear in mind the case-law of the Court according to which consideration of economic and commercial realities is a fundamental criterion for the application of the common system of VAT (see, to that effect, Joined Cases C-53/09 and C-55/09 *Loyalty Management UK and Baxi Group* [2010] ECR I-9187, paragraphs 39 and 40 and the case-law cited).

43 Given that the contractual position normally reflects the economic and commercial reality of the transactions and in order to satisfy the requirements of legal certainty, the relevant contractual terms constitute a factor to be taken into consideration when the supplier and the recipient in a 'supply of services' transaction within the meaning of Articles 2(1) and 6(1) of the Sixth Directive have to be identified.

44 It may, however, become apparent that, sometimes, certain contractual terms do not wholly reflect the economic and commercial reality of the transactions.

45 That is the case in particular if it becomes apparent that those contractual terms constitute a purely artificial arrangement which does not correspond with the economic and commercial reality of the transactions.

24. In the light of that guidance, we will adopt the following approach:

(1) First, we will ascertain the meaning and effect of relevant contractual terms so as to determine whether those terms impose an obligation on the appellant or the Writer (or both) to provide the academic work to the Customer in return for the payment that the Customer makes to the appellant.

(2) Second, we will consider whether the contractual terms reflect commercial and economic reality.

(3) In the light of our answers to questions (1) and (2), we will determine whether the appellant made a supply of the academic work so as to become subject to an obligation to account for VAT."

10. In this case, I will adopt the following approach:

(1) First, I will ascertain the meaning and effect of the relevant contractual terms so as to determine whether the appellant was, at the relevant time, carrying on a business which consisted of or included the provision of insurance under contracts of insurance and received payments under those contracts in the course of that business.

(2) Second, I will consider whether those contractual terms reflect commercial and economic reality.

(3) In light of my answers to questions (1) and (2) I will determine whether the appellant was liable to be registered for IPT on 22 June 2011.

BURDEN OF PROOF

11. Although neither party has dealt with this in their submissions, it is my view that, by analogy with VAT, it is for the appellant to show, on the balance of probabilities that it is not liable to be registered for IPT and that it is not liable to tax under the assessment.

SUBMISSIONS

The parties original submissions

12. Both parties provided extensive submissions in the papers which were originally submitted to the Tribunal and which I considered, originally, on 20 August 2020. However following that consideration, I required further submissions on the point as to whether the arrangements between the drivers and the appellant comprised a contract of insurance in light of the relevant case law. I issued directions to this effect to which the parties responded with further submissions. I set out in the following two paragraphs the parties original submissions, and subsequently their further submissions on the contract of insurance point.

13. The respondents submit that a person is liable to be registered for IPT if they receive any payment under a contract of insurance; as a person carrying on a business which consists of or includes the provision of insurance; in the course of a business which includes the provision of insurance under a contract of insurance. There is no statutory definition of contract of insurance but it is defined in the leading textbook “Chitty on Contracts”, and that definition is wide enough to include an agreement by a car hire company (which is the policyholder of a fleet policy which includes third party cover for those who use the policyholder’s vehicles with its permission) and a hirer/driver of the vehicle, that the vehicle will be included in the fleet policy and so the driver will be entitled to the benefit of the insurance policy in exchange for a fee. On the facts of this case there is such an agreement between the appellant and the drivers since it is clear from the evidence that the drivers make a payment to the appellant in respect of insurance which is not a “repayment” of sums incurred by the appellant on the driver’s behalf (this is an inaccurate description) but is a payment by the drivers in consideration for the appellant including the vehicle hired by the driver in the New India policy and granting the driver permission to drive the vehicle with the consequence that the driver will be entitled to the benefit of third party liability cover under that policy. EC legislation and case law, and domestic case law (in particular the Upper Tribunal decision in *HMRC v Wheels Private Hire Ltd* [2017] UKUT 51 (“*Wheels*”)) clearly provides that there is the provision of insurance by a taxpayer where the taxpayer procures insurance cover for a customer under a policy between the taxpayer and an insurance company. This is the case for VAT, and the same principles apply for IPT, notwithstanding that for IPT purposes, fleet policies and block policies are treated differently from each other. In this appeal the evidence shows that the appellant was procuring insurance for the drivers under the New India policy and was thus providing insurance to them. The appellant’s reliance on certain aspects of HMRC’s IPT manual, which does not have the force of law, reflects a misunderstanding of the purpose of the manuals and in some aspects that reliance is misconceived. This is true in respect of the appellant’s submissions regarding what comprises an “insurer” and what comprises a “contract of insurance”. It is clear from the agreements

between the appellant and the drivers, when considered alongside the New India policy, the invoices, and the representations made by the appellant's representative in correspondence, that there were agreements between the appellant and the drivers that in return for payment of a sum of money by the drivers (the insurance costs) the appellant would procure the benefit of third party liability cover under the New India policy for the drivers. The insurance costs which are identified in the invoices are a premium. The appellant is not, as it now contends, simply supplying, on hire, an insured vehicle. This position is inconsistent both with its grounds of appeal and with the information provided in correspondence with HMRC during the course of their enquiries into the appellant's VAT refund claim.

14. The appellant submits that the evidence is consistent with its contention that the charge made to the drivers is for the supply on hire of an insured vehicle and there is no payment made for a separate supply of insurance. The insurance policy with New India does not require there to be an assignment of any benefit to the drivers. The vehicles which are hired to those drivers are identified in the certificates and in a fleet vehicle schedule, and the terms of the policy are that the drivers are insured provided permission is given to them by the appellant. That permission is given by the appellant via the contract with the drivers. Where the appellant permits any person to drive one of the insured vehicles, that vehicle is insured under the policy and the driver is indemnified against third-party liabilities. The comparison between the New India policy and the Motability scheme conducted by Officer Hull is an inappropriate comparison because of the differences between the policies and the fact that the Motability scheme is not a normal block policy. The New India policy does not constitute an insurance contract between the appellant and the drivers in the same way that the Motability policy does between Motability and its drivers. The appellant is not an "insurer" when tested against the relevant criteria in the respondents IPT manual. It is not regulated by the FCA, nor is it able to do things which an insurer would habitually do such as settle claims or make payments to compensate third parties. There is no insurance contract between the appellant and the drivers when tested against the criteria for the provision of an insurance contract in the respondents IPT manual. There is no contract of insurance between the appellant and the drivers. The IPT manual sets out six main characteristics or features of a contract of insurance and the contract between the appellant and the drivers does not contain those characteristics or features. The contract between the appellant and the driver contains 16 short clauses, only the last of which mentions insurance. That clause is unclear as to its meaning but what it does not do is provide for a supply of insurance by the appellant to the drivers. Any such purported supply would be unnecessary because the drivers are already covered under the New India policy. There is no need for the appellant to supply insurance to the drivers since this is supplied under the New India policy, which insures each of the vehicles, which the appellant owns and hires out, from damage, and also indemnifies whoever is driving that vehicle against third-party liability. Since there is no contract of insurance, any payment by the drivers cannot be a premium. This is the case even though the sample invoices do separately describe a charge for insurance. There are distinctions between the facts in this case and the facts in *Wheels*, and in particular there is no evidence in this case that the drivers had genuine contractual freedom to arrange their own insurance (indeed, to the contrary, the contract between the drivers and the appellant suggests that the driver had no such contractual freedom).

The parties further submissions on the contract of insurance point

15. In HMRC's view, the relevant cases are; *Prudential Insurance Company v Commissioners of Inland Revenue* [1904] 2 KB 658 ("**Prudential**"), *Department of Trade and Industry v St Christopher Motorists Association Ltd* [1974] 1WLR 99 ("**DTI**"), *Medical*

Defence Union Ltd v Department of Trade [1980] Ch 82 (“*MDU*”), *re Digital Satellite Warranty Cover Ltd* [2011] EWHC 122 (Ch) (“*Digital Satellite*”), and *Vannin Capital PCC v RBOS Shareholders Action Group Ltd* [2018] EWHC 2821 (Ch) (“*Vannin*”).

16. From the above authorities, HMRC say that the following general principles can be identified:

(1) In the absence of a statutory definition of the term “contract of insurance”, the term falls to be construed in its context according to the common law (*MDU* at 89A ; *Digital Satellite* at [42]; *Vannin* at [120]).

(2) A useful starting point is the definition provided by Channell J in *Prudential* at 664 (*DTI* at 104E-106B; *MDU* at 89C-H; *Digital Satellite* at [43]; *Vannin* at [120]). This can be summarised as requiring a contract of insurance to have three elements:

- (a) That the insured will become entitled to something on the occurrence of some event;
- (b) That event must have some amount of uncertainty about it; and
- (c) The insured must have an insurable interest in the subject matter of the contract (*MDU* at 89C-H).

(3) As regards the “something” which the insured will become entitled to (described by Channell J as “money or...a corresponding benefit”, a contract which covered risk in the shape of consideration other than money is capable of being an insurance contract (*Digital Satellite* at [44]-[46]; *DTI* at 104C-H and 105H) but does not extend to a mere hope or expectation such as a right to have an application for the exercise of a discretion properly considered (*MDU* at 95G-H and 97D).

(4) However, this is not an exhaustive or comprehensive definition, good for all purposes or in all contexts, and there may be some contracts which might appear to fall within this definition but which, on analysis, are not true contracts of insurance at all (*DTI* at 106C; *MDU* at 90A; *Vannin* at [120]). It is right to look at the substance of a transaction in order to properly categorise it; the true effect of a contract is to be ascertained not upon a scrutiny of its terms but upon an examination of its effect (*Digital Satellite* at [48]) and the question of whether a particular contract falls within the definition must be determined by a careful analysis of the particular features of the relevant contract against the background facts of any particular case (*Vannin* at [120]).

17. When these principles are applied to the facts in this case, it is HMRC’s view that the arrangements between the drivers and the appellant fall within the definition of a contract of insurance. The agreement between them pursuant to which the appellant must include the relevant vehicle under the New India policy permits the driver to drive the vehicle; that driver is entitled to the benefit of the cover provided under that policy should an insured event arise (an accident for example); that event has an amount of uncertainty; and the driver has an insurable interest in the subject matter of the contract.

18. HMRC also submit that without the agreement between the driver and the appellant, that the relevant vehicle be included under the insurance policy and that the driver has permission to drive the vehicle, the driver would not have third party liability cover under the

New India policy. It is the agreement between the appellant and the driver in exchange for which the driver pays the appellant a sum of money, that extends cover to the driver.

19. The appellant's further submissions on this point are that the *Prudential* and *MDU* tests for determining whether there is a contract of insurance require there to be a provider who agrees to pay money or to provide a corresponding benefit to the recipient upon the occurrence of an uncertain event and the recipient gives consideration for that agreement. This explains why HMRC describe an insurance contract at paragraph 3.3 of their Public Notice IPT 1 as displaying many or all of six features listed in that notice. These features are also listed, slightly differently worded, in HMRC's IPT manual. The appellant submits that the arrangements between it and the drivers do not exhibit these characteristics. It also submits, by reference to volume 25 of Halsbury's Laws, that "if the contract is created otherwise than by acceptance of a written proposal it must be shown that there has been agreement on the fundamentals of the insurance proposed, namely the subject matter of the insurance, the amount of the insurance..... the nature of the risks insured against, the period for which the insurance is to last and the rate of premium to be charged.....". In the appellant's view it must be clear from a contract of insurance that it is the provider who must be "doing the insuring" and providing the benefits. It must also be clear what the terms of the insurance are (i.e. what the insured will be entitled to, what the uncertain event is etc). In this case the appellant does not insure anything or anybody. It does not agree to pay money to, or give any benefit at all, to the drivers under any circumstances. But even if it had so agreed, the contract between the appellant and the drivers do not identify; the subject matter of the insurance, the benefits of the insurance, the nature of the risks insured, and the period for which the insurance is to last. There is nothing in that contract which suggest that the drivers are advised of the terms of any insurance policy nor that they have any understanding of those terms. The evidence of Mr Georgiou is inconsistent with a scenario in which the appellant insures drivers and the terms of that insurance cover are explained to the drivers and form a contract of insurance with the drivers.

DISCUSSION

20. A person is liable for IPT if they receive a premium under a contract of insurance. That person is liable to be registered for IPT if it is a person carrying on a business which consists of or includes the provision of insurance under contracts of insurance. A premium is a payment received under a contract of insurance by a person who carries on a business which consists of or includes the provision of insurance.

21. From this, two things are clear. Firstly, not just any payment made by a driver to the appellant comprises a premium which renders the appellant liable to IPT. It must be paid under a contract of insurance. Secondly to be liable to be registered for the tax, any insurance provided to the drivers by the appellant must also be under contracts of insurance.

22. In considering these issues I start with the agreements between the appellant and its drivers, read in conjunction with the corresponding invoices and the evidence I have seen concerning the insurance arrangements with New India.

23. I shall deal first with whether the appellant has, in relation to the agreements with the drivers, received any payments in the course of a business which consists of or includes the provision of insurance. I shall then deal, if I find that this is the case, with whether that insurance was provided under any contract of insurance.

24. As the appellant has submitted, the agreements between the appellant and the drivers are very light on detail concerning the insurance position. There is only one paragraph which deals with it and that reads:

“GB Taxi Services Ltd will pay the vehicle insurance and the I.P.T on the hirer’s behalf annually and to be repaid by the hirer on a weekly basis as a disbursement, therefore there will be no V.A.T charged.”

25. The invoices are described at [8(6)] above. “Insurance” is identified as a separate item on which no VAT is charged; this is distinct from the other item described in the invoice which is “Rental” and which does attract VAT.

26. So it is clear from these documents that the appellant is insuring the vehicle which it hires to a driver and the driver is paying or repaying his share of the premium, on a weekly basis, at the same time as paying for the rental of the vehicle.

27. The evidence clearly shows that the appellant insures these vehicles under a policy with New India, and the essential elements of that policy are set out earlier in this decision.

28. One of the reasons why HMRC, it seems to me, have been unclear as to the insurance relationship between the appellant and the drivers is because of the confusing and contradictory correspondence which they received from the appellants various representatives. I suspect that this is because the origin of this appeal was a claim for repayment of VAT by the appellant in respect of payments by the drivers of the insurance element of the supply. It suited the appellant’s representative at that stage to suggest that the contract was correct in indicating that the payment by the driver for the insurance element of the supply, was a disbursement and thus should not have had VAT applied to it. This dragged the representative into a discussion concerning the VAT niceties of the arrangements in which, for VAT purposes, it appeared to suit the appellant to claim that it made two distinct supplies one of vehicle rental (subject to VAT) and one of insurance (which did not attract VAT). However, somewhat late in the day, those advising the appellant realised that this might render the appellant open to a claim for IPT, and so they were caught in a dilemma. As a consequence of this they gave somewhat confused (to put it at its most generous) responses to HMRC concerning the insurance position (for example whether the drivers were able to obtain their own insurance for the vehicles or whether insurance had to be obtained by the appellant who then recharged its premium to the drivers).

29. But the evidence that I have seen make it crystal clear that it is the appellant which has taken out insurance for the vehicles (through its agent) with New India, and the terms of that policy provide cover in the event of the occurrence of certain events not just to the appellant but also to any person driving or using the vehicle with the appellant’s permission. The drivers by dint of the hiring arrangements have that permission which is reflected in the insurance certificates in which the registration number of a hired vehicle is included. The appellant, unsurprisingly, then recovers the cost of its premium from the drivers (and I do not think it matters for the purposes of IPT whether this is a payment, repayment, or a “disbursement” - an expression which I suspect was included in the agreements with an eye on VAT by someone who thought that form trumps substance). The benefits of the policy are commercially conferred on both the appellant, who clearly wants to make sure that if something happens to the vehicle, it is properly insured and any loss that it suffers will be reimbursed by an insurance company, as well as the drivers who know they are driving an insured vehicle which is something required by law, and that if something happens to that vehicle or themselves or to a third party, then there is insurance to which they or that third party has recourse. In that event, the drivers immediate point of contact is not New India but is the appellant, and it would be the appellant who would then deal with New India, probably via its agent. In those circumstances the driver would be relegated to the status of witness rather than claimant.

30. The question is then whether these arrangements mean that the appellant is carrying on a business which includes the provision of insurance. My view is that it does.

31. In support of their position that this is the case, HMRC have cited a number of EC authorities as well as the Upper Tribunal decision in *Wheels*,⁷ to show that under European and domestic VAT law a taxpayer who is not an insurer performs an exempt insurance transaction when it procures insurance which cover the drivers against certain risks from the insurer under a policy which that taxpayer has with the insurer. I entirely accept that that line of EC authorities, and *Wheels* shows just that. But that finding is concerned with the interpretation of the expression “insurance transaction” for the purposes of European and domestic VAT, whereas I am concerned with interpreting the expression “provision of insurance” for the purposes of a purely domestic tax, IPT. And HMRC have provided me with no authority as to why I should read across the principles in the VAT cases and in particular in *Wheels*, into my interpretation of IPT legislation.

32. Having said that however it is difficult to see how it could be said that, given the evidence of the documents I have described above supplemented by the evidence of Mr Georgiou, the appellant is not carrying on a business which includes the provision of insurance. The appellant’s business is to hire, for remuneration, vehicles to drivers. It supplies (in the non-technical VAT sense) insured vehicles to its drivers, in consideration for which the drivers pay to the appellant a fee for hiring the vehicle described as rent, and a further payment to reimburse the appellant for the insurance which has been taken out with New India to cover the vehicle whilst it is on hire to the driver. It is, in essence, the supply of an insured vehicle. I am not saying that the business of the appellant is solely the provision of insurance, but that is not the test. Provided the appellant’s business “includes” the provision of insurance, it falls within the statutory definition. And the business of hiring an insured vehicle comes within the ambit of this definition. The appellant’s business of hiring the vehicle includes the provision of the insurance which goes along with it.

33. But in order to be liable to registration and to account for IPT, the insurance must be provided “under taxable insurance contracts” which are in turn defined as “any contract of insurance”. If there are no contracts of insurance, any payment by the drivers for the provision of insurance cannot be a premium. I now turn to a consideration of whether there are, as between the appellant and the drivers, contracts of insurance. There is clearly a contract of insurance between the appellant and New India (on which the latter pays IPT). The question is whether there is a contract of insurance between the appellant and the drivers.

34. In determining this, I adopt, with gratitude, the general principles submitted by HMRC as part of their further submissions and which I have set out at [16] above. However I would add one further principle which I derive from *Prudential* at 663 and it is that the three elements identified by Channell J which if present in a contract would normally mean that it is a contract of insurance, must be “in” that contract. “That I think is the first requirement in a contract of insurance. It must be a contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit.....”.

35. With these principles in mind, I now turn to the agreements between the drivers and the appellant. It is clear that the agreements did not, on their face, include the first two of the Prudential elements namely that the insured will become entitled to something on the occurrence of some event and that event must have some amount of uncertainty about it. Whilst those elements are clearly present in the New India policy, they are not contained, expressly, in the agreements between the appellant and the drivers. As far as the appellant is concerned, this absence is fatal to the respondents’ case. The appellant, relying on the extract

from Halsbury, says that the agreement with the drivers does not identify the subject matter of the insurance, the benefits of the insurance, the nature of the risks insured against, nor the period for which insurance is to last.

36. HMRC, on the other hand, submit that when the relevant principles are applied to the facts of the case, the arrangements between the drivers and the appellant fall within the definition of contract of insurance. They submit that because the drivers fall within the definition of “insured” under the New India policy, and pay a premium for inclusion in that policy, there is a contract of insurance between the driver and the appellant. They say that pursuant to that agreement, the appellant “must” include the relevant vehicle under the New India policy. In essence HMRC’s point is that the Prudential criteria which are clearly contained in the policy taken out by the appellant with New India are included in the arrangements between the appellant and the drivers if not expressly in the agreement between them itself but by dint of the overall arrangements whereby the appellant procures that the drivers are insured and passes the benefit of that insurance on to the drivers along with the hire of the vehicle.

37. I have carefully considered the authorities, the principles, and the clear and helpful submissions made by both parties representatives. And I have come to the conclusion that there is no contract of insurance between the appellant and the drivers.

38. In my view, in order to be such a contract, there must be more than simply a contract for the supply of insurance by the appellant to the drivers. The agreement between them must itself contain the essential elements of a contract of insurance, and the agreement between the drivers and the appellant clearly does not contain, on its face, the first two of the Prudential elements. It does not identify what the driver will become entitled to, nor the event which triggers that entitlement. I wholly accept that this is clearly identified in the New India policy, but the wording in that policy has not been expressly incorporated into the agreement with the drivers. There is nothing in that agreement which cross refers to the terms of the New India policy. It might be said that this is unsurprising given that there is no need for such reference to be made because the drivers are insured as a result of having been given permission to drive the vehicle by the appellant, and that cover is reflected in the insurance certificates. But as Officer Hull has said in evidence, there is no direct contract between the driver and the insurance company and there are two insurance arrangements, the first is between the appellant and the insurance company; the second is between the appellant and the driver. And while HMRC submit that the benefit of the cover provided by the New India policy is only extended to the driver by virtue of the agreement between the appellant and the driver, that does not, of itself, mean that the terms of the New India policy which deal with the benefits and the nature of the risks insured against are incorporated into the agreement between the driver and the appellant.

39. I have seen no evidence which suggests that the drivers were shown a copy of the New India policy before they entered into the agreements with the appellant. I suspect that they knew, generally, as men and women of the world, what a typical motor vehicle insurance policy would contain; and I suspect too that they knew they were covered for the usual matters under the policy which the appellant had with New India. But this does not mean that those terms were incorporated into the agreement between the appellant and the drivers. It is not possible to tell from the face of those agreements what the driver becomes entitled to on the occurrence of some event.

40. And it is this absence which distinguishes the agreements between the drivers and the appellant in this case, and the provisions in the relevant documents in the authorities cited to me by HMRC.

41. In *Prudential* the document provided that in exchange for a weekly premium, the Prudential agreed to pay a sum of money if the person insured attained the age of 65 and a lesser sum if that person died before that age. In *DTI* the objects of the Association set out that in consideration for payment of an annual sum, if an event occurred which prevented the member from driving due to either disqualification or injury, the Association would provide him or her with a driver and if necessary, a car and driver for certain specified periods. In *MDU*, there was a contract between the MDU and its members by dint of the constitution of the former and which gave it a discretion whether to undertake the conduct or defence of any matter of proceedings concerning a member's professional character or interests and to grant to any member from its funds an indemnity regarding any action proceeding claim or demand concerning his professional character or interests. In *Digital Satellite* the terms of the extended warranty contracts and the circumstances in which the customers could claim were clearly set out in the terms of the warranties to which a customer signed up. In *Vannin* the funding agreements themselves set out the circumstances in which the litigation funder was entitled to a premium.

42. I accept that in, for example, *DTI*, the benefits to which a member of the Association, was entitled are described in pretty general terms. But in all of the foregoing cases in which it was decided that a contract of insurance was in place, it was possible to ascertain from the relevant documents themselves to which the insurer and insured were parties what the insured was entitled to and the event which triggers that entitlement.

43. It is not possible to ascertain that from the agreement between the appellant and the drivers. It is perfectly possible to ascertain it from the agreement between the appellant and New India. But the terms of that policy have not been incorporated into the agreement between the drivers and the appellant. I would also observe, incidentally, that I can see nothing which justifies HMRC submission that the agreement between the appellant and the drivers obliges the appellant to include the relevant vehicle under the New India policy. Whilst it is clear that the appellant has taken out insurance for which the driver will reimburse the appellant, the agreement does not expressly oblige the appellant to include the driver under the policy.

44. There is a second principle which is evident from *MDU* and which is absent from the summary principles set out at [16] above. It is found at [19] of the decision: "I do not know whether a satisfactory definition of "a contract of insurance" will ever be evolved. Plainly it is a matter of considerable difficulty. It may be that it is a concept which it is better to describe than to attempt to define;....."

45. In its submissions, the appellant has set out extracts from the provisions of HMRC's IPT manual, and of HMRC's Public Notice IPT1, both of which set out a number of features which, in HMRC's view, an insurance contract will display, and submit that when tested against those features, the agreement between the drivers and the appellant fall outside the features which would demonstrate that there is a contract of insurance. HMRC have criticised this submission on the basis that the IPT manual does not have the force of law, it is intended to assist HMRC offices in determining whether a person is an insurer and it does not purport to be an exhaustive definition of what is meant by insurer for IPT purposes.

46. But it seems to me that HMRC in both the manual and the notice are fulfilling their commendable policy of assisting taxpayers to get their affairs right, and by identifying the main characteristics of a contract of insurance, are reflecting the sentiments expressed in *MDU*, namely that it is easier to describe the characteristics of a contract of insurance than is to define one.

47. Both the manual and the notice set out the main characteristics which HMRC consider that a contract of insurance will contain. Their view is that it would contain or display many of the following features: there should be a legally enforceable contract between the insurer and insured which should identify clearly what is being insured; the insured pays a premium in return for which the insurer indemnifies the insured against losses or compensates them for damage; the insured must have an insurable interest in the subject matter of the insurance (they must suffer financial or other loss on the happening of the insured event); the premium the insurer charges is calculated with reference to the claims the insurer expects to meet from the pool of premiums which the insurer has collected to cover the corresponding pool of risks; the contract is one of utmost good faith; the insured has an absolute right to payment or assistance; if the insured breaches the contract the insurer can declare the contract void from the date of breach.

48. I agree with the appellant that the agreements between the appellant and the drivers did not contain many of these characteristics. Whilst it might be apparent from the agreements that it is the driver's vehicle which is insured, it is not possible to identify the losses which are being insured against, nor the events which will trigger a claim. The payments made by the drivers to the appellant are not calculated with reference to the claims that the appellant expects to meet from a pool of premiums collected. Whilst that might well be the case as regards the New India policy, the appellant simply recovers a proportion of the premiums it pays to New India from the drivers. It never expects to pay the drivers out from those pooled premiums. There is no suggestion that the agreement between the drivers and the appellant is one of the utmost good faith. It is simply a commercial agreement and HMRC have made no submissions that if the appellant were to breach the agreement, the appellant could declare the contract void from the date of the breach. In my view if there were to be a breach of the agreement, the appellant's remedy would be in damages and it could not avoid the contract.

49. Having decided that the terms of the agreement do not have the characteristics of a contract of insurance, I now need to consider whether those terms reflect commercial and economic reality. I consider that they do. The commercial and economic reality of the overall arrangement is that the appellant insures the vehicles with New India, and then supplies an insured vehicle to the drivers for which the drivers pay a rental fee for the hire of the vehicle and a separate payment to reimburse the appellant for the costs incurred in taking out the New India policy. The terms of the agreement with the drivers are consistent with this commercial and economic reality. That agreement does not need to be a contract of insurance to fit in with these economic and commercial arrangements. The drivers want to be certain that they are insured. The appellant wants to make certain that the vehicles are insured. Those two ends are achieved by the arrangements that the parties have put in place. A finding that the agreements with the drivers are not contract of insurance is consistent with the economic and commercial reality of the arrangements.

50. I am conscious that one of the principles set out at [16] above is that the question of whether a particular contract is a contract of insurance must be determined by careful analysis of the particular features of the relevant contract against the background facts of any particular case. I have undertaken that analysis, and on the facts of this particular case, found that the contract with the drivers is not a contract of insurance.

51. And I can see no inconsistency between this finding, and the finding that the appellant is carrying on a business which includes the provision of insurance to the drivers. It seems to me that when Parliament introduced IPT in 1994 it decided that the broad concept of "insurance transaction", the phrase used in EC and domestic VAT legislation, was not the appropriate concept for the purposes of IPT. Whilst it was broad enough to cover insurance provided under a contract of insurance, it would also cover situations where, as in *Wheels*,

and indeed in this appeal, the benefit of the policy was passed on by a taxpayer, “not being an insurer” (*Wheels* at [38]) to someone else. By introducing the additional criterion that the provision of the insurance must be under a contract of insurance, Parliament provided a more restrictive criterion to whittle down the broader “provision of insurance” so that, to my mind, it was to apply only to contracts which had the characteristics of a contract of insurance and thus to “true” (my terminology) contracts between insurance companies and their insured. Parliament can be treated as knowing the issues associated with the interpretation of the concept of “contract of insurance”, and that it is a term of art used in a number of statutory provisions. And to have made a conscious decision to include that term with its associated interpretive difficulties, into the legislation. My view is that this was intended to restrict IPT to what most people accept are normal commercial or domestic insurance arrangements between an insured and an insurance company, and not to other arrangements which might have certain characteristics of an insurance contract. For example, if I own development land which I sell to a developer for, say, £1 million, I might also seek overage or an anti-embarrassment clause, that if the developer sold the land on within three years at a profit, I would be entitled to 50% of that profit. It seems to me that this straightforward and extremely common commercial provision is in danger of being treated, on HMRC’s criteria, as a contract of insurance since it fulfils the three *Prudential* criteria. I will become entitled to the additional payment on the occurrence of the onward sale which is an uncertain event, and I have an insurable interest in the subject matter of the contract, namely the land. But I simply cannot believe that HMRC would seek to register the developer for IPT nor that the FCA would consider this comprises a contract of insurance and would seek to regulate developers who, up and down the land, enter into this sort of agreement on an almost daily basis.

52. The reason, I would suggest, why these arrangements do not comprise a contract of insurance is that they do not have the characteristics of such a contract when tested, for example, against those set out in HMRC’s manual and its public notice. They fall, in my view, within the situation identified by Templeman J in *DTI* when he says “it does not follow that the definition given by Channell J in a case based on the facts with which he was concerned and applied by me to the case in which I am now concerned is an exhaustive definition of insurance. There may well be some contracts of guarantee, some contracts of maintenance which might at first sight appear to have some resemblance to the definition laid down by Channell J and which, on analysis, are not found to be true contracts of insurance at all.” The same is true of the agreements between the drivers and the appellant.

53. Drawing all these strands together, I have concluded that: the appellant insures the motor vehicles which it hires to the drivers under an insurance policy with New India; this is a conventional insurance policy which covers conventional risks associated with ownership of a motor vehicle; that policy provides that the insurance is extended to anyone who drives with the appellant’s permission; the appellant provides that permission to the drivers to whom it hires the vehicle; the vehicle registration number is set out in an insurance certificate; the driver makes two payments to the appellant, one for the hire of the vehicle and the second payment as reimbursement for the insurance premium that the appellant pays to New India; the agreement between the appellant and the drivers, which reflects economic and commercial reality, is an agreement pursuant to which the appellant provides insurance to the drivers; however it is not a contract of insurance since it does not, in itself, include the essential elements of a contract of insurance set out in case law and in particular *Prudential*; this is consistent with the commercial and economic reality of the arrangements which are, in essence, that the appellant is supplying an insured vehicle to the drivers in consideration for a hire fee and reimbursement of its insurance premium.

DECISION

54. On the facts before me in this case, I find that there is no contract of insurance between the appellant and the drivers. The appellant is therefore neither liable to be registered for IPT, nor do the payments made by the drivers constitute premiums on which IPT is due. I therefore allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

55. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

NIGEL POPPLEWELL

TRIBUNAL JUDGE

RELEASE DATE: 18 DECEMBER 2020