Neutral Citation: [2024] UKFTT 969 (TC)

Case Number: TC09341

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2019/04832 (1)
TC/2019/05823 (2)
TC/2020/00579 (3)

VAT – denial of input tax and deregistration – Fini, Kittel and Ablessio – fraudulent scheme for generation of unjustified input VAT claims within a small group of traders – penalties under section 69C VATA 94 – appeals dismissed

Heard on: 6-10, 13, 17, 20 & 27 November 2023
Judgment date: 29 October 2024

Between

EASY WORK LIMITED (1)
PRICERITE MINI MART & ELECTRICAL GO (a firm) (trading as Pricerite Travel and Data Services) (2)
ANTHONY LLOYD BECKFORD (trading as APAS) (3)

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Before

TRIBUNAL JUDGE KEVIN POOLE
IAN SHEARER

Representation:

For the Appellants: Anthony Lloyd Beckford, director of Easy Work Limited, partner in Pricerite Mini Mart & Electrical Go (a firm), and in person

For the Respondents: Christopher Foulkes of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video). All participants attended by video link using the Tribunal's own video hearing system. A face to face hearing was not held because the original hearing was listed by video due to pandemic restrictions and upon relisting it became apparent that geographical constraints and the convenience of the parties would make it difficult to hold an "in person" hearing which was convenient to all parties and the panel.

2. The documents to which we were referred consisted of a main document bundle of 4,686 pages, a supplemental bundle of 503 pages and an authorities bundle of 144 pages. In addition, we were provided (by way of attachments to HMRC's skeleton argument) with two tables which served as reference documents to assist us in finding relevant documents in the main bundles. These two documents were referred to as "Schedule of Tax Loss Examples" (5 pages) and "Schedule of VAT submissions and denials" (a spreadsheet pulling together details of all VAT submissions and input tax disallowances, providing page references to the relevant documents in the document bundles). We were also provided with an electronic folder containing copies of the original Excel spreadsheets and paper VAT summaries which had been submitted to HMRC at various stages in support of the VAT returns which had been made by the various traders involved.

3. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

SUMMARY

4. These joined appeals concerned what HMRC considered to be a fraudulent scheme, masterminded by the third Appellant ("Mr Beckford", or "APAS"), involving multiple allegedly connected VAT-registered traders (which HMRC referred to as "the network"), the sole purpose of which was to generate artificial VAT repayments. Essentially, the allegations were that supposed supplies of goods and services invoiced between the various entities were entirely fictitious; that Mr Beckford had created VAT invoices in the names of various traders in the network which had no relationship to any true supplies of goods or services by any of them; and that he had then sought to claim the input VAT shown on those invoices in other traders within the network, giving rise to repayments (the associated output VAT often not being declared, either in full or at all, by the trader in whose name the invoice had been issued). HMRC therefore denied the relevant input VAT to many of the members of the network, de-registered most for VAT purposes and imposed penalties under section 69C Value Added Tax Act 1994 ("VATA").

5. Five traders (the three involved in this hearing and also two others called Ashley Marketing Services Limited ("Ashley") and Spic 'n' Span Cleaning Services Limited ("Spic n Span"), both of which are referred to below) appealed to the Tribunal against various of HMRC's decisions affecting them.

6. The appeals had originally been listed for hearing in December 2022 but had to be adjourned when it became apparent that Mr Beckford was not the authorised representative of the other two traders involved, and it was not clear that valid notification of the hearing had been issued to those two traders. Subsequently, their appeals were struck out for failing to engage with the Tribunal and comply with Tribunal directions. Accordingly, by the time of this hearing only three appeals remained before the Tribunal. Nonetheless, the evidence in relation to Ashley and Spic n Span remained relevant in consideration of the remaining appeals.

7. The remaining appeals relate to the following matters:

(1) denial of input VAT totalling £9,960 to Easy Work Limited ("Easy Work") in respect of its three month VAT accounting period ended 31 March 2019;

(2) denial of input VAT totalling £23,514 to Pricerite Mini Mart and Electrical Go (a firm), trading as Pricerite Travel and Data Services ("Pricerite") in respect of various accounting periods from 1 July 2017 to 31 March 2019;

(3) de-registration of Easy Work and Pricerite for VAT purposes with effect from 31 March 2019; and

(4) a penalty of £6,831 imposed on Mr Beckford under s.69C VATA in relation to his VAT accounting periods from 1 November 2017 to 30 April 2019.

8. The hearing (which was conducted entirely remotely, as agreed by both sides) was beset with some technical difficulties which reduced the amount of hearing time actually available. In addition, Mr Foulkes' careful and extensive cross examination of Mr Beckford took much longer than expected. The initial six day listing was eventually extended to a full nine days, but by the end of that time Mr Beckford's cross examination was only just finished. We therefore directed (with the agreement of the parties) that closing submissions would be dealt with in writing rather than orally. We subsequently received such submissions from Mr Foulkes (123 pages) and Mr Beckford (37 pages, including 27 pages which were simply a reprint of his previous written opening submissions).

THE EVIDENCE

9. Included in the documents we received were witness statements from:

(1) HMRC officer Robert Phillips, in relation to Pricerite, APAS, Spic n Span and Easy Work;

(2) HMRC officer Laurie Reid, in relation to Ashley;

(3) HMRC officer Gerald Hayward, in relation to Pricerite, APAS, Spic n Span and Easy Work;

(4) HMRC officer Neil Bewley, in relation to Spic n Span;

(5) HMRC officer Fahmida Begum, in relation to Easy Work; and

(6) Mr Beckford.

10. Officer Hayward had not been involved in the original investigations into the Appellants or the decisions under appeal. That role had been performed by officer Robert Phillips, who had since retired from HMRC and was no longer available to give evidence even though he had prepared extensive witness statements, each of which was reviewed and adopted by officer Hayward.

11. We heard oral evidence from HMRC officers Laurie Reid and Gerald Hayward, and from Mr Beckford.

12. We found officer Reid to be a truthful witness, though of course his evidence (now that Ashley's appeal had been struck out) was chiefly relevant to an assessment of the activities of Ashley seen in the context of what HMRC alleged to be the overall scheme to defraud HMRC, the specific disallowance of Ashley's input tax claims no longer being under direct consideration.

13. We found officer Hayward to be a truthful witness, though of course much of his evidence was concerned with analysis of documentation as he had not been personally present at any of the meetings with Mr Beckford.

14. We were less satisfied with the evidence of Mr Beckford. We considered his evidence to be a mixture of bluster, evasion, delusion and total fabrication. His explanations of many of the inconsistencies appearing on the face of the documents were either entirely absent, so vague as to amount to no explanation at all, or were unsupported by credible evidence and/or totally incredible.

THE LAW

15. Mr Beckford did not take issue at any stage with the legal analysis advanced by Mr Foulkes. His dispute was as to whether HMRC had established the relevant facts to support their case. Mr Foulkes helpfully set out his legal submissions in full in his closing submissions starting at paragraph 19, and since we agree with them, for the sake of simplicity they are set out in full in the Appendix to this decision.

THE BACKGROUND FACTS

16. We find the following facts.

17. Mr Beckford is an accountant in Bristol. He is not a current member of any of the professional bodies, but claims to have qualified as both ACCA and FCCA, and therefore to be expert in matters of accountancy. He has been involved since at least 2012 in either the operation or administration of a number of trading entities, or as an advisor and/or agent (either formal or informal) for them in their VAT (and sometimes other) dealings with HMRC.

18. The entities involved in the current appeals are:

(1) **Mr Beckford** himself (under the trading style "**APAS**", standing for "Antbec Payroll and Accountancy Services"), providing payroll, accounting and advisory/consultancy services. Mr Beckford was registered for VAT from 9 September 2012.

(2) **Pricerite,** a firm in which Mr Beckford was a partner, along with (initially) three other individuals Devon Powell, Hopeton Brown and Michael Rowe. Pricerite was registered for VAT from 1 September 2013 and operated a grocery store at Brislington Hill in Bristol until it was evicted from its premises in November 2017. On its VAT registration application form, it had given its business activity as "Retail Traders. Grocer with alcohol licence". Apparently there were disagreements between the partners, as a result of which Mr Beckford ran the shop himself from early 2014. A break-in also occurred there shortly after that time, in which Mr Beckford said his computer and all his records had been stolen. Mr Beckford claimed that following the closure of the shop, Pricerite had gone into a different line of business as a travel agent, but there was no evidence of anything other than preparatory activity in that line of business. Mr Beckford also claimed that Pricerite had gone into the data business – buying and onselling databases of potential customers, but there was no documentary evidence of any such activity. Other claimed activities included storage, property rental, trading in groceries (including the provision of food ingredients to Nadine's Caribbean Café and to Mr Rowe's restaurant – see below) and purchase of surplus stock (especially IT equipment) for resale. There was some more recent evidence of the latter activity (postdating the period relevant to the appeals), but nothing else. There was insufficient credible evidence before us to demonstrate that any of the claimed activities actually took place after the shop closed.

(3) **Easy Work**, a company of which Mr Beckford was the director, was registered for VAT on 1 April 2018 on supposedly acquiring the business of CC Trade and Maintenance Limited as a going concern (see below). Easy Work's declared activity was "provision of consultancy and data management services" and "financial management

consultancy services". Its supposed activities included cleaning services, then advice and consultancy, especially on HMRC enquiries. Business development research was also claimed. Again, there was insufficient credible evidence before us to demonstrate that any of these claimed activities took place.

(4) **Antbec Services Limited** ("Antbec"), a company of which Mr Beckford was the director, incorporated on 28 March 2014 and registered for VAT with effect from 1 December 2014. Its initial stated business activity was "exchange, repair, buy and see *[sic]* electrical goods". Mr Beckford was the appointed agent of this company for VAT purposes. Mr Beckford said the company also rented out some electrical products for cash (an activity which it may have taken over from Pricerite) and also owned a Mercedes Benz motor vehicle which was occasionally also rented out. This company was also involved in the purchase for export of some trucks – see below.

(5) **Ashley** was incorporated on 11 August 2017. In its VAT registration application, it gave an address in Kensington High Street, London as its principal place of business, and its business activity was described as follows: "The Company will engage in marketing services and the sale of peripheral computer related equipment/ We will be selling information and data to business customers". The address given for its director was in Filton, near Bristol, and neither he nor the agent lodging the application had any apparent connection with Mr Beckford. From October 2017, its sole director and "person with significant control" was one Ahmed Adan Habane, who told HMRC he had bought the company from its original owner. Mr Beckford was never the appointed agent for the company, nor did he submit its VAT returns, but Mr Habane told HMRC that Mr Beckford prepared all its VAT returns, and the VAT summaries provided for AMS were in similar format to those prepared by Mr Beckford for all the other companies and were, according to Mr Habane, prepared by Mr Beckford. We find that they were. Ashley had also been Mr Beckford's landlord at his premises in Bristol. Whilst we consider it likely that Ashley carried out some activities, we are satisfied that the VAT summaries provided for it are largely unreliable.

(6) **Spic n Span**, incorporated on 8 January 2018. Its sole director and shareholder is Hopeton Brown (one of the partners in Pricerite, and also referred to at [(10)] below). It was registered for VAT with effect from 8 January 2018, with its business activity described as "cleaning". Mr Beckford was not appointed agent on the registration application, however he was so appointed on 15 May 2018. This company does appear to have provided some real services to an apparently unconnected customer called "Friday Island", supposedly in Tewkesbury. Apart from that, we do not accept that any of the supposed supplies referred to in the VAT summaries lodged on its behalf took place.

(7) **Michael Antony Rowe trading as Bravo Car Rental** ("Bravo Car Rental"). This individual (one of the partners in Pricerite, see above) was registered for VAT with effect from 1 August 2012, with "rental of car and van" given as the business activity. The bank account named on the registration application form was that of APAS and Mr Beckford was also named as agent and submitted the VAT returns. Mr Beckford said that Mr Rowe had changed the business activity from this to a Caribbean restaurant at some point. Whatever actual trading activities Bravo Car Rental carried out, we are satisfied that the supplies supposedly made by it to the other traders in this list did not take place. It has never supplied VAT summaries in spite of repeated requests.

(8) **Layne & Co Communications Limited** ("Layne"), incorporated on 25 July 2016. Its sole director and shareholder is one Adriene Layne. It was registered for VAT with

effect from 1 January 2018, its business activity being given as "create and market range of devices", with a reference to "communication equipment rental and operating leasing". Mr Beckford was named on the application form as its agent. Mr Beckford said that Ms Layne had worked as a "volunteer" for him (along with a number of other individuals from time to time), including helping in the Pricerite shop and doing data input into spreadsheets. No direct response has been received from this company to any of the communications sent to it by HMRC. There was insufficient credible evidence before us to demonstrate that any of the supposed supplies listed in the VAT summaries lodged by Mr Beckford for it have taken place.

(9) **Joscelyn Errol Smith trading as Smiths Travel and Shipping** ("Smiths Travel"). This individual was registered with VAT with effect from 22 January 2013, with "vatable services such as airline, bookings, fright *[sic]* and telephone credits" given as the business activity. Mr Beckford was named as agent. When HMRC were finally able to contact Mr Smith by telephone, he informed them that he had not seen the VAT summaries prepared by Mr Beckford before they were submitted to HMRC, and he confirmed they were not accurate. He was not aware of many of the other traders in this list who were included in the VAT summaries for him, and was extremely vague about the nature of the dealings he had had with the others. There was insufficient credible evidence before us to demonstrate that any of the supposed supplies listed in the VAT summaries lodged by Mr Beckford for him have taken place.

(10) **Hopeton Brown trading as Village Rock** ("Village Rock"). This individual (one of the partners in Pricerite) was registered for VAT with effect from 1 May 2012, with a declared business activity of "recording, writing and performing music". Whilst Mr Beckford was not named as the agent for Mr Brown, he in fact submitted all his VAT returns. From the limited contact HMRC were able to have with Mr Brown, it is apparent that he had no involvement in the preparation or approval of the VAT returns or supporting VAT summaries submitted on his behalf, and we find them to be totally unreliable.

(11) **Jewel Deal Limited** ("Jewel Deal"), incorporated on 1 February 2018. Its sole director and shareholder is one Christopher Hendricks. It was registered for VAT with effect from 1 March 2018, its business activity being given as "provision of booking services and production and distribution of records". A "Trevor Green" at APAS was named on the application form as its agent. Jewel Deal Limited was deregistered for VAT by letter dated 16 July 2019, however on 11 October 2020 Mr Beckford requested a new VAT registration backdated to 31 May 2020, and further VAT returns have been submitted under this registration. HMRC have not received any response from Mr Hendricks in reply to their correspondence to him, all communications having been with Mr Beckford. There was insufficient credible evidence before us to demonstrate that any of the supposed supplies listed in the VAT summaries lodged by Mr Beckford on behalf of this company have taken place.

(12) **Nadine Brown trading as Nadine's Caribbean Café** ("Nadine's"). This individual was registered for VAT with effect from 31 March 2018, with a declared business activity of "provides cooked meals to the public daily". Mr Beckford was named as agent, and submitted all VAT returns and summaries. Ms Brown clearly has a café trade, and when she was asked at a meeting with HMRC to name her suppliers, she failed to mention any of the traders in this list who formed such an important part of the VAT summaries submitted on her behalf by Mr Beckford.

(13) **CC Trade and Maintenance Limited** ("CC T&M"), incorporated on 11 April 2012. Its sole director and shareholder was one Khalid Osman. It was registered with effect from 6 January 2013 with a principal place of business at the same address as the Pricerite shop at that time (indeed, Mr Beckford said that Pricerite took over the shop from it). Its declared business activity was "purchasing of goods and supplies for resale. We also offer internet and money remittance services". Mr Beckford was named as its agent on the application form, but could not recollect ever submitting VAT returns on its behalf. In response to a request from the company or Mr Beckford (which Mr Beckford denied having sent), the company was notified by HMRC on 23 March 2014 that its VAT registration was cancelled with effect from 24 February 2014. Mr Osman was notified by letter dated 4 September 2014 that HMRC understood the business to have been transferred as a going concern, and that it needed to be registered for VAT if it was trading above the registration threshold, however no application for a renewed registration was received and the company was formally dissolved on 18 November 2014.

(14) **Bristol Shipping Limited** ("Bristol Shipping"), incorporated on 25 April 2012. Its sole director and shareholder was Ahmed Habane (see Ashley above). It was registered for VAT with effect from 1 July 2012 with a declared business activity of "shipping services". Mr Beckford was named as its agent on the application form. It was deregistered for VAT with effect from 31 July 2013. It was formally dissolved on 12 August 2014.

(15) **Richard Salmon**. This individual was registered for VAT with effect from 18 November 2018, with a declared business activity of "banksman – jobs include being in charge of the crane movements from the point of loading and unloading slinging the ropes to move heavy materials around site etc. Responsible for own health and safety". Mr Beckford was not named as agent on the application form, however he did submit a VAT summary for the period ended 28 February 2019. HMRC deregistered Mr Salmon for VAT with effect from 31 May 2019 by letter dated 4 July 2019.

(16) **R A Salmon Limited trading as Aiden Trading** ("Aiden Trading"). This company was incorporated on 24 February 2017 with Richard Salmon as its sole director and shareholder. It was registered for VAT as a transfer of a going concern from Bristol Shipping with effect from 1 January 2018 (though in fact Bristol Shipping had been deregistered for VAT and then dissolved over three years previously). The declared business activity was "provision of building and maintenance services provision and distribution of travel and related services shipping services". The registration application was submitted by Mr Beckford, giving an address of "Flat, The Old Tavern, Blackberry Hill, Stapleton, Bristol BS16 1DB", but also appointing himself (as APAS) as agent, giving an address of "5 Russell Town Avenue, Bristol BS5 9LT". Mr Lloyd Beckford (who we infer to be Mr Beckford, as a change of details was later lodged at Companies House to that effect) was appointed as sole director of the company on 6 March 2019 and also took over as a "person with significant control" of the company during 2020. It only became apparent that this company was the trader referred to in Mr Beckford's VAT schedules as "Aiden Trading" when a document purporting to be an invoice from it was provided to HMRC by Mr Beckford, which gave the VAT registration number of R A Salmon Limited. On 13 September 2020, the company changed its name to Aiden Trading Limited.

19. Put succinctly, HMRC allege that these entities have formed a largely closed "network" of supposed traders whose VAT affairs have been artificially managed by Mr Beckford. VAT returns have been delivered for the various entities which, in aggregate, have resulted in

entirely unjustified net repayments being claimed by the network as a whole, as a result of supposed taxable supplies between them. Upon closer examination of the returns, it is said that VAT summaries have been supplied which are entirely fabricated and which do not "match up", in that output tax supposedly charged by one entity to another often does not equate to the input tax claimed by the other entity. To support these VAT summaries, it is said that invoices which do not reflect any true underlying supplies have been fabricated. In short, Mr Beckford has been manipulating the VAT system to claim entirely unjustified repayments of VAT from HMRC.

20. HMRC's first relevant "in person" encounter with Mr Beckford was following the submission of APAS's second VAT return, for period 07/13, which claimed a repayment of £1,196.45. The return was selected for verification and when HMRC visited (which took place on 4 November 2013 at the Pricerite shop), they were told that the premises had been broken into since HMRC had arranged the visit, and laptops containing all the business records had been stolen, along with the flash drives containing backups. They were also told that the figures in the VAT return were from Mr Beckford's two "other businesses", described as "Antbec Electrical Services" and "Antbec Accountancy Services" (it was also stated that the Pricerite shop had only started trading in August 2013). HMRC were not satisfied with the evidence that was produced to support the input tax claimed and disallowed it, in the amount of £2,410.45, resulting in a VAT liability of £1,214.

21. APAS's return for period 07/14, claiming a repayment of £736.54, was also selected for verification. A VAT summary was provided but it appears HMRC did not check it and simply released the repayment.

22. APAS's returns for periods 04/16 and 07/16 were also selected for verification, containing repayment claims of £523.98 and £21.56 respectively. Initially Mr Beckford did not provide sufficient evidence to support the claims and the input tax in both returns was disallowed. However, VAT summaries were eventually supplied and HMRC then released both repayments, despite noticing various apparent discrepancies.

23. The next contact was by officer Phillips, who made a visit to 24 Lower Ashley Road, Bristol, on 13 November 2018 to inspect the records of Pricerite (in order to check its returns for periods 03/18, 06/18 and 09/18) and Antbec Services Limited (to check periods 12/17, 03/18, 06/18 and 09/18). Officer Phillips became aware of APAS at that meeting. In checking the records supplied for Pricerite and Antbec, he became satisfied that they were contrived; the purchase and sales invoices used the same templates, there were a number of discrepancies in dates, reference numbers and addresses and Mr Beckford took a long time to provide even simple answers to questions.

24. He therefore took away the available VAT summaries, purchase and sales invoices for Pricerite for the four VAT periods to analyse them more closely. As a result of that process, he became aware of what he regarded as a "network" of businesses whose VAT affairs were effectively under Mr Beckford's control and who, according to the documents supplied, were all trading with each other but where the net result of the supposed transactions between them was an overall excess of input tax claimed over output tax declared by them on the dealings between them. He reached the provisional view that the records provided could not be relied upon as reflecting, to any material extent, any real underlying transactions. These concerns were put to Mr Beckford in a meeting at HMRC's offices on 26 April 2019, and nothing in that meeting affected Mr Phillips' previous provisional view.

25. Mr Phillips wrote to Mr Beckford on 15 May 2019 setting out his "main concerns". This was a long and complicated letter, but among the points he mentioned were: the vagueness and changeability of the supplies supposedly made by the various entities, the lack of credibility of

the supposed supplies (for example the fact that Pricerite had supposedly made supplies totalling £90,000 in value to the other small entities in the network since it had ceased trading as a shop, over one third of which was supposedly for the onward sale of groceries bought through supermarkets); the obvious errors and inconsistencies in the documentation supplied to evidence the supposed supplies and the lack of any evidence of payment for them; the lack of correlation between the inputs and outputs reported in the documents in respect of the entities that were supposedly trading with each other; the lack of any material supplies to entities outside the network; the lack of any credible explanation for how the entities could all have consistently traded at a loss in generating the overall repayment claim; the fact that all of the VAT affairs of all the companies were effectively controlled by Mr Beckford; and the overall lack of credibility of many of the supplies supposedly made to small entities.

26. In the absence of any substantive response to Mr Phillips' letter, on 1 July 2019 he issued the following decision letters relevant to these appeals:

(1) To Pricerite, both denying its input tax of £23,514 claimed for the period 1 July 2017 to 31 March 2019 and deregistering it for VAT purposes with effect from 31 March 2019;

(2) To APAS, both denying its input tax of £16,203 claimed for the period from 1 November 2017 to 31 January 2019 and deregistering him for VAT purposes with effect from 30 April 2019 (neither of these decisions is actually under appeal in the present proceedings, but a related penalty decision is – see [29] below); and

(3) To Easy Work, both denying its input tax of £9,960 claimed for the period 1 April 2018 to 31 March 2019 and deregistering it for VAT purposes with effect from 31 March 2019.

27. In each case, the amounts of input VAT denied were those which were shown on the trader's VAT summaries (provided by Mr Beckford) as being attributable to supplies received from the other traders listed at [18] above.

28. Other similar letters were sent over the next few months to all the other traders listed at [18] above with a current VAT registration, except that Bravo Car Rental and Nadine's were not deregistered as they were understood to be carrying on restaurant trades which might have been above the registration threshold, and Aiden Trading was only dealt with at a later stage of the investigation.

29. The only other decision under appeal in these proceedings is a decision issued on 31 January 2020 to APAS, under which an amended penalty was imposed on Mr Beckford under section 69C VATA 94 in the sum of £6,831, spread across the accounting periods from 01/18 to 04/19, in respect of the input tax disallowed to APAS by HMRC in respect of those periods. During the course of the proceedings, HMRC indicated that two errors had been made in the calculation of this penalty, in each case by reference to the accounting period in which a part of the relevant input tax had been disallowed. In consequence of these errors, HMRC had indicated that they only wished to defend the penalties in the slightly reduced aggregate amount of £6,722. Mr Beckford takes no issue with the calculation of the penalties, only his liability for them, on the basis of his argument that all the relevant input tax was properly claimable.

THE ALLEGED SCHEME TO DEFRAUD AND THE APPELLANTS' INVOLVEMENT IN IT

30. There were a number of factors which HMRC relied on in support of their assertion that there was an overall scheme to defraud the Revenue to which the Appellants' transactions (if any transactions truly took place) were connected.

Matching of inputs and outputs

31. HMRC's "key" method of analysis was to consider the relative claims made by the various entities involved in respect of the supposed supplies between them. All the entities were using invoice accounting, so there ought to have been matching between output tax declared by one entity and input tax claimed by another on supposed supplies between them. Of course, the accounting periods of the various entities were not all the same and therefore it would not be possible to match exactly on a "period by period" basis; and in any event some degree of error or slippage might be expected in the normal course of events without there being any fraudulent intent. However, HMRC's basic proposition was that by taking a broad view of a longer period as a whole, any such matters ought to be largely accommodated, allowing a clearer overall picture to emerge, by way of supplement to the "period by period" analysis. In addition, by reference to the VAT summaries actually provided by Mr Beckford for some of the entities (which broke their input and output figures down on a month by month basis), it was possible to obtain a clearer picture of the position in each period. This process could not be completed comprehensively because of the failure of some of the entities to deliver VAT summaries for some periods, however HMRC considered that the picture which emerged, on the basis of the summaries which had been supplied, was compelling in its own right.

32. First, it is necessary to consider HMRC's justification for regarding the various entities as participating in a single fraudulent scheme. We find that Mr Beckford either submitted or prepared the VAT returns of all the traders, and various conversations with some of the other traders confirmed this to be the case. We find that he also prepared and submitted the VAT summaries for all of the traders. Those traders often did not know what was being entered into their VAT returns or the VAT summaries which Mr Beckford supplied to HMRC, and expressed ignorance of the other traders they were supposedly dealing with when HMRC told them about them. The value of the supplies made by the various entities to each other rather than to unconnected customers, viewed both independently and in proportion to their respective overall supplies, also pointed to a clear link between them.

33. By way of illustration of the latter point, APAS reported total taxable supplies (excluding VAT) of £27,615 in period 01/18. All of those supplies were made to the entities listed at [18] above, and £21,240 of that figure was made up of two supplies to Ashley on 1 and 30 November 2017. In period 04/18, APAS reported taxable supplies of £13,625, of which all but £600 was to entities listed at [18] above. In period 07/18, the equivalent figures were £11,626 and £300. In period 10/18 they were £22,210 and £1,600 and in period 01/19 they were £19,000 and £600.

34. For Antbec over the periods 12/17 to 12/18, reported supplies were £86,670 (excluding VAT), all of which were made to other entities listed at [18] above.

35. Ashley reported total taxable supplies over periods 11/17 to 11/18 of £28,820 (which did not include any amount in respect of its supply of the trucks referred to below, presumably on the basis that such supply would have been zero rated). In the first four of those periods up to 08/18, its total reported supplies were £13,700 (excluding VAT), all of which were to other entities listed at [18] above, apart from £1,500 to "Eunick Care" (which turned out to be a company in which both Mr Beckford and Mr Habane were directors at the time) and £3,000 to an unknown trader described as "first call taxi, s" in the VAT summaries. By contrast, in period 11/18 Ashley suddenly started reporting significant supplies to other apparently unconnected traders – £10,331.11 out of the total reported supplies of £15,120. This sudden and complete change in the nature of Ashley's business does not appear credible.

36. It is true that Nadine's reported significant supplies to outside customers, but nonetheless she also reported invoiced supplies to other entities listed at [18] above of £7,120 (excluding VAT) during the period 5 September 2018 to 24 October 2018 alone (compared with her

reported supplies through the till of £13,318 (excluding VAT) for the entire 11/18 accounting period).

37. It is also true that Spic n Span appears to have an unconnected customer called Friday Island (about which little is known). However, apart from that customer, over the period from 1 January 2018 to 28 February 2019, all Spic n Span's reported supplies were to other traders listed at [18] above.

38. HMRC then provided an analysis which compared the input tax claimed by the Appellants and other entities listed at [18] above in respect of each supplier on that list with the output tax declared by that supplier in respect of supplies to each of those entities. This analysis showed that, on the basis of the information supplied by Mr Beckford, the claimed input tax exceeded the output tax declared as follows:

Trader	**Period covered**	**Excess of input tax claimed on supplies from relevant entities over output tax declared by them per summaries provided**
APAS	November 2017 to January 2019	£5,859
Pricerite	July 2017 to March 2019	£8,313
Easy Work	January 2019 to June 2019	£15,569
Antbec	October 2017 to March 2019	£9,169
Ashley	July 2017 to March 2019	£5,110
Spic n Span	January 2018 to February 2019	£4,049
Bravo Car Rental	No VAT summaries have ever been supplied for this trader; however, all the VAT returns for it from period 01/17 to 01/19 claimed repayments.	
Layne	January 2018 to January 2019	£5,141
Smiths Travel	August 2017 to January 2019	£2,664
Village Rock	July 2017 to March 2019	£1,367
Jewel Deal	May 2018 to April 2019	£2,273.86
Nadine's	March 2018 to May 2019	£2,997
CC T & M	This trader had been deregistered for VAT, therefore no recent input tax claimed by it; however, purported VAT invoices issued by it were claimed as input tax by other traders.	
Bristol Shipping	This trader had been deregistered for VAT and indeed dissolved, therefore no recent input tax claimed by it;	

	however, purported VAT invoices issued by it were claimed as input tax by other traders.	
Richard Salmon	December 2018 to February 2019	£700
Aiden Trading	This trader only came to HMRC's notice late. Historical VAT summaries have not been provided for it, however all its VAT returns from period 03/19 to period 09/20 claimed repayments.	

39. Looking at the overall picture, the table above shows a total discrepancy of over £62,500. It tied in with separate analysis with which we were presented showing that, in relation to all of the traders over periods approximately corresponding to the same relevant timeframe, input tax claimed exceeded output tax declared by similarly significant sums (albeit that some relatively small 'non-network' inputs and outputs may have been included within that analysis). Such an excess existed for every trader apart from Spic n Span (where there was an overall net liability of just £968 declared over the relevant period).

40. This highlighted the fact that when taken over an extended period, the aggregate VAT returns of the various traders lacked credibility. None of the traders was claiming to make zero rated supplies or to have any special explanation for the permanent VAT reclaim, other than continuing ongoing losses. Mr Beckford's explanation referred to "time frames", which HMRC took to be claiming that the position would reverse if the full picture were taken into account, including all the other accounting periods of all the traders in question. However, no information about those other accounting periods was provided by him, thus rendering it impossible to check that claim.

41. We are satisfied on the basis of the evidence as a whole and the above facts in particular that it was appropriate for HMRC to consider the various traders listed at [18] as making up a largely closed network which amounted to an overall scheme to defraud the Revenue, and for them to consider that all input tax being claimed on supplies between those traders to be connected to that overall fraudulent scheme. We refer to these traders together as "the group".

42. That then leads on to a consideration of some aspects of the fraud and the question of whether Pricerite, Easy Work and APAS (the Appellants in these appeals) were either knowingly involved in it or ought to have known of the connection of their transactions with it.

Purchase and sale of trucks

43. One specific transaction, involving an unconnected third party, stood out and deserves special mention. This was a transaction which took place in August 2018. Mr Beckford's evidence was that Mr Habane of Ashley engaged his help to source some trucks for which Mr Habane had found buyers. By researching on the internet, Mr Beckford had found two trucks which were being sold by a company called Zoemick Commercials Limited in Durham which seemed to suit Mr Habane's requirements. They had travelled together to view the trucks and reach terms with the sellers. The intention was that Mr Beckford would acquire the trucks through Antbec and sell them on to Ashley, for onward sale to Ashley's customer (whose identity was not known to Mr Beckford).

44. Zoemick issued a proforma invoice to Antbec dated 21 August 2018 which listed the two trucks and gave a price of £13,000 plus VAT for each of them – so a total of £31,200. They required payment of a deposit and the trucks would then only be released once they had

been paid in full. Mr Beckford was unable to explain how it was that Zoemick had later sent to him a different invoice (not a proforma) in respect of the two trucks, dated 18 August 2018, with a price of £13,000 each but with no VAT charged as they were to be exported to a consignee in "Somaliland".

45. Mr Beckford left it to Mr Habane to arrange the details with Zoemick, and Mr Habane indeed paid a large part of the purchase price directly to them (we infer this must be correct as the vehicles would not otherwise have been released). It appears that Mr Habane planned to export the trucks – which eventually happened as it was arranged by Zoemick on his instructions. However, in the meantime, Antbec issued invoices addressed to Ashley in respect of the vehicles. First, two invoices were issued, erroneously dated 3 August 2018, each for £12,000 plus £2,400 of VAT, for "interim charges" in relation to the two vehicles. Then two further invoices were issued, dated 23 August 2018, each for £14,000 plus VAT of £2,800, for "final charges inc insurance, driver cost, fuel and parking" for each vehicle. So the sale price from Zoemick was £13,000 per vehicle with no VAT charged and Antbec invoiced Ashley £26,000 plus VAT in respect of each vehicle (which included an amount Mr Beckford included for the expected costs of taxing the vehicles and having them driven to Bristol from Durham). In its VAT summaries, Antbec showed both £10,400 of output VAT invoiced to Ashley and £5,200 of supposed input VAT from Zoemick, but the £5,200 difference was more than cancelled out by supposed purchases from other entities within the network which gave rise to nearly £7,000 of input VAT for Antbec. Ashley claimed the £10,400 of input VAT in its own VAT summary, resulting in an overall repayment claim of £13,979 in its return for period 08/18. In that period, apart from £84.66 of input VAT claimed on minor expenses, the whole of Ashley's input VAT of £15,219 and the whole of its output VAT were said to have arisen from supplies supposedly made entirely between Ashley and the other entities listed at [18] above. No credible evidence of payment for any of these supposed supplies was provided.

46. There were a number of inconsistencies in the account of this transaction given by Mr Beckford, but the trucks were clearly bought and paid for by somebody and HMRC export declaration records show them as having been exported in January 2019 from Felixstowe. HMRC spoke to Zoemick and they confirmed they had indeed sold the vehicles for export (hence charging no VAT) and had themselves arranged for the vehicles to be taken to Felixstowe and shipped to Somalia. We find that Mr Beckford was well aware that the trucks were to be exported and that by invoicing Ashley from Antbec he was creating the appearance of a large amount of input tax in Ashley (leading to a significant repayment claim by it since it declared no output tax on any onward supply of the vehicles as they were being exported), whilst eliminating the output tax liability in Antbec by supposed purchases by it from other entities listed at [18] above.

Vagueness of nature and value of supplies and associated documentation

47. Mr Beckford was extremely vague about the nature of many of the supplies which had supposedly been made between the various entities. In relation to supplies by APAS and Easy Work, the main supplies he referred to were of accountancy/bookkeeping and advisory services (particularly, in the later periods, in respect of the various HMRC enquiries). But he also claimed that APAS had carried out a great deal of "research" for the other traders, Ashley in particular. This was said to involve finding business opportunities and evaluating them, in areas such as solar panels. He also said that he had provided some marketing data to Ashley as part of a supposed branching out of Pricerite into the provision of customer mailing lists from a central supplier of such data, but there was no evidence of any such data having been either obtained or sold on, and Mr Beckford's evidence as to the activities which had supposedly been conducted in this area was extremely vague and completely implausible. Antbec was said to be in the business of renting out electrical and other goods, but there was

no evidence of acquisition of such goods or of the invoicing or collection of payments for them from any customers outside the network of traders referred to at [18] above.

48. Also, the values of the supplies supposedly made were sometimes adjusted after the event by the issue of credit notes. So, for example, the VAT summaries for both APAS and Ashley showed APAS as having made a supply to Ashley on 30 November 2017 to the value of £8,000 plus VAT (though no detail of the nature of the supply was given). Then, in APAS's VAT summary for its period 01/19, a credit note dated 10 November 2018 for the full amount addressed to Ashley was entered, with the note "Cn ashley marketing-nov17" against it. A copy of the credit note was also included in the bundle. The credit note bore the date "14/10/2019" (the date it was actually sent to HMRC), carried the identifying number 10000, recorded the description of services to which it related as "Research and Development", and included the new VAT number of APAS which had only been issued to it in July 2019 after it had applied to be re-registered for VAT following its deregistration at the start of that month. It also included an address for APAS from which Mr Beckford said it had never traded, and gave a reason for its issue: "re discount due to services not meeting buyers specification".

49. Mr Beckford said the current date and updated VAT number must have been inserted by his accounting software when the credit note was reprinted on the day he sent it to HMRC. This was, he said one of the problems he had found with the software in question. The address was an error he could not explain, beyond suggesting that the system might also have done this (without explaining how the system would have recorded an address at which he said APAS had never traded). His explanation for the issue of the credit note was unclear, but he seemed to be suggesting that it was prompted by HMRC telling Mr Habane that APAS's fees were too high, as a result of which he agreed with Mr Habane to reduce them, alternatively he mentioned it might have been because of some set-off arrangement. Nor could he explain what services APAS had originally provided with any clarity, speculating that it might have been accounting services and/or research into possible new products for Ashley.

50. On the same date as he supplied this credit note to HMRC, Mr Beckford supplied another one to them. This was a confusing document. It bore the date 9 December 2018 (therefore not apparently suffering from the "system induced" error of inserting a current date as the date of issue, Mr Beckford suggesting that this may have been because this had been a stored copy of the originally issued credit note, rather than a re-printed copy) and the serial number 10002. It was also addressed to Ashley and also showed APAS's new VAT number (the one which was only issued to it in July 2019, which negates any suggestion that this could have been a stored copy of a document which had truly been issued on 9 December 2018). It contained three lines of entries. The first referred to "Accounting Fees" of £5,000 plus £1,000 VAT, which were shown to total up to £5,000 (not £6,000). The second line referred to "Business Advisory Services" of £3,000 plus £600 VAT, which were shown to total up to £3,000 (not £3,600). The third line referred to "discount" and gave a figure of -£5,630 as the unit price, with zero VAT, totalling -£5,630. Below these three entries, a "subtotal" of £2,370 was given, above a VAT figure of £1,600, with a "Total" at the bottom of £3,970. Mr Beckford's explanation of this credit note was again vague. He said that the intention was to issue a credit note for the whole £8,000 referred to in the first two lines, but the "system" must have changed the figures to reflect the fact that a part payment had been received on the original invoice(s).

51. When this second credit note is matched to the VAT summary that had been provided for APAS, it is shown as an entirely separate entry, dated 9 December 2018, entitled "Cn-ashley marketing", with a negative sales figure of -£5,630 net, and an associated negative VAT amount of -£1,126 – which does not tally with either the credit note produced, or Mr Beckford's explanation of it. No VAT summary has ever been supplied for Ashley covering any period after November 2018, so it was not possible to check how this credit note was dealt with in

Ashley's VAT return for the relevant period. The effect of the issue of the two credit notes on APAS's VAT return for period 01/19 was however clear enough – it reduced what would otherwise have been a VAT liability of £2,746 for the period to a liability of £20.

52. Having considered the documents and heard Mr Beckford's evidence, we conclude that HMRC's assertion is correct: the two credit notes were simply fabricated after the event by Mr Beckford in an attempt to provide documentary support for the respective entries included in APAS's VAT summary for December 2018 and they do not reflect any true adjustment in value to any underlying supply made by APAS.

CONCLUSION ON EXISTENCE OF AN OVERALL FRAUDULENT SCHEME AND APPELLANTS' INVOLVEMENT IN IT

53. Mr Beckford argued that all the supplies reflected in the VAT returns and the VAT summaries provided had taken place. HMRC's suspicions about the reality of many of the underlying transactions were misplaced, and any mismatch between the input tax claimed by one trader and the output tax reported by another was attributable either to a simple timing difference in their respective VAT accounting or to human error. HMRC had clearly made their minds up at an early stage that they would "get" him and from that point had compiled and manipulated the evidence to support the narrative they were promoting. As to the values placed on the supplies, it was up to individual traders to negotiate and agree them and it was not HMRC's place to question them. He accepted that his record keeping had not been up to the standard HMRC required, but that did not mean that the supplies had not taken place.

54. By reference to the whole of the evidence before us (of which the above represents just some obvious highlights), we are satisfied on a balance of probabilities that there was a fraudulent scheme to defraud the VAT system which involved the traders listed at [18] above and that Mr Beckford was not just aware of that scheme but was its architect and administrator. The closed nature of the network was clear from an examination of the volume of supplies supposedly made by each member to the others, there being almost no other customers (apart from the small restaurant business of Nadine's and the single external customer of Spic n Span). Mr Beckford's central role in administering the network was perfectly clear. Most of the supposed supplies were highly implausible in the context of the businesses concerned, and the evidence to demonstrate the supplies that had been made was almost non-existent. We found Mr Beckford a wholly unconvincing witness and do not accept the various explanations which he advanced whilst giving his oral testimony.

55. Addressing the position of APAS specifically, whilst Mr Beckford undoubtedly acted on behalf of the other traders and carried out certain basic administrative and accounting tasks in their names, we consider that most of his activity in doing so was to further the objectives of the overall fraudulent scheme; to the extent he was (as he claims) actually providing accounting or other services, those services were secondary to his administration of the fraud. Nonetheless, some small value could potentially be attributed to those supplies. Mr Beckford argues that the value placed by the parties on those supplies must be accepted by HMRC. As a general proposition, we accept that parties who bargain at arms' length are free to agree whatever value they wish on goods or services supplied to one another, however there are limits to that proposition when the supposed values are clearly fabricated, based on largely fictitious supplies, in order to facilitate a fraud. Whilst accepting therefore that some taxable supplies may have been made by APAS to the other traders in the network, we consider that any such supplies will have been connected to the overall fraud, and therefore the recovery of input VAT on them by the other traders would be properly denied under the *Kittel* principle.

56. As APAS was simply a trading style of Mr Beckford, he was a partner in Pricerite and the sole director of Easy Work, his knowledge and state of mind are imputed to all three Appellants. It follows we are satisfied on a balance of probabilities that:

(1) all three Appellants were well aware of the existence of the overall fraudulent scheme;

(2) the vast bulk of the supposed supplies did not take place (because the entries in the VAT returns, the VAT summaries and any underlying invoices were fabrications created in furtherance of the scheme as a whole), the Appellants were aware of that fact and accordingly to that extent they were seeking fraudulently to rely on a right to deduct input VAT which they knew did not exist;

(3) to the extent that any supposed supplies of services within the group of traders actually took place, the Appellants were well aware of the connection of those supplies to the overall fraudulent scheme; and

(4) the Appellants were well aware that their VAT registrations were being (and were expected to continue to be) used fraudulently.

57. It follows that the requirements for the denial of all input tax purportedly charged by any trader within the group to the Appellants are satisfied, as are the requirements for de-registration of the Appellants for VAT purposes.

APAS PENALTIES

58. For the penalties imposed on Mr Beckford to be maintained, HMRC must clearly satisfy all the requirements of section 69C VATA. We note that Mr Beckford did contest the penalties on the basis of any technical legal argument, he simply asserted they were not due because all of the claimed supplies in question had taken place and the values ascribed to them had been correct and could not be questioned by HMRC.

59. The general scheme of section 69C is to allow HMRC to impose a penalty on a taxpayer in respect of the VAT advantage he gains from making or receiving a supply where the transaction in question is connected with the fraudulent evasion of VAT by another person, where the taxpayer knew (or should have known) of that connection and HMRC have issued a decision to the taxpayer denying him the expected advantage based on that knowledge and the principles set out in *Kittel* (where the advantage is credit for input tax) or *Mecsek* (where the advantage is zero rating of an outward supply, a circumstance which does not apply in this case).

60. Turning to the specifics of section 69C, HMRC clearly issued a "denial decision" which included a denial of APAS's input tax on *Kittel* grounds (see subsection (4)). Thus in respect of each amount of input tax claimed by APAS, if (i) APAS entered into a "transaction involving the making of a supply to" it (see subsection (1)(a)), (ii) the "transaction" in question was connected with the fraudulent evasion of VAT by another person (see subsection (2)), and (iii) APAS knew or should have known of that connection (see subsection (3)), then a penalty under section 69C is justified.

61. Liability under section 69C therefore depends on APAS having "entered into a transaction involving the making of a supply to" it.

62. This would present a problem for HMRC if the true situation was that there had never been any "transaction involving the making of a supply" between the various other network traders and APAS. We consider that most if not all of the various VAT invoices addressed by the other traders to APAS were entirely fictitious, in that the purported underlying supplies to which they referred did not take place. That does not, however, mean that APAS never entered

into any "transaction" which involved the making of a supply to it by each of the other network traders. We consider that there was such a "supply", in each case the nature of that supply being the provision of a false VAT invoice upon which it was intended that APAS would reclaim the input VAT; and ample consideration was given for that supply in the form of APAS arranging for other similarly fictitious VAT invoices to be provided to each of the other network traders to form the basis of their respective fraudulent claims for input VAT. We have also found that all of the various fraudulent input tax claims were part of an overall fraudulent scheme organised and administered by Mr Beckford/APAS, who therefore had full knowledge of the connection between the disallowed input tax of APAS and the overall fraud.

63. It follows that we consider the requirements of section 69C to be satisfied and therefore uphold the penalty imposed on APAS in the reduced amount of £6,722 argued for by HMRC.

SUMMARY

64. There was an overall scheme to defraud the revenue which involved all the traders listed at [18] above.

65. Mr Beckford was the architect and administrator of that scheme.

66. All three Appellants knew of the fraudulent scheme.

67. The vast majority of the purported taxable supplies within the group of traders did not take place at all, as all three Appellants well knew. To that extent, in seeking to recover input tax which they knew was not properly recoverable by them, they were seeking fraudulently to exercise a right to deduct and HMRC were entitled to deny that input tax on the basis of *Fini*.

68. To the extent that the Appellants were the recipients of any actual taxable supplies from other traders in the group, they were well aware that such supplies were an integral part of (and therefore connected to) the overall fraud, accordingly HMRC were entitled to deny the related input tax on the basis of *Kittel*.

69. As all three Appellants were well aware that their VAT registrations were being used fraudulently in furtherance of the overall fraudulent scheme, HMRC were entitled to deregister them for VAT purposes on the basis of *Ablessio*, as explained in *Impact Contracting Solutions*.

70. The requirements for the valid imposition of a penalty under section 69C VATA on Mr Beckford (trading as APAS) were satisfied, but in the reduced amount of £6,722.

DISPOSITION

71. Accordingly, the appeal of Mr Beckford is ALLOWED IN PART, to the extent of reducing the penalty under section 69C VATA 1994 imposed on him from £6,831 to £6,722. The penalty is accordingly confirmed in that reduced amount.

72. Apart from that, the appeals are DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

73. 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.

KEVIN POOLE
TRIBUNAL JUDGE

Release date: 29th OCTOBER 2024

APPENDIX

The Law

The right to deduct and denial of entitlement

19. Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT provide:

> 167 – A right of deduction shall arise at the time the deductible tax becomes charged
>
> 168 – In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:
>
> > (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person

20. Sections 24, 25 and 26 of the VAT Act 1994 provide:

> 24.—(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—
>
> > (a) VAT on the supply to him of any goods or services;
> >
> > (b) VAT on the acquisition by him from another member State of any goods; and
> >
> > (c) VAT paid or payable by him on the importation of any goods from a place outside the member States,
>
> being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
>
> …
>
> (6) Regulations may provide—
>
> > (a) for VAT on the supply of goods or services to a taxable person, VAT on the acquisition of goods by a taxable person from other member States and VAT paid or payable by a taxable person on the importation of goods from places outside the member States to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;
>
> 25.—(1) A taxable person shall—
>
> > (a) in respect of supplies made by him, and
> >
> > (b) in respect of the acquisition by him from other member States of any goods,
>
> account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined

by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

26. - (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

21. Paragraph 4(1), Schedule 11 of the VAT Act 1994 provides:

(1) The Commissioners may, as a condition of allowing or repaying input tax to any person, require the production of such evidence relating to VAT as they may specify.

22. Regulations 13 and 29 of the VAT Regulations 1995 provide:

13.—(1) Save as otherwise provided in these Regulations, where a registered person—

(a) makes a taxable supply in the United Kingdom to a taxable person, or

(b) makes a supply of goods or services to a person in another member State for the purpose of any business activity carried out by that person, or

(c) receives a payment on account in respect of a supply he has made or intends to make from a person in another member State,

he shall provide such persons as are mentioned above with a VAT invoice.

….

29.—(1) Subject to paragraph (2) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable.

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;…

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold, instead of the document or invoice (as the case may require) specified in sub-paragraph (a)… above, such other documentary evidence of the charge to VAT as the Commissioners may direct.

23. Thus, if a taxable person has incurred input tax that is properly allowable, he is entitled to set it against his output tax liability and, if the input tax credit due to him exceeds the output tax liability, receive a repayment.

Loss of entitlement to deduct

24. However, in a judgment dated 3 March 2005 in *I/S Fini H v Skatteministeriet* (C-32/03), he European Court of Justice ("ECJ") held:

"33. If the tax authorities were to conclude that the right to deduct has been exercised fraudulently or abusively, they would be entitled to demand, with retrospective effect,

repayment of the amounts deducted (see, inter alia, *Rompelman*, paragraph 24; *INZO*, paragraph 24; and *Gabalfrisa*, paragraph 46).

34. It is, in any event, a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent or abusive ends."

25. Furthermore, in its judgment dated 6 July 2006 in the joined cases *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) ("*Kittel*"), the ECJ confirmed that, in the context of MTIC fraud, traders who "knew or should have known", that the transactions in which they were engaging were connected with such frauds will not be entitled to reclaim any input tax incurred. In particular, in the *Kittel* judgment, the ECJ stated:

"56. … a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.

57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.

59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'."

26. In *Mobilx Limited (in Liquidation) v HMRC* [2010] EWCA Civ 517 the Court of Appeal considered *Kittel*. At paragraph 52, Moses LJ stated:

"If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises."

27. At paragraph 59, Moses LJ went on to state in relation to the "should have known" aspect of the test:

"The test in *Kittel* is simple and should not be over-refined, it embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances, which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraudulent evasion of VAT then he should have known of that fact..."

28. At paragraph 64 of *Mobilx*, Moses LJ then said:

"If it is established that a trader should have known that by his purchase there was no reasonable explanation for the circumstances in which the transaction was undertaken

> other than that it was connected with fraud then such a trader was directly and knowingly involved in fraudulent evasion of VAT."

29. In paragraph 84 the Court of Appeal commended as significant the fact that:

> "... a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time."

30. Thus a taxpayer who involves himself in a transaction which he "knew or should have known" is "connected with fraudulent evasion of VAT" can be denied his Community law right to claim input tax.

31. Therefore, in respect of the decision to deny an appellant's input VAT claims, the issues before the tribunal are:

> c. Was the appellant's right to deduct being relied upon for fraudulent or abusive ends?

or alternatively,

> d. Was the appellant's transaction connected with the fraudulent evasion of VAT? If so, did the appellant know of that connection or should it have known of that connection?

<u>Multiple recovery/penalty</u>

32. In *Calltel Telecom Limited & Opto Telelinks Limited v HMRC* [2009] EWHC 1081 (Ch), Floyd J dismissed the appellants' submission that the denial of input VAT in a sum greater than the tax loss would offend against the principle of fiscal neutrality or amount to a penalty.

> "96. In my judgment there is no principle which requires HMRC to acknowledge a claim to repayment to the extent that the claim exceeds HMRC's tax loss. Firstly, as Mr Cordara emphasised in other connections, the correct unit of fiscal analysis is not the entire chain but the individual transaction. This proposition was emphasised in both *Optigen* and *Kittel* (supra). The question is accordingly whether the taxpayer has or does not have the right to deduct or reclaim his input tax in respect of an individual transaction. Consideration of this question does not justify recourse to the overall fiscal impact on HMRC of all the transactions in the chain.
>
> 97. Secondly, none of the statements in *Kittel* suggest that the right is lost only to the extent that tax is lost elsewhere in the chain. It is true that measures adopted by Member States to combat MTIC fraud must be proportionate: see e.g. *Netto* (supra) at [18]-[23]. Thus irrebuttable presumptions of illegality, for example, are not permitted: *Garage Molenheide* Joined Cases C-286/94; C-340/95; C-401/95 and C- 47/96: [1998] STC 126 at [52]. But, once it is established that a taxpayer has, by his purchase, participated in the fraudulent evasion of VAT, it seems to me to be impossible to argue that, by withholding repayment of VAT in respect of that very purchase the taxpayer is being subjected to a disproportionate remedy. In fact, to use the VAT legislation to achieve any benefit from such a purchase seems to me to be wrong in principle.
>
> 98. Thirdly, although fiscal neutrality is a fundamental feature of the system of VAT, and the right of any trader to deduct input tax is an important feature of the system of ensuring fiscal neutrality (see e.g. *Kittel* at [48]), the fiscal neutrality of an individual transaction will, as *Kittel* shows, have to give way to the objective of combating fraud.
>
> 99. It seems to me that the objective of not recognising the right to repayment is not simply to ensure that the exchequer is not harmed by fraud: the objective includes combating fraud and discouraging taxpayers from entering into transactions of this nature. In that context, considerations of fiscal neutrality of the impugned transaction are, it seems to me, beside the point."

Deregistration on grounds of fraud/abuse

33. In *Valsts ienemumu dienests v Ablessio SIA* (C-527/11), the CJEU ruled that VAT registration may be refused where there is 'sound evidence giving objective grounds for considering that it is probable that the VAT identification number assigned to that taxable person will be used fraudulently.' (para 34). In respect of *Ablessio SIA*, the court observed that this would apply if the evidence indicated that the registration of the company, '..might result in misuse of the identification number or other VAT fraud.' (para 38).

34. Any decision to refuse a registration 'must be based on an overall assessment of all the circumstances of the case...' (para 34).

35. Whilst the judgment in *Ablessio* concerned the refusal to register a person for VAT rather than cancelling an existing registration, the Respondents submit that it follows equally that they may deregister a taxable person for VAT where such objective grounds exist on an overall assessment of all the circumstances of the case.

36. This was confirmed most recently by the Upper Tribunal in *Impact Contracting Solutions Limited v HMRC* UT/2022/000076. In which it was held that deregistration may be appropriate under the *Ablessio* principle even when a taxpayer has undertaken other unconnected transactions that are not connected with fraud and may themselves take the taxpayer above the VAT threshold:

> "57. We do not agree that the application of the *Ablessio* principle to an existing registered trader with untainted supplies above the VAT threshold breaches the EU principle of legal certainty. There is no indication in the decision in *Ablessio* that this was a concern, and, while we acknowledge that there may be uncertainties arising as a consequence of deregistration which do not arise following a refusal to register (as was considered in *Ablessio*), that does not mean that deregistration itself, pursuant to *Ablessio*, breaches the principle of legal certainty. A taxpayer who knew or should have known that his transactions were connected with the fraudulent evasion of VAT can be certain that if he is found out he will not be entitled to deduct input tax. We see no principled reason why the same should not be true in relation to entitlement to register.
>
> …
>
> 100. Our conclusion in relation to the preliminary issues raised by Grounds 1 and 2 is as follows:
>
> The principle in *Ablessio* applies:
>
> (a) to the deregistration for VAT purposes by HMRC of a person as well as to a refusal by HMRC to register a person.
>
> (b) to enable the deregistration of a person for VAT purposes who has facilitated the VAT fraud of another, where the person to be deregistered knew or should have known that it was facilitating the VAT fraud of another.
>
> (c) notwithstanding that the person whom HMRC seek to deregister has at the relevant time or times also made taxable supplies unconnected with such facilitation of fraud and which would result in a liability to be registered under paragraph 1(1) Schedule 1 VATA 1994."

37. Therefore, in respect of the decision to deregister an appellant for VAT, the issue before the tribunal is as follows: are there objective grounds for considering that it is probable that the Appellant's VAT registration number would be used fraudulently?

Recovery of VAT shown on invoice

38. Paragraph 5 of Schedule 11 to VATA provides as follows:

5.—

(1) VAT due from any person shall be recoverable as a debt due to the Crown.

(2) Where an invoice shows a supply of goods or services as taking place with VAT chargeable on it, there shall be recoverable from the person who issued the invoice an amount equal to that which is shown on the invoice as VAT or, if VAT is not separately shown, to so much of the total amount shown as payable as is to be taken as representing VAT on the supply.

(3) Sub-paragraph (2) above applies whether or not—

> (a) the invoice is a VAT invoice issued in pursuance of paragraph 2(1) above; or
>
> (b) the supply shown on the invoice actually takes or has taken place, or the amount shown as VAT, or any amount of VAT, is or was chargeable on the supply; or
>
> (c) the person issuing the invoice is a taxable person;

and any sum recoverable from a person under the sub-paragraph shall, if it is in any case VAT be recoverable as such and shall otherwise be recoverable as a debt due to the Crown.

Penalties pursuant to section 69C of VATA 1994

39. Section 69C of VATA 1994 states:

> **69C Transactions connected with VAT fraud**
>
> (1) A person (T) is liable to a penalty where—
>
> > (a) T has entered into a transaction involving the making of a supply by or to T ("the transaction"), and
> >
> > (b) conditions A to C are satisfied.
>
> (2) Condition A is that the transaction was connected with the fraudulent evasion of VAT by another person (whether occurring before or after T entered into the transaction).
>
> (3) Condition B is that T knew or should have known that the transaction was connected with the fraudulent evasion of VAT by another person.
>
> (4) Condition C is that HMRC have issued a decision ("the denial decision") in relation to the supply which—
>
> > (a) prevents T from exercising or relying on a VAT right in relation to the supply,
> >
> > (b) is based on the facts which satisfy conditions A and B in relation to the transaction, and
> >
> > (c) applies a relevant principle of EU case law (whether or not in circumstances that are the same as the circumstances in which any relevant case was decided by the European Court of Justice).
>
> (5) In this section "VAT right" includes the right to deduct input tax, the right to apply a zero rate to international supplies and any other right connected with VAT in relation to a supply.
>
> (6) The relevant principles of EU case law for the purposes of this section are the principles established by the European Court of Justice in the following cases—
>
> > (a) joined Cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State; Belgium v. Recolta Recycling* (denial of right to deduct input tax), and

(b) Case C-273/11 *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* (denial of right to zero rate),

as developed or extended by that Court (whether before or after the coming into force of this section) in other cases relating to the denial or refusal of a VAT right in order to prevent abuses of the VAT system.

(7) The penalty payable under this section is 30% of the potential lost VAT.

(8) The potential lost VAT is—

(a) the additional VAT which becomes payable by T as a result of the denial decision,

(b) the VAT which is not repaid to T as a result of that decision, or

(c) in a case where as a result of that decision VAT is not repaid to T and additional VAT becomes payable by T, the aggregate of the VAT that is not repaid and the additional VAT.

(9) Where T is liable to a penalty under this section the Commissioners may assess the amount of the penalty and notify it to T accordingly.

…

(11) The assessment of a penalty under this section may be made immediately after the denial decision is made (and notice of the assessment may be given to T in the same document as the notice of the decision).

…

40. Section 70 of VATA 1994 provides for mitigation of penalties under section 69C, amongst others:

70.— Mitigation of penalties under sections 60, 63, 64, 67, 69A and 69C

(1) Where a person is liable to a penalty under [section 60, 63, 64, 67, 69A or 69C or under paragraph 10 of Schedule 11A the Commissioners or, on appeal, a tribunal may reduce the penalty to such amount (including nil) as they think proper.

(2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.

(3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any tribunal shall be entitled to take into account in exercising their powers under this section.

(4) Those matters are—

(a) the insufficiency of the funds available to any person for paying any VAT due or for paying the amount of the penalty;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of VAT;

(c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

(5) In the application of subsections (3) and (4) in relation to a penalty under section 69C, subsection (4) has effect with the omission of paragraphs (b) and (c).

Burden and standard of proof

41. The burden of proof lies on the Respondents in respect of all issues.

42. In *Mobilx & others v HMRC* [2010] EWCA Civ 517, Moses LJ observed at [81]:

> "HMRC raised in writing the question as to where the burden of proof lies. It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is out with the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary."

43. By implication, HMRC will also bear the burden of proving that the grounds for deregistration on the basis of fraud or abuse are present.

44. Similarly, HMRC bears the burden of establishing that the relevant statutory conditions are established in section 69C. (See, for example, *Konstruct Recruitment Limited and another v HMRC* [2023] UKFTT 745 (TC) at [20]).

45. The standard of proof is the civil standard. In *Re B* [2009] 1 AC 11, Lord Hoffman stated at [13]:

> "I think that the time has come to say, once and for all, that there is only one civil standard of proof, and that is proof that the fact in issue more probably occurred than not."