



Neutral Citation: [2024] UKFTT 00545 (TC)

Case Number: TC09215

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Bristol Magistrates' and Tribunals Hearing
Centre

Appeal reference: TC/2018/04143

Value Added Tax – when did HMRC have sufficient evidence to issue an assessment – false invoices issued by companies controlled by a convicted money launderer – accounts staff allocated invoices to jobs – some goods never received – at least one director deemed to have knowledge – appeal dismissed

Heard on: 15 to 19 April 2024

Judgment date: 17 June 2024

Before

**TRIBUNAL JUDGE ALASTAIR J RANKIN MBE
MR MOHAMMED FAROOQ**

Between

LANCER SCOTT LIMITED

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Tim Brown of counsel instructed by the Appellant's In-house solicitor.

For the Respondents: Mr Stuart Biggs and Ms Kathryn Amot Drummond of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs.

DECISION

INTRODUCTION

1. This is an appeal against the decision of the Commissioners for Her Majesty's Revenue and Customs (hereinafter "the Respondents") denying Lancer Scott Limited ("the Appellant") an entitlement to deduct input tax of £551,695 within quarterly Value Added Tax ("VAT") accounting periods 09/06 to 12/09 inclusive. The disputed decision ("the Decision") of the Respondents is contained in a letter dated 15 April 2016. The Appellant's tax advisers, Francis Clark, requested a statutory review of that decision on 13 February 2018. The review was carried out and the original decision was upheld. On 12 June 2018, the Appellant filed its appeal with the Tribunal.
2. By notice dated 25 September 2019, penalties totalling £126,186 were imposed. An appeal of those penalties dated 25 October 2019, was later consolidated with the assessment appeal.
3. The figure of £551,695 represents the input tax claimed on the basis of supplies of goods and services, namely the purchase of building supplies and hire of equipment, purportedly made to the Appellant by entities connected to Wilfred Folwell ("Folwell"), a professional adviser to the Appellant, subsequently convicted of money laundering offences. It is the Respondents' case that no such supplies were made or, any such supplies were substantially overstated and there is no reliable evidence to justify a charge to VAT.
4. Further, and in the alternative, the Respondents claim that, if any such supplies were made, they were transactions connected to fraud by reason of the failure of Folwell to account for VAT, and that the Appellant knew this to be the case.
5. The assessment figure of £551,695 was calculated on the basis of a total of £3,903,625 paid by the Appellant into bank accounts controlled by Folwell. A full calculation was appended to the assessment. The Respondents asserted that this is a best judgement assessment and is a case involving a loss of VAT brought about deliberately by the Appellant (or a person acting on the Appellant's behalf) and/or a case in which the Appellant had participated in transactions knowing that those were part of arrangements of a kind intended to bring about a loss of VAT.
6. Accordingly, the Respondents claimed that the assessment made on 15 April 2016 were within the extended time period permitted in circumstances in which deliberate/knowing conduct is established.
7. The Respondents relied, in particular and without restriction, upon the following aspects in this matter:
 - 7.1 The money laundering conviction of Folwell;
 - 7.2 The involvement of the Appellant in a fraud on Solaglas Limited, which provided evidence of the Appellant being concerned in the creation and use of false invoices, and provided an initial motivation to fabricate expenditure to provide false records showing input tax paid to offset the output tax shown in false invoices provided to Solaglas;
 - 7.3 Evidence from customers of the Appellant that invoices sent from entities connected to Folwell, CH Building Supplies and Smart Services, to the Appellant and attributed by the Appellant (by job number or site name) to jobs for those

customers, charged for building supplies that were not used on those jobs; the inference being that the supplies shown on the invoices were not in fact made;

7.4 Evidence from purported suppliers Munster Joinery and Pod Associates that no supplies were made by them: the inference being that Folwell had effectively hijacked their details to create false invoices paid by the Appellant;

7.5 Evidence of the payments out from Folwell to directors of the Appellant; the inference being that, having used the device of false invoices to create a false claim for input tax, and paid money to Folwell controlled entities which was not in fact due, the directors of the Appellant received back the money, received interests in property and/or were owed money by Folwell.

8. The Appellant asserted that its directors did not act deliberately in reclaiming input tax on alleged false invoices issued to them by Folwell and that they did not personally benefit from this behaviour. The Appellant contended that it had provided material to the Respondents to support this.

THE LEGISLATION AND CASELAW

9. 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: 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,

10. Sections 24, 25 and 26 of the Value Added Tax Act 1994 (VATA) 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.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies; ...

11. Section 4 of VATA provides:

4.— Scope of VAT on taxable supplies.

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

12. Paragraph 4(1), Schedule 11 VATA 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.

13. Accordingly, if a taxable person has incurred input tax that is properly allowable, he is entitled to set it against his output tax liability. If, however, there has been no such taxable supply, the basis for the credit is not established. As clarified by the Upper Tribunal in *Infinity Distribution Limited v HMRC* [2019] UKUT 0405 (TCC) at paragraph 43:

“43. ...Without an actual supply, no right to input tax credit arises. In applying this principle, the good or bad faith of the recipient of the supply is nothing to the point: if an invoice records a transaction which has not in fact taken place, it cannot be relied on to claim credit for the input tax shown on that invoice.”

14. In circumstances where there has been a supply, the Respondents submitted that a claim for input tax can be refused if it can be established that a taxable person knew or should have known that he was taking part in a transaction connected with the fraudulent evasion of VAT. In the joined cases of *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (C-4 hereafter known as “the Kittel judgment”), the European Court of Justice 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

purpose 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.’”

15. Section 73 VATA provides:

73.— Failure to make returns etc

(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person—

(a) as being a repayment or refund of VAT, or

(b) as being due to him as a VAT credit,

an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.

...

(6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following

(a) 2 years after the end of the prescribed accounting period; or

(b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,

but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.

16. Section 77 makes provision for the time limit for a s73 assessment and for a s76 penalty assessment to be made:

(1) Subject to the following provisions of this section, an assessment under section 73, 75 or 76, shall not be made—

(a) more than 4 years after the end of the prescribed accounting period or importation or acquisition concerned, or

(b) in the case of an assessment under section 76 of an amount due by way of a penalty which is not among those referred to in subsection (3) of that section, 4 years after the event giving rise to the penalty.

...

(4) In any case falling within subsection (4A), an assessment of a person (“P”), or of an amount payable by P, may be made at any time not more than 20 years after the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate (subject to subsection (5)).

(4A) Those cases are—

(a) a case involving a loss of VAT brought about deliberately by P (or by another person acting on P's behalf),

(b) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of VAT.

17. Section 83 VATA provides

“83. Appeals.

(1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—

(e) the proportion of input tax allowable under section 26;

...

(n) any liability to a penalty or surcharge by virtue of any of sections 59 to 69B; (p) an assessment—

(i) under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act; or ...

(q) the amount of any penalty, interest or surcharge specified in an assessment under section 76;

(r) the making of an assessment on the basis set out in section 77(4).

18. Schedule 24 of the Finance Act 2007 provide as follows:

15

(1) [A person may] appeal against a decision of HMRC that a penalty is payable [by the person] .

(2) [A person may] appeal against a decision of HMRC as to the amount of a penalty payable [by the person].

16—

(1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Act

19. The Respondents correctly claimed that the burden of showing that the assessment was valid, in time and to their best judgment lies with them. They stated that the term “best judgment” is taken from the statute and is a term of art for an assessment conducted in good faith, often in circumstances where the information available to the officer is limited. The Respondents claimed that they do not have to prove that the assessment was the best possible in the circumstances.

20. The burden of showing that any inaccuracies in the relevant VAT returns were deliberate inaccuracies also lies with the Respondents with the standard of proof being the balance of probabilities. Conversely the burden of showing that the assessment was incorrect lies with the Appellant who must also establish the extent of the overcharge.

21. In the recent decision of *Ahmad v. HMRC* [2019] UKFTT 0682 (TC) the First-tier Tribunal stated:

“42. The approach that this tribunal should take when faced with a challenge based on best judgment was described by the Court of Appeal in *Pegasus Birds Ltd v Commissioners of HM Revenue & Customs* [2004] EWCA Civ 1015. Carnwath LJ gave the following the following helpful guidance:

“... The Tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the Tribunal should not allow it to be diverted into an attack on the Commissioners' exercise of judgment at the time of the assessment...”

43. In *Khan v Commissioners for HM Revenue & Customs* [2006] EWCA Civ 89, Carnwath LJ again summarised the position as follows:

69. ...The position on an appeal against a "best of judgment" assessment is well-established. The burden lies on the taxpayer to establish the correct amount of tax due:

“The element of guess-work and the almost unavoidable inaccuracy in a properly made best of judgment assessment, as the cases have established, do not serve to displace the validity of the assessments, which are prima facie right and remain right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right.”

44. What these authorities establish is that if the assessments made by HMRC are, prima facie right; whether or not they are best judgement assessments, the burden is on the appellant to show that they are wrong.”

22. The periods that form the subject of this appeal fall into two different penalty regimes. The Finance Act 2007, Schedule 24 (Commencement and Transitional Provisions) Order 2008/568 provides that for tax periods for which a return was required to be made before 1st April 2009, the Finance Act 2007 penalty provisions do not apply. Penalties are imposed in respect of those earlier periods under s.60 VATA 1994.

23. Section 60 states:

60.— VAT evasion: conduct involving dishonesty.

(1) In any case where—

(a) for the purpose of evading VAT, a person does any act or omits to take any action, and

(b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability), he shall be liable, subject to subsection (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be, sought to be evaded, by his conduct.

(2) The reference in subsection (1)(a) above to evading VAT includes a reference to obtaining any of the following sums—

(a) a refund under any regulations made by virtue of section 13(5);

(b) a VAT credit;

(c) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; and

(d) a repayment under section 39, in circumstances where the person concerned is not entitled to that sum.

(3) The reference in subsection (1) above to the amount of the VAT evaded or sought to be evaded by a person's conduct shall be construed—

(a) in relation to VAT itself or a VAT credit as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and

(b) in relation to the sums referred to in subsection (2)(a), (c) and (e) above, as a reference to the amount falsely claimed by way of refund or repayment.

...

(7) On an appeal against an assessment to a penalty under this section, the burden of proof as to the matters specified in subsection (1)(a) and (b) above shall lie upon the Commissioners.

24. The Respondents submitted that the test for dishonesty is whether the Appellant was dishonest by the standards of an ordinary, reasonable individual (having the same knowledge as the accused): *Ivey v Genting Casinos* [2017] UKSC 67.

25. Section 76 VATA states:

(1) Where any person is liable –

...

(b) to a penalty under section 60 ...

the Commissioners may ... assess the amount due by way of penalty ... and notify it to him accordingly;

...

(3) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as “the relevant period” —

(b) in the case of a penalty under section 60 relating to the evasion of VAT, the relevant period is the prescribed accounting period for which the VAT evaded was due;

(c) in the case of a penalty under section 60 relating to the obtaining of the payment of a VAT credit, the relevant period is the prescribed accounting period in respect of which the payment was obtained;

26. The relevant parts of Schedule 24 of the Finance Act 2007 provide as follows:

1 Error in taxpayer's document

(1) A penalty is payable by a person (P) where—

(a) P gives HMRC a document of a kind listed in the Table below, and

(b) Conditions 1 and 2 are satisfied.

(2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss, or

(c) a false or inflated claim to repayment of tax.

(3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.

(4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

The table provides that a VAT return is a relevant document.

3 Degrees of culpability

(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—

(a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

(b) “deliberate but not concealed” if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and

(c) “deliberate and concealed” if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P—

(a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

(3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently uncooperative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.

13

(1) Where a person becomes liable for a penalty under paragraph 1, 1A or 2 HMRC shall—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice a tax period in respect of which the penalty is assessed (subject to sub-paragraph (1ZB)).

THE BACKGROUND OF THE APPELLANT

27. The Appellant was incorporated on 31 March 1998 (company number 03537554). The nature of its business is described on Companies House as “43290 - Other construction installation”.

28. The directors during the relevant period 1 October 2005 to 1 October 2010 were:

- (a) Morian Cooke (Cooke) the Chief Executive Officer appointed on 31 March 1998;
- (b) Mark Kemery (Kemery) appointed on 31 March 1998;
- (c) Mark Chapman (Chapman) appointed on 1 June 2000;
- (d) Terence William Hosier (Hosier) appointed on 30 August 2007 and resigned on 1 February 2011;
- (e) Lisa Hosier *née* Bagley (Bagley) appointed on 30 August 2007 and resigned on 30 September 2009;
- (f) Robert Griffiths (Griffiths) appointed on 30 August 2007;
- (g) Tim Dougherty (Dougherty) appointed on 30 August 2007; and
- (h) Jon Bishop (Bishop) appointed on 1 October 2010.

29. The Appellant was registered for the purposes of value added tax with effect from 1 April 1998. At the request of the Appellant, VAT registration number 681 7519 08, which, since 1 September 1996, had been allocated to the partnership, Green Building Services (comprising Mark Green, Kemery and Cooke), was reallocated to it. The Appellant’s principal place of business at the time of registration was Unit 4, Wessex Business Centre, Wedmore Road, Cheddar, Somerset, BS27 3ED. The principal place of business has subsequently changed five times and, since December 2017, it has been 53-55 Queen Charlotte Street, Bristol, BS1 4HQ. The Appellant is required to submit VAT returns quarterly.

30. On its website, the Appellant describes itself as follows:

“Lancer Scott is a major privately-owned Built environment construction, development and property maintenance company in the UK. Lancer Scott was formed in 1996. The company has since grown and developed in a structured manner whilst maintaining the robust foundations that have underpinned the organisation since inception. As a national company large enough to guarantee delivery with economies of scale but remain flexible enough to maintain the personal touch we are committed to the long-term future of the built environment. Our vision is to be the most trusted partner in the built environment, leaving a positive legacy for the communities in which we work and live.”

31. The Appellant’s turnover and profit for the relevant and surrounding periods, as set out in its annual accounts is as follows, together with a breakdown of purchases costs and hire costs:

Period End	March 2006	Sept 2007	Sept 2008	Sept 2009	Sept 2010	Sept 2011
Turnover	5,898,834	15,040,103	11,493,405	16,434,252	15,350,773	18,081,141
Cost of	5,287,856	12,855,19	9,540,339	13,424,63	12,463,115	16,674,091

Sales		9		2		
Purchases	1,414,845	1,742,785	3,841,078	4,018,233	6,518,996	3,887,338
Hire Costs	89,758	1,310,234	388,994	279,628	248,478	379,226

32. Of the £16,121,092 total declared purchases in the account periods ending 09/07, 09/08, 09/09, 09/10 (54 months), approximately £3,351,930 (total payments of £3,903,625 minus the VAT assessment) were payments to Folwell accounts across 41 months. As considered below, the Respondents consider this shows the invoices purported that he was a significant supplier but by no means the sole supplier.

THE RESPONDENT’S PRIMARY CASE

33. It was the Respondent’s primary case that no supplies were provided by Folwell and his associated businesses to the Appellant and that its directors were aware of this. Accordingly, the Appellant acted deliberately in claiming input tax in relation to the invoices generated by Folwell. Under section 77 (4A)(a) of the VATA, the Respondents are therefore entitled to make a best judgment assessment under section 73(2) of the VATA and deny the claim for input tax. In support of this, the Respondents relied upon the evidence summarised below.

34. Folwell held himself out as an accountant with an expertise in tax affairs and as a businessman with an interest in property (purchase and sale, refurbishment, development as cafés or bars, and domestic rental). Hosier, a director of the Appellant during the relevant period, described in a witness statement to the police dated 30 March 2010 how he thought he met Folwell in one of Folwell’s bars in Bristol in the early 2000s and that they became friendly over the years. He classified him as a friend and Folwell would attend company events. He described him as a “man of many trades. He was a bookkeeper, a supplier of building materials, he dealt with Revenue Tax Issues. He also dealt with a lot of properties.”

35. Folwell’s initial involvement with the Appellant appears to have been as an advisor in relation to an investigation by the Respondents relating to Construction Industry Scheme payments, which concluded in 2007/8. According to Hosier and Cooke, Folwell subsequently offered to source and supply building materials for the Appellant, which he claimed to be able to obtain at a discounted rate. He was not employed by the Appellant and was not paid for his services. Cooke described Folwell as a purchaser or buyer who came to the Appellant’s office on a daily basis, where he had a tray from which he collected a list of materials, and then went and sourced them. Cooke explained that he understood that Folwell made money by “buying the goods for X and selling them for Y”.

36. Folwell controlled the bank accounts for the various companies purporting to supply materials to the Appellant and it was into these bank accounts that the Appellant paid £3,903,625. These bank accounts had been set up by Folwell using the business names of third parties (the “associate business accounts”), either without their knowledge (Smart Services) or, he having advised them to do so in order to minimise their tax liability (CH Building Services, Pod/Ipod Associates and Munster Joinery). In addition, Folwell controlled 14 personal and business bank accounts in his own name and various trading names (the “Folwell accounts”). Folwell was arrested in 2010 and subsequently prosecuted for fraud and using his own and the associate business accounts to launder the proceeds of crime. In the period covered by the Indictment, Folwell received over £14m through his own and associate business accounts. The sources of the millions of pounds included: the Appellant (through the

payment of false invoices purportedly for supplies never provided); a company with links to the Appellant (Micra); a fraud directly linked to the Appellant (the Solaglas fraud). It was part of the prosecution case at trial, and it was the Respondent's case in this appeal, that no supplies (or no substantial supplies) were provided by Folwell under the guise of the false invoices.

37. Following a trial at Bristol Crown Court between March and May 2012, Folwell was convicted of money laundering and fraud offences, which he committed between August 2006 and December 2009 ("the indictment period"). He was sentenced to 8 years' imprisonment. Both Cooke and Hosier visited Folwell in prison following his conviction, which is indicative of the closeness of the relationship.

38. Solaglas is a nationwide glass and glass systems distributor and installer. On 7 April 2011, David Hartley, an employee of Solaglas, pleaded guilty to conspiring with Hosier and Shaun Hosier to commit fraud. Specifically, between 2 February 2007 and 1 May 2010, David Hartley received false invoices from the Appellant (specifically Hosier) and West Street Glazing (Shaun Hosier) for work that had never been carried out for Solaglas. David Hartley then authorised the payment of those invoices in return for cash payments from Hosier and Shaun Hosier. Hosier and Shaun Hosier were both prosecuted for the conspiracy and pleaded not guilty. Cooke and Griffiths both gave evidence as part of Hosier's case.

39. Hosier and the Appellant accepted that the invoices were false. However, in his defence to the criminal charges, Hosier asserted that he did not defraud Solaglas as alleged. Rather, he provided the false invoices at the request of David Hartley, who had told him that in order for the Solaglas work to be done as cheaply as possible they wanted to pay immigrant workers cash in hand and needed to put the payments "through the books". The Appellant agreed to provide the invoices to create the necessary paper trail. In short, Hosier appeared to have asserted that he agreed to assist in defrauding the Respondents but not Solaglas. Hosier and Shaun Hosier were both acquitted of the fraud with which they were charged. Solaglas issued a civil claim against the Appellant. The Appellant contested the claim on the basis that the invoices were not false, and in the alternative argued that any fraudulent behaviour by Hosier should not be attributed to it as he would have been acting in breach of his fiduciary duties. Notwithstanding the acquittal and the civil defence raised, the directors reported to the Respondents that the Appellant settled with Solaglas for £490,000.

40. Mr Biggs claimed that not only did the Solaglas fraud evidence a readiness on the part of the Appellant to prepare false invoices, but it also explained some of the transactions between Folwell's associated accounts and the Appellant. Specifically, the prosecution in Folwell's trial pointed to Folwell providing the means by which Hosier could extract from the Appellant at least some of the monies received from Solaglas for the non-existent work on the false invoices provided to David Hartley. Also, the Solaglas fraud itself created a motive to produce false Folwell invoices because without those corresponding false invoices for the materials supposedly used on the Solglass jobs, the Appellant would have presented as having received output tax with no corresponding input tax from a supplier and would be due to pay some of the proceeds of the fraud to the Respondents.

41. Mr Biggs further claimed that it was inconceivable that frauds were committed at both the customer side (Solaglas) and the supply-side (Folwell) of the Appellant, without the two being connected and without the knowledge of the Appellant's directors.

42. From 1 May 2003 to 31 March 2009, the Appellant made scrap metal sales and failed to declare the sales. Consequently, it did not pay the relevant output tax. Cooke, Griffiths and Hosier all made Outline Disclosures in November 2015 in which they each accepted, under the heading “Description of Deliberate Conduct” that:

“As a director of Lancer Scott Ltd, I was aware the company received cash from sales of scrap metal which were not recorded as income in the business records. These funds were used to pay David Hartley, who was a manager of Solaglass Ltd, in respect of materials and labour that were believed to be incurred by that company on work being completed on behalf of Lancer Scott Ltd.”

43. While this aspect does not fall for determination within this appeal, Mr Biggs submitted that the Appellant’s poor, deliberate conduct in this regard might assist the Tribunal in determining whether there has been further deliberate misconduct.

44. Two of the companies that purportedly provided building supplies, as sourced by Folwell, were CH Building Supplies and Services and Smart Services. The Appellant made payments totalling £1,566,648 to CH Building Supplies from July 2007 to October 2009. In his evidence at Hosier’s trial, Cooke described CH Building Supplies and Services as “Wilf’s building supplies company” whilst Griffiths claimed not to know who they were. In fact, CH Building Supplies and Services was a fake business set up by Folwell, hijacking the details and bank account of a legitimate business, namely Keith Andrew Brain trading as CH Construction Supplies. Keith Brain was a plasterer by trade who carried out maintenance work on Folwell’s portfolio of properties and also became Folwell’s personal driver. CH Construction Supplies was registered for VAT from 1 June 2007 to 1 July 2011, with a registered address of 94 Ilminster Avenue, Knowle West, Bristol. The VAT registration number was 908906207. Folwell used the VAT number on the false invoices of the similarly named CH Building Services and Supplies.

45. In May 2007, Folwell advised Keith Brain to open a bank account in the name of C H Building Supplies., which he did. The cheque book and debit card for the account went to Folwell and the business address to which the bank statements would be sent was the address of Folwell’s solicitors in Brynmawr, Gwent. It was into this account that the Appellant’s payments for the CH Building Supplies and Services invoices were paid. Credits into the Keith Brain T/A C H Building Supplies bank account during the period August 2007 to October 2009 totalled over £2.5m, of which £1,566,648 were payments from the Appellants.

46. Smart Services was also a fake business set up by Folwell using the details of Simon John Noble. Simon Noble was an air conditioning engineer who, with his partner, Stuart Cameron had engaged Folwell’s accountancy services. Without Simon Noble’s knowledge or permission, Folwell set up a Natwest account called “Simon Trading as Smart Services”.

47. Simon Noble never traded under such a name and was unaware that his name was being used in this way. Simon John Noble trading as Smart Services of 140 Charston, Greenmeadow, Cwmbran was registered for VAT with the registration number 885695648, with effect from 31 July 2006. The registration was cancelled with effect from 2 October 2007 but the invoices in the name of Smart Services evidencing the Appellant’s claim for input tax continued to show the registration number and to show VAT as charged across the relevant periods.

48. On 18 November 2010, an employee of the Appellant named Gillian Jones (Jones) provided Detective Constable Atkin, the officer in the Folwell prosecution, with 637 invoices addressed to the Appellant from CH Building Supplies and 252 invoices addressed to the Appellant from Smart Services. Each of these invoices was marked with the Appellant's job number, indicating the job to which the building materials specified on the invoices related.

49. DC Atkin extracted 10% of the most recent CH Building Supplies invoices (64 in number) and the 10% most recent Smart Services invoices (25 in number), which together related to a total of 49 of the Appellant's jobs. Officers then made enquiries regarding the Appellant's customers who had commissioned the work in question.

50. As a result of those enquiries, the following conclusions were drawn regarding the 49 jobs of the Appellant:

- (a) in 29 cases, the materials specified on the invoices were not used or were not used in the quantity or for the period of time specified;
- (b) in nine cases the job files were never provided to the police by the Appellant, rendering further enquiry impossible;
- (c) in nine cases the police were unable to find any individual who was able to say whether the materials listed on the relevant invoices were used on the job or not;
- (d) in one case the customer said that the items invoiced were suitable for the job and could well have been used, although it could not be positively confirmed that they were in fact used;
- (e) in one case the customer said that some of the items invoiced were suitable for the job and could well have been used, although it could not be positively confirmed that they were in fact used: but other items invoiced were not used.

51. Mr Biggs claimed that it appeared that no employee of the Appellant ever checked the supplier invoices submitted by Folwell or confirmed that the specified supplies had been provided or quality checked them. It also appeared that no employee of the Appellant ever had any contact with Smart Services or CH Building Services and Supplies or verified the VAT registration numbers on the invoices for those companies.

52. A number of invoices (36 in the name CH Building Supplies and 8 in the name Smart Services) were allocated by the Appellant to job numbers relating to work being done for David Hartley of Solaglas. Mr Biggs claimed these jobs were fictitious; supposedly to allow Solaglas to pay workers cash in hand, but actually part of a fraud committed against Solaglas. In neither circumstance would the Appellant have required materials for those jobs.

53. If CH Building Supplies and/or Smart Services had really been providing goods and services on the scale suggested by the invoices, they would have required significant infrastructure, several employees, and access to a large volume of building materials. There is no evidence to that effect. There is also no evidence on the face of the bank accounts of either company of the largescale purchase of building supplies, either for onward supply to the Appellant or at all. In reality Mr Biggs claimed that there were no building supplies service associated with either of these bank accounts.

54. Between 2 February 2009 and 11 August 2009, the Appellant made payments of £206,746 to the bank account Steven Woodman T/A IPOD Associates, purportedly in satisfaction of invoices submitted in the name of POD Associates. POD Associates was a real

business, which at one time was trading from premises rented from Folwell at 215 North Street, Bedminster, Bristol. However, the invoices for POD Associates, which were submitted to, and paid by, the Appellant were not real, although the VAT number was. The invoices were found on Folwell's computer and a director of POD Associates has confirmed that they are fake. Folwell effectively cloned a real business and used its VAT number to raise false invoices and, by extension, create a false entitlement to deduct input tax.

55. Mr Biggs claimed the account into which those payments were made was one of the associated business accounts controlled by Folwell. The account had been set up by Steven Woodman, who was a security equipment installer by trade and a client of Folwell's accountancy service. He had approached Folwell for advice after he had secured a Ministry of Defence contract, which took him over the VAT threshold. Folwell advised him to open an additional account with NatWest in the name of POD Associates. Steven Woodman agreed to do so but mistakenly opened the account in the name of Steven Woodman T/A IPOD Associates.

56. Steven Woodman recalled sending his first cheque from the Ministry of Defence to Folwell for him to pay into this new account. The total professional fees for Steven Woodman from the Ministry of Defence credited to this account was £31,107. However, during the period February to November 2009 payments into this account totalled £406,000, coming largely from the Appellant and MJN Southwest Ltd, (a company of which Bishop was a director).

57. The invoices from POD Associates are predominantly for technical drawings. Mr Biggs advised that POD Associates had confirmed that the invoices were forgeries and that they had never done any work for the Appellant. There is also no evidence that such drawings were ever required for any of the Appellant's jobs. Accordingly, it was the Respondent's case that no taxable supplies were provided under the cover of the false POD Associates invoices and, accordingly, there is no entitlement to deduct any input tax associated with them.

58. Between 1 October 2008 and 13 August 2009, the Appellant made payments to the bank account, Nicholas Hime, T/A Munster Joinery, totaling £400,786, which was another one of Folwell's associated business accounts, purportedly in satisfaction of invoices submitted in the name of Munster Joinery. Nicholas Hime was a self-employed carpenter trading as Timeless Carpentry. Acting on a recommendation, he had approached Folwell for accountancy advice who had advised him to open a bank account in the name of Munster Joinery as a way of reducing his tax bill. Nicholas Hime subsequently set up a NatWest bank account in the name of Nicholas Hime T/A Munster Joinery and gave Folwell the cheque book and all correspondence, unopened.

59. When Folwell was arrested and his premises were searched, two invoices purporting to be from Munster Joinery (UK) Ltd to Smart Services were amongst the items recovered. Munster Joinery (UK) is a real, VAT-registered business and the VAT number on the invoices is that of Munster Joinery (UK). However, Antoinette Mulcahy, the Finance Director of Munster Joinery (UK) Ltd. had confirmed that these two invoices were forgeries. As with POD Associates, it was the Respondent's case that Folwell effectively cloned a real business and used its VAT number to raise false invoices and, by extension, create a false entitlement to deduct input tax.

60. Despite the large sums of money paid into this account by the Appellant, the only payment from the Nicholas Hime T/A Munster Joinery account, which could be identified as being in respect of building supplies is £1,139 to the builders merchants, Selco. These were merchants associated with renovations on Folwell's own properties. Accordingly, it was the Respondent's case that no taxable supplies were provided by Munster Joinery (in any guise) to the Appellant and, accordingly, there was no entitlement to deduct any input tax associated with them.

61. In the period of August 2006 to December 2009, the Appellant also transferred the following sums to other accounts controlled by Folwell:

- (a). £781,722 to Eastview Housing
- (b). £123,882 to WH Folwell & Co
- (c). £3,290 to WH Folwell House

62. As with the accounts in the names of the companies appearing on the invoices, there was no evidence of Folwell using any of the above accounts to pay for materials. The vast majority of payments into the above accounts were either withdrawn as cash or transferred to other accounts controlled by Folwell. Investigations conducted by the Respondents in 2016 suggested that the account holder for the Eastview Housing bank account never supplied any materials to the Appellant.

63. The Respondents asserted that, having received payments on false invoices where there had been no supplies (or exaggerated supplies), Folwell invested the money in properties on behalf of the Appellant's directors (or some of them); and/or made payments by cheque and/or cash to those directors; and/or continued to owe or hold money for them at the time of his arrest. A total of £337,188 was transferred from Folwell accounts to Hosier. A number of these transactions occurred before Hosier became a director of the Appellant, but while he was working there as a consultant:

- (a). £169,003 from WH Folwell & Co;
- (b). £32,000 from WH Folwell Gold;
- (c). £74,952 from House of Monmouth;
- (d). £61,233 from Folwell & Folwell.

64. A total of £200,000 was transferred from Folwell accounts to Griffiths. A number of these transactions occurred before he became a director of the Appellant, but while he was working there as a consultant:

- (a). £155,048 from WH Folwell & Co;
- (b). £44,952 from House of Monmouth.

65. A total of £271,262 was transferred from Folwell accounts to Bishop, who was not a director of Appellant when the payments occurred but was a director of the closely linked Micra companies:

- (a). £102,269 from WH Folwell & Co;
- (b). £33,776 from WH Folwell Gold;
- (c). £26,993 from House of Monmouth;
- (d). £108,224 from Folwell & Folwell.

66. Payments were made from the Folwell accounts for what appear to be property purchases. The bank accounts show payments to solicitors and developers, consistent with the

application of the Appellant's funds to the purchase and development of property by Folwell on behalf of the Appellant's directors or some of them.

67. In January 2010, after Folwell's disappearance, Hosier and Bishop instructed Charles Cook & Co solicitors to seek to establish that they were the true beneficial owners of Folwell's properties. An email dated 25 January 2010 from Charles Cook & Co sets out instructions for the transfer of properties from Folwell to Hosier and Bishop and asks the solicitors on the other side of the transaction to confirm their instructions. Bagley is amongst those copied into the email in which email, Charles Cook requested that the following properties be transferred to Bishop for the mortgage price:

(a). 1 Atlas Road. This property was purchased jointly by Folwell, John Folwell, Stuart Cameron, and Stuart Noble for £235,000 on 15 September 2006. The four purchasers originally borrowed £141,000 from NatWest for the purchase. Folwell later took out further loans against the property, without informing Noble or Cameron, and forging their signatures. When Noble and Cameron made enquiries with the bank, they learnt that a total of £395,500 had been borrowed against the property. The property was sold by NatWest for £455,000 on 7 August 2014.

(b). 21 Wooton Park. This property was purchased in the name of Lisa Folwell, by Folwell, for £314,000 on 13 November 2007. An unsigned trust declaration was recovered by police from Brynmwr Property Lawyers showing an attempt to declare a trust in favour of Bishop for half the property. Lisa Folwell's signature on the document was forged. The property was sold by Southern Pacific Mortgage Limited for £264,950 on 12 August 2011.

(c). 43a Greenleaze. This property was purchased in the name of Lisa Folwell, by Folwell, for £375,000 on 31 October 2008. An unsigned trust declaration was recovered by police from Brynmwr Property Lawyers showing an attempt to declare a trust in favour of Bishop for half the property. Lisa Folwell's signature on the document was forged. The property was sold by Bank of Ireland for £285,000 on 27 February 2012.

68. Charles Cook also requested that the following properties be transferred to Hosier for the mortgage price:

(a). 27 Greenleaze. This property was purchased by Folwell and his wife Mary Folwell for £107,897 on 10 July 2006, and used as their family home. The property was sold by them for £194,000 on 30 September 2013.

(b). 136 Chessel Street (incorrectly 135 on the email). This property was purchased by Folwell and John Folwell for £235,000 on 8 October 2007. The property was sold by them for £286,000 on 24 May 2013.

(c). 161-163 North Street. This property was purchased by Folwell and John Folwell for £175,000 on 31 January 2008. The property was sold by them for £100,000 on 4 November 2013.

(d) 215 North Street. The property was purchased by Hosier and Griffiths for £245,000 on 6 January 2006, and then sold to Folwell for £375,000 on 3 April 2007. Folwell used this property as an office.

69. Charles Cook also requested that the leases of the Rustic Vine and The Terrace, two other business ventures of Folwell's, be assigned to Hosier. Folwell made a number of payments directly to directors of the Appellant as well as directors of Micra, a company with

close links to the Appellant. Whilst some of these directors have asserted that these payments represented the repayments of loans, the timings of the payments, often very soon after payments by Lancer Scott into Folwell's associated accounts, the circumstances of the loan and repayment, and the absence of clear documentation, most likely exemplify, at least in part, how money was laundered by Folwell, as contended by the prosecution at his trial.

70. Folwell also withdrew over £2.8m in cash from the accounts under his control. The Respondents submitted that an inference could be drawn from all the circumstances outlined above that the cash was withdrawn to return to the Appellant's directors or for use on their behalf, whether or not this was in fact effected. When he was arrested on 25 February 2010 Folwell reportedly said, "Basically I owe £3 million"

71. An analysis of the Appellant's ledgers shows that it had numerous, genuine suppliers, which would have enabled it to conduct its business and complete its contracted jobs without reliance upon Folwell. Over a 41 month period from August 2006 to December 2009, payments totalling £3,903,265 were made to bank accounts controlled by Folwell purportedly for building materials and equipment hire, a relatively small proportion of the amounts paid to its genuine suppliers. The accounts of the Appellant, covering the period 1 April 2006 to 30 September 2009, show Costs of Sales of £35,820,170, of which purchases and equipment hire were a large percentage, which is reflected in the Appellant's SAGE accounting records.

WITNESS EVIDENCE AT THE HEARING ON BEHALF OF THE RESPONDENTS

72. Mr David Maguire, a Case Director with the Respondents, signed a witness statement dated 23 November 2021. He was not called to give oral evidence and his witness statement was taken as read. In his statement he said that he believed that the Appellant had deliberately and dishonestly submitted false VAT returns relating to understated output tax on scrap metal sales and overclaimed input tax detailed on false invoices supplied by Folwell. He believed he had applied section 60 VATA 1994 and Schedule 24 FA 2007 correctly to arrive at the penalties charged.

73. Mr Biggs then called Mr Benjamin John Livings, a member of the Respondent's Fraud Investigation Service Individuals and Business Fraud and Bespoke Avoidance team. He had been involved with the Appellant's appeal since February 2024 but had read two witness statements dated 23 November 2021 and 31 August 2022 made by Mr William George Brett Jackson, a Grade 7 Fraud Investigator with the Respondents. Mr Jackson was unable to attend in person for health reasons.

74. Mr Livings confirmed that he had read Mr Jackson's two witness statements and that he agreed with their contents. In his witness statement dated 23 November 2021 Mr Jackson stated that he had used a Best Judgement Assessment to conclude that the Appellant's directors or someone acting on their behalf had deliberately submitted false VAT returns. The Appellant had paid £3,903,625 into bank accounts controlled by Folwell but there was no evidence, or no sufficient evidence of supplies corresponding to the invoices. Mr Jackson had become aware of the trial of Folwell in 2014 but claimed he did not have sufficient information to issue assessments until he received the Jury Bundle for the criminal prosecution of Folwell on 24 April 2015.

75. Following receipt of the Jury Bundle Mr Jackson entered into correspondence with Hosier, Griffiths and Cooke advising them that the Respondents had reason to suspect them each of tax fraud and offering each of them the opportunity of entering into a Contractual

Disclosure Facility. All three directors accepted the offer but subsequently Mr Jackson advised them that he was not satisfied that they had made full disclosures. Accordingly on 15 April 2016 Mr Jackson issued the VAT assessment to the Appellant as he was mindful of the fact that he had one year from receipt of the Jury Bundle in which to issue an assessment.

76. In his witness statement dated 31 August 2022 Mr Jackson referred to 13 statements made by people who worked for customers of the Appellant. These statements had been prepared for the criminal trial of Folwell. Some of the people who made these statements were later called by Mr Brown on behalf of the Appellant. In general terms these statements doubted the accuracy of the descriptions on various invoices addressed to the Appellant and which were a sample of the false invoices giving rise to the VAT assessment under appeal.

WITNESS EVIDENCE AT THE HEARING ON BEHALF OF THE APPELLANT

77. Mr Keith Randall (Randall), the operations manager at The Galleries in Bristol signed a statement dated 14 May 2022 in which he stated that he had been a witness for the prosecution at the trial of Folwell. Over the years he had engaged the Appellant in numerous projects some of which were minor but others exceeded over £1million. Mr Biggs took Randall to a statement he had provided for the trial of Folwell. The first invoice referred to by Randall was from Smart Services dated 17 January 2008 with a job number and showed the hire of a triple inspection tower for 30 days , trellis hire for 24 days and further trellis hire for a further 30 days, nine 24-Yard skips with a total value of £4,690.49. Randall confirmed that he had advised the police officer who came to interview him that he thought the invoice referred to repairs to a roof skylight following a break-in in January 2008. He agreed with Mr Biggs that the repairs to the skylight would only have required one skip but now realised the invoice probably referred to major refurbishment work to the neighbouring TK Max store. Randall also informed Mr Biggs that the date of the invoice was five days before he had instructed the Appellant to carry out the repairs to the skylight.

78. Mr Biggs questioned Randall as to when the TX Max work was carried out – was it in 2008 or 2009 but Randall was unable to remember due to the passage of time. He was unable to confirm or deny that the TX Max work would have been underway when the skylight was broken in January 2008. While Randall confirmed that he believed his statements both for the trial of Hosier and for this Tribunal were true, he was only appearing as a witness due to his friendship with Hosier for over 20 years but when he made the statement for the criminal trial he was not aware that the officer was in fact investigating the Appellant.

79. Mr Biggs then took Randall to another invoice from Smart Services addressed to the Appellant dated 9 January 2008 which described “8 four yard mini skip(s) @ 62.40, 8 24 yard skip(s) @ 225.80, 3 telescopic hoist hire for 93 days and a Pak 41 generator hired for 92 days”. Randall had confirmed that this invoice related to the replacement of lights at The Galleries but he agreed with Mr Biggs that the invoice was grossly exaggerated.

80. Finally, Mr Biggs referred Randall to work carried out at The Galleries in September 2007 when lead had been removed and skylights damaged as a result of persons climbing on the roof. The relevant invoice from Smart Services described a mobile generator for 24 days and welding hire for 24 days. Randall confirmed that none of the items listed were used.

81. Mr Brown then called Mr Duncan Hay (Hay) of Cubix Construction Consultants who had provided a statement to the police in respect of the proceedings regarding Hosier. He had

signed a statement for this Tribunal on 22 April 2019 which Mr Brown submitted as his evidence in chief.

82. Mr Biggs, upon cross-examination referred Hay to invoices relating to the Thames Club refurbishment, a single job on one site. Unfortunately, none of the invoices were included in the papers before the Tribunal. In Hay's witness statement to the police he commented on invoices from CH Building Supplies addressed to the Appellant. Hay confirmed that he had installed four centrifugal fans but he could not confirm whether the invoice referred to more than four. The invoice then referred to Gyproc sealant to which Hay had stated that he did not know what this was but the rate charged for Gyproc wallboards was far in excess of what he would have expected. Hay agreed that the Appellant was paying well over the odds for wallboards. In his police statement Hay had confirmed that no baths were fitted in the Thames Club refurbishment so the inclusion of bath filler taps in the invoice was wrong. Hay had continued in his police statement to say there were no bath filler taps, no sensor flow taps no self closing basins, no baths or combined bath/showers.

83. Mr Biggs referred Hay to other invoices which appeared to have incorrect descriptions to which Hay agreed. On re-examination Hay said he could not remember whether he had been shown any invoices from the Appellant.

84. Mr Brown then called Mr Mark O'Leary (O'Leary), an associate building surveyor whose unsigned statement it was agreed should have been dated 22 April 2019. As with Hay, O'Leary referred to a witness statement he had provided to the police in connection with Mr Hosier's trial. Mr Brown submitted the statement as O'Leary's evidence in chief.

85. On cross-examination Mr Biggs referred to invoices in connection with work at Balliol House, Exeter. Again, this was a specific job within a certain time-frame in relation to a specific building. O'Leary had instructed the Appellant to complete the refurbishment of Balliol House as the main contractor. O'Leary confirmed that he had informed the police in his statement that various items listed on invoices from CH Building Supplies to the Appellant dated 5 June 2009 were incorrect. O'Leary had been given copies of five invoices issued by CH Building Supplies to the Appellant, three dated 16 June 2008, one dated 19 June 2008, and one dated 5 June 2009, and all of which contained discrepancies.

86. Mr Brown then called Mr Mark Kemery ("Kemery") a former director of the Appellant appointed on 31 March 1998 but who had subsequently sold his shares in 2019 back to the Appellant. In his witness statement dated 14 April 2022, which was accepted as his evidence in chief Kemery explained that the Appellant did not always keep a specific track of job costs and sometimes the paperwork was not always dealt with in the most efficient way. He stated that Folwell had initially offered his services to the Appellant in connection with some tax investigation queries. Mr Brown took Kemery to the Appellant's filed accounts. In the 18 months ending 30 September 2007 the Appellant's revenue was £15 million-odd whereas for the 12 months previously it was only £6 million. Kemery agreed that it was the introduction of Hosier and Griffiths that made such a big difference. In the 12 months ending 30 September 2008 the revenue was roughly £11.5 million but increased for the year ending 30 September 2009 to roughly £16.5 million. While Kemery could not confirm exactly when Hosier and Griffiths joined the Appellant but did not refute Mr Bigg's suggestion that it was in 2007. He did confirm that he had heard that they had sold their previous company and believed they would bring a lot of goodwill to the Appellant.

87. Kemery explained that each director dealt with their own projects and would deal with supplies for their projects. He confirmed that he understood Folwell had submitted invoices totalling about £4 million to the Appellant but he had never actually met Folwell. Kemery was unable to say whether Folwell attended the office as he, Kemery, spent most of his time out of the office travelling from site to site. He attended the office about once a week but did not know whether Folwell had access to the Appellant's computers.

88. Kemery was unable to explain why in the accounts for the period ending 30 September 2007 the Appellant had made a payment of £60,000 to the Upland Pension Scheme which was for the benefit of Hosier and Griffiths. He was also unable to assist with any details of either directors' salaries of £191,250 or the wages of £807,720 or indeed with any questions concerning the accounts or shareholdings.

89. Mr Biggs then questioned Kemery about various invoices from Smart Services to the Appellant. Kemery confirmed he had never spoken to anyone from Smart Services and it was not normal practice to check supplier companies but he had not personally used them. Kemery's practice was to telephone in to the office with a requisition for materials and plant and someone in the office would then place the orders with the various suppliers. He was unable to confirm whether any of his supplies had come from Smart Services. So long as his materials arrived in time that was all he was interested in.

90. Kemery confirmed that the invoices were marked with the name "L Begley" who was Lisa Begley who had joined the firm at the same time as Hosier, subsequently becoming a director and marrying Hosier. He confirmed that most of the sample invoices were signed by Ms Begley and that it was not unusual for one supplier to source multiple types of material and plant.

91. Finally Kemery stated that he knew nothing about the Appellant's involvement in a scrap metal fraud which involved a fraud on Solaglas and the Appellant having to pay a considerable settlement as he left everything to the lawyers.

92. When Mr Farooq questioned Kemery as to whether there were discussions with his fellow directors during the time that Folwell was being prosecuted he answered that he did not think any of his fellow directors were to blame for the mess the Appellant was in. He also confirmed there were no regular meetings of the directors but there was an annual meeting with their accountant. Lastly, he estimated that his jobs contributed £2 to £3 million of the turnover during the period 2006 to 2009.

93. Mr Brown then called Mr Mark Chapman ("Chapman"), a painter and decorator by trade, who joined the Appellant in 1998 and became a director in June 2000. In his witness statement dated 19 August 2021, which was taken as his evidence-in-chief, he confirmed that Folwell was in and around the offices but he did not have much to do with him. Chapman had started as a painter and decorator with the Appellant but as the company grew he took on fitting kitchens and showers and then managing other contractors. Mr Biggs asked Chapman several questions about the Appellant's accounts but he was unable to assist. He did confirm that there were no regular meetings of the directors, that he did not even attend the annual meetings with the Appellant's accountants. The only time he met his fellow directors was at the Christmas party.

94. Mr Michael Silk ("Silk") had signed a witness statement dated 3 April 2020 which Mr Brown presented as his evidence in chief. Mr Biggs asked Silk, who had owned a company

called Micra, which had dealings with a company called Uplands owned by Hosier and Griffiths. Micra had got into financial difficulties and had received loans each of £200,000 from Hosier and Griffiths. As Silk had become good friends with Hosier and Griffiths there was no written agreement. Micra subsequently passed the loan to Folwell and there then followed questions about various financial arrangements between Micra, Uplands, Hosier, Griffiths and Folwell. Ultimately Hosier and Griffiths were bought out of Uplands. Mr Biggs then referred Silk to various payments to Folwell and companies owned by him. Folwell was invoicing Micra companies, Smart Services and CH Building Supplies, for Polish labour. The vast majority of payments to Folwell or his companies were from Micra and the Appellant.

95. Silk was unable to give clear answers to many of Mr Bigg's questions due to the fact that most of the questions concerned matters happening about 20 years ago but he did agree that it was possible that Micra had been hijacked by Folwell as Folwell had on his computer a file named "Micra Headed Paper".

96. Mr Biggs then asked Silk about payments from various Folwell sources to Mr Jon Bishop ("Bishop") who at the time was a partner in Micra but later became a director of the Appellant. Silk was unaware at the time of these payments amounting to £271,262 nor could he remember why Mr Michael Holt, a co-director of Micra, had received substantial, though smaller payments from Folwell or his companies nor why he himself had received some payments.

97. Mr Brown then called Mrs Gillian Jones ("Jones") whose statement dated 16 May 2022 was submitted as her evidence-in-chief. She had started to work for the Appellant in 2004 although her exact job description was never stated. Initially she set about organising the structure of the office. She recalled that Folwell would have come into the office once every couple of weeks but he was not involved in purchases made by the Appellant. She had worked with Lisa Bagley ("Bagley") in the Accounts Department. Bagley had dealt with most of the sales (creating sales invoices) while Jones had dealt with most of the purchases.

98. Mr Biggs referred Jones to several invoices from Smart Services which had handwritten references followed by the signature "Lisa Bagley". Any invoices had to be signed off before they could be put through the system. She confirmed that the Smart Services invoices were probably produced by Folwell and likewise invoices from CH Construction. Jones confirmed that she had only produced invoices to the police in connection with Folwell's trial. Mr Morian Cooke was aware that she was producing the invoices but did not interfere.

99. Mr Brown then called Mr Robert Jarrett ("Jarrett"), a contracts manager, who started to work for the Appellant in 2004. His witness statement dated 10 September 2021 was presented as his evidence-in-chief. Jarrett's brother, Tony, was in business with Hosier. Tony Jarrett's company was a painting and decorating company which Hosier bought into as it was severely in debt. Jarrett confirmed that he had conveyed envelopes from the Appellant to a director of Solaglas but he did not know the contents. He confirmed that he knew Folwell and that Smart Services and CH Building Supplies were his companies. Folwell had on occasions delivered paint to sites where Jarrett was managing work on behalf of the Appellant.

100. Jarrett stated that he knew that if you said to Folwell you wanted a lollipop he would supply it – he would supply anything. If he ordered paint from Folwell it would be on site the next morning.

101. Mr Brown then called Mr Fransisco Mercedes (“Mercedes”), a self-employed builder. In his witness statement dated 13 April 2022, which was submitted as his evidence-in-chief, Mercedes recalled working for Mr Fred Cornish (“Cornish”) on a subcontract basis for the Appellant. Cornish would deliver the materials which had been supplied by Folwell.

102. Mr Brown then called Mr David Christopher Britton (“Britton”), whose witness statement dated 23 August 2021 was submitted as his evidence-in-chief. Britton had his own building business but mainly acted as a sub-contractor. He had dealings with Cornish who he knew worked with Folwell. His projects were working for the Appellant through Cornish. Cornish supplied the materials but Britton did not know where Cornish sourced them.

103. Mr Brown then called Mr Michael Joseph Fitzpatrick (“Fitzpatrick”) whose witness statement dated 17 May 2022 was submitted as his evidence-in-chief. Fitzpatrick had owned Uplands and had known Hosier for the best part of 30 years. Fitzpatrick described himself as a lazy director responsible for getting customers. He did not pay attention to what Hosier was doing.

104. Mr Brown then called Cooke whose witness statement dated 28 April 2002 was submitted as his evidence-in-chief. Cooke informed the Tribunal that during the period 2005 to 2008 he was going through a divorce and was “around, maybe not in full capacity or in full mind” but had responsibility for two young children as his wife did not want to know them.

105. Mr Biggs took Cooke to a transcript of his evidence at the trial of Folwell. When Hosier joined the Appellant, initially as a consultant, they did not take wages for three months at his suggestion. Cooke had met Hosier through the industry and was running the Appellant on his own as his fellow directors were tradesmen. He informed them that Hosier was joining the company whether they liked it or not. The company was subject to a two-pronged investigation by the Respondents as to whether sub-contractors had been correctly treated for tax purposes. Folwell initially offered to help.

106. Hosier injected money into the Appellant when he joined – perhaps as much as £1 million but he did not immediately become a director or shareholder as he wanted to be certain the company was secure. Cooke’s explanation for this was “friendship” over a two, three or four year period.

107. Folwell offered Cooke the possibility of sourcing materials as the company at that time had no system in place for doing so. Each job was dealt with on an ad hoc basis. Cooke said he never got involved in ordering materials and only randomly inspected invoices. The Appellant started to put job numbers on invoices so they could be allocated to the correct job. This enabled them to discover whether a job was profitable or not and which areas of work were profitable. Even today wrong job numbers are entered on invoices and staff have to indicate the correct job number.

108. Cooke stated that he did not know where Folwell sourced the materials he supplied but he believed they were supplied at good prices. He could not explain why Folwell was invoicing the Appellant from four different companies. At the time he did not know that Folwell was using four different companies. He did not ask Folwell any questions about the source of the materials or his VAT status.

109. Mr Biggs then questioned Cooke about the Solaglass fraud which involved Folwell and the Appellant. Mr Cooke claimed that he was not involved in the fraud but on being questioned by Mr Biggs he stated that he did not know whether Folwell had submitted

fraudulent invoices totalling over £100,000 to the Appellant in respect of work that it had not carried out for Solaglas. At the time of Folwell's trial Cooke had suggested that Folwell had access to the Appellant's computers and was able to allocate job numbers to invoices but Cooke was now saying he did not know how Folwell managed to allocate job numbers. Cooke had visited Folwell in prison to try to find an answer as to how this happened.

110. Cooke then confirmed that Bagley used to speak to somebody in the Appellant to enable her to allocate job numbers and by this time Bagley and Hosier were a couple. Cooke had no way of policing whether what Folwell was invoicing the Appellant for was actually delivered. He had no idea that Folwell was not paying his VAT liabilities.

111. Cooke was not aware that Hosier was investing money with Folwell and getting money back from him with no documentary evidence either way.

112. Mr Brown then called Hosier whose witness statement dated 22 May 2022 was submitted as his evidence-in-chief. Mr Biggs referred Hosier to his witness statement in connection with the prosecution of Folwell in which he stated that he had known Folwell for some 10 years more or less but could not remember how he had first met him though he classified him as a friend and a Walter Mitty character. He had described Folwell as a bookkeeper, a supplier of building materials and the owner of many properties. He further stated that Folwell could obtain materials for 10% less than the trade. He had lent Folwell money over the years which had always been repaid. However, in 2009 he had given Folwell £100,000 to invest in watches expecting a £40,000 profit but he never saw the £100,000 again as Folwell vanished towards the end of the year.

113. Mr Biggs then took Hosier to a schedule of payments to and from various companies associated with Folwell and in particular payments totalling £233,000 being paid in by Hosier. Hosier was unable to explain what these payments were for. Further down the schedule various payments totalling £337,188 appeared as being paid to Hosier. There were also payments to Cameron Cooling which Hosier recognised as an air conditioning engineering company. This company made transfers of over £760,000 on the instructions of Folwell but only £36,000 came from Folwell while over £580,000 had come from the Appellant but Cameron Cooling had only one project with the Appellant at that time for less than £10,000.

114. Hosier explained that Griffiths is in Spain and is alive and well and Bagley, now his wife, could have been a witness if she had been asked.

115. Mr Biggs asked why Mr Hosier as a director of Lancer Scott and Mr Bishop as a director of Micra had been pursuing Folwell asking to have his properties transferred into their names. Mr Hosier answered because he owed them a lot of money.

116. Hosier then informed Mr Biggs that the Appellant would sometimes put quite a few items in for stock so they would be signed off but not for any particular job. Folwell would inform him that he could supply certain materials – a pallet of paint, baths or whatever - and Hosier would then ring local suppliers to check the price. In all the invoices before the Tribunal it was Bagley who added the job number and her signature having first checked with Bishop, Griffiths or himself as to the correct job number.

117. Mr Biggs referred Hosier to his witness statement at Folwell's criminal trial when he stated that the Appellant paid around £4M to Folwell for the supply of building materials but it was impossible to assess whether in fact all the materials had been supplied. Hosier stated

that the Appellant trusted Folwell and that he had spent considerable time in their office as he was involved in some of the allocation of job numbers to invoices. Hosier now said there was no way Folwell could allocate job numbers.

118. Hosier was unable to accept that Folwell could have got away with supplying false invoices to the Appellant for around £4M though he could have got away with a few hundred pounds. Mr Biggs took him to various invoices for items which witnesses at the criminal trial said could not have been for the jobs described in the invoices. Hosier's response was that these invoices had been allocated to the wrong jobs.

119. As an example, there was an invoice for trellis hire and six 12 yard skips signed off by Bagley but as the job was internal there would have been no need for trellis hire or for six 12 yard skips. Other invoices with the same date were for a total of 17 twelve yard skips invoiced by Folwell and signed off by Bagley. Mr Biggs put it to Hosier that he was making money from Folwell's false invoices as Folwell was receiving money from the Appellant which he could then turn to cash and use to repay Hosier and others. Hosier insisted he had received no money from Folwell and was still owed £100,000.00 by him.

120. Mr Biggs referred Hosier to an invoice from POD Associates for "Redesign and submission of engineering details" for Loch Fyne restaurant. When asked by Mr Biggs if Folwell could have provided engineering details or technical drawings or conveyancing plans he became quite agitated and said "we wouldn't have paid him if he didn't".

121. After a short break Mr Biggs took Hosier to some agreed documentary evidence from his own criminal trial and in particular to a table relating to CHBS and Smart Services annotated with the Appellant's job numbers. There were 453 invoices signed L Bagley or LB, 101 invoices stamped with site details but no authorisation and 154 invoices with handwritten job numbers only. There were also 44 signed off TWH. Hosier agreed that if nobody else was available he would have signed them.

122. Mr Biggs then took Hosier to evidence produced in a civil claim by Solaglas against the Appellant in which it was agreed that the Appellant invoiced Solaglas for three separate jobs to enable Solaglas to pay immigrant workers in cash. The Appellant's profit was around 30% of the invoices submitted. In other words the Appellant was agreeing to put forward false invoices to make it look as though the Appellant had been doing the work when they had not in fact been doing so. Although the judge threw out the claim Hosier admitted that the Appellant supplied Solaglas with cash. Eventually the Appellant's insurers paid Solaglas to avoid the claim proceeding to court.

123. Hosier was then referred to an interview with the Respondents when he talked about his winnings from betting and from a racehorse which he owned. Over a four year period £860,000.00 had gone into his bank account and £800,000 had gone out but he kept his winnings at home. Over an 18 month period he had won £305,000 and had betting slips to prove it but there was no cash hoard at his house nor did he own a property which had been used as a cannabis factory.

124. Mr Biggs then referred Hosier to examples of where he had received money from Folwell. There was a coincidence of dates or a closeness of dates between times when the Appellant paid Smart Services and then payments on to either Hosier or Bishop. Mr Biggs suggested the invoices from the four Folwell companies were all part of a VAT fraud to which Hosier replied that the Appellant could not have existed by paying out £4M without

the money coming back in. He confirmed that they had not carried out any due diligence in respect of any of the four Folwell companies.

125. Judge Rankin asked Hosier how the directors had survived when he had suggested that they take no drawings or salary for six months. He replied “whether their wives were earning money or whatever. But everybody knuckled down”.

126. Hosier confirmed to Mr Farooq that he was aware that the four companies furnishing voices to the Appellant were owned by or controlled by Folwell.

127. Mr Brown called Mr Chris Watts (“Watts”), a chartered tax adviser and member of the Society of Trust and Estate Practitioners. His witness statement dated 16 May 2022 was submitted as his evidence in chief. His first dealings with the Appellant were in 2015 so much of his statement were opinions rather than factual. He had attended a meeting with Mr Jackson from the Respondents on behalf of the Appellants on 23 March 2016. Mr Biggs referred to a section in his witness statement concerning an invoice from the Appellant to Solaglas which referred to work carried out on a certain floor but Mr Jackson had pointed out that the particular building did not have as many floors. Watts confirmed that he understood the Appellant was going to correct the VAT returns to reflect the payment to Solaglas but he confirmed that he had never checked that this had been done.

128. The minutes of the meeting on 23 March 2016 stated that Mr Jackson wanted to know whether the directors of the Appellant were going to admit that the company deliberately and dishonestly under declared tax due to false invoices provided by Folwell to which Griffiths commented that he would not have done that.

129. Watts was able to confirm to Mr Biggs that he had carried out an investigation into all of Hosier’s bank accounts and had been able to corroborate all amounts in and out of those accounts and this had been accepted by the police.

130. Finally Mr Brown called Mr David Ronald Cook (“Cook”) whose witness statement dated 13 March 2024 was submitted as his evidence in chief. He had prepared a report dated 6 February 2018 on behalf of the Appellant concerning the company’s dispute with HMRC. Mr Biggs suggested that the fundamental point in Cook’s report was that the profit margin was consistent and followed the curve which would be expected but if the £4M paid to Folwell was removed the profit margin would be much greater.

131. Mr Biggs had a lengthy discussion with Cook about opening and closing stock in the Appellant’s accounts. Only in the accounts for the year ending 30 September 2009 was there a significant figure of almost £1.6M for closing stock which Cook was unable to explain.

DISCUSSION

132. The issues for the Tribunal to decide are:

132.1 Was the assessment issued in time - within one year of HMRC having evidence of facts, sufficient to justify the making of the assessment (s.73(6)(b) VAT Act 1994); and if so

132.2 Was the input tax claimed done so deliberately (s.77(4A)(a) VAT Act 1994), in order to assess going back further than four years (s.77(1)(a) and 77(4);

132.3 Did the supplies take place and if so was the Appellant entitled to deduct input tax;

132.4 If so, was there a tax loss, was it fraudulent and did the Appellant know this;

132.5 Were the assessments for the penalties issued in time i.e. was the Appellant dishonest in claiming the input tax up until 31 March 2006 or deliberate in doing so from 1 April 2006. If not then they are out of time (section 77(4) above extending the time limit.

133. Mr Brown submitted that the criminal trial of Folwell in 2012 was based on evidence which could only have come from the Respondents. Mr Brown failed to provide proof that that evidence could only have come from the Respondents. Mr Jackson, who was unable to attend the hearing for health reasons, said in his witness statement that although he came across the opening note of prosecution counsel in 2014 he did not receive the jury bundle until 24 April 2015. We were taken to some of the evidence given at Folwell's trial but the Tribunal has accepted Mr Bigg's submission that Mr Jackson, and therefore the Respondents, did not have sufficient evidence to raise the assessments until he received the jury bundle on 24 April 2015. As Mr Jackson issued the assessments on 15 April 2016 they were issued within the one year time limit required by the legislation.

134. Several of the witnesses called by Mr Brown were unable to confirm that the items in various invoices would have been used on the jobs to which the invoices were allocated. Almost all the invoices referred to in this appeal had been signed off by Bagley, now Lisa Hosier. The Tribunal wonders why she was not called as a witness as it would appear she would have been able to give much better first-hand evidence of the office procedures rather than Jones who primarily dealt with sales rather than purchases.

135. Jones had assumed that Smart Services was one of Folwell's companies. Folwell would deliver his companies' invoices personally or leave them on a desk.

136. While some of the supplies referred to in the invoices may have been genuine, it was clear from the evidence that the vast majority of the invoices referred to items which were not in fact supplied.

137. The evidence of most of the witnesses indicated a very laid-back approach to the handling of invoices within the Appellant's office. It was left to Bagley to decide which invoice would be allocated to which job after apparently telephoning the relevant contract manager or quantity surveyor to confirm the invoice referred to their particular job. Hosier claimed he did not get involved with office administration. Indeed, none of the directors who gave evidence seemed to be concerned with office administration.

138. Folwell was convicted after trial on 2 July 2012. In essence, he was a professional money launderer who washed the proceeds of a range of crimes including organised crime in the Bristol area. He used all of the companies relevant to these proceedings in this operation and a forensic analysis of his bank accounts shows that there were extensive payments from the Appellant as well as some of the directors into his accounts.

139. The only two construction companies which paid money into the Folwell accounts were the Appellant and Micra which is of considerable significance as the companies were connected through the common involvement of individuals. It is a necessary part of any money laundering scheme of this type to have a source or sources of bank transfers which present as legitimate; funds within the banking system which can be provided to criminals in exchange for cash paid to the launderer by those criminals. Simultaneously, this false invoice trail provides a basis for claims for input tax and suppresses profits for the purposes of corporation tax. There must be some additional reward (beyond the substantial tax advantage) for the accomplices within the companies. In this case there were bank transfers totalling

£983,000 said by witnesses to relate to loan repayments but without any paperwork to support that contention; assertions as to interests in real property; and substantial withdrawals of cash. On balance it is probable that directors of the Appellant and Micra were rewarded and/or that they were promised future reward.

140. The suggestion at the core of the Appellant's case, that the Appellant would not have been able to undertake work without the Folwell supplies, is not accepted by the Tribunal. The total amount for supplies paid over the period was much higher than the amount paid to the Folwell companies.

141. The evidence of Cooke was to the effect that all Folwell could in fact offer was an ability to act as an intermediary between the Appellant and well-known wholesalers, taking the time to obtain best prices. In those circumstances it is not clear why the invoice would not come direct from the wholesaler.

142. Hosier had no answer to the point that Folwell could not possibly have provided the technical drawings etc detailed on the false POD invoices. His suggestion that these would have been a matter for his electrical and mechanical colleagues is undermined by Kemery's lack of knowledge of any of the Folwell companies.

143. The invoices which relate to the fake supplies to Solaglass were clearly fraudulent and accepted as fraudulent by the Appellant. Their inclusion in the input tax calculation had not been remedied by the Appellant. It is not credible that so many of the sample of invoices taken by the police would have been innocently misassigned to jobs in error. The evidence from the criminal trial was overwhelmingly to the effect that the goods listed were not supplied and indeed that was the overall effect of the evidence called by the Appellant before the Tribunal.

144. Randall did suggest that the items on the first invoice to which he was referred could have related to the TK Maxx roof job but could not explain satisfactorily why he did not suggest that to the police officer. When asked about two other invoices he agreed that no welding took place and in relation to the second invoice, at best it was 'grossly exaggerated'.

145. Hay agreed that when he signed his witness statement, he was signing to confirm that the invoices were wrong and that all of the invoices were wrongly allocated to Thames.

146. O'Leary was asked about the invoices for GVA Grimley jobs. In relation to the galvanised steel base structure mentioned on some invoices he had surmised they were used as a support structure for the independent panelling system for toilets to be fitted. He said there was the potential they could be used but he did not look at the cost. He came to the conclusion that everything else on the invoices was not used. He confirmed the Hertford House job did not use those items either.

147. There were multiple examples of items which could not have been used on the site or by the client in question. Moreover, there is repetition of items which is consistent with the rapid production of multiple invoices almost by cut-and-paste – for example a total of 17 12 yard skips all supposedly supplied on 20 December 2007 and repeated references to galvanised steel base structures and bath taps.

148. The Appellant called a number of witnesses who had met Cornish (now deceased) and seen him deliver some supplies to projects. When explored, this evidence amounted to little more than Cornish knowing Folwell; driving back and forward on a few occasions with supplies and that the supplies he was seen to deliver were paint and plasterboard. Cornish used the Appellant's lock up which according to Cooke contained at most tens of thousands of pounds of materials but, not a £4m lock up under the control of Folwell.

149. Jarrett had agreed that he was involved in the fraud with Hosier against Solaglas. He had known Hosier for 40 years and Griffiths for a long time. He had taken wine and envelopes of money to Mr Hartley which he said he recalled doing twice. He said Hosier did not tell him that he was carrying an envelope of cash and he did not ask any questions. He said that he could not give evidence that Folwell had provided skips – they were always there. He just assumed they were supplied by Folwell.

150. Mercedes was a subcontractor with Cornish. He said that Cornish would supply some materials although this seemed to be limited to jobs in which Cornish was acting as subcontractor. Mercedes recalled that talking to Cornish, Folwell's name came up.

151. Britton said that he had seen Cornish drive back and forth with supplies but he was unable to say which wholesalers they came from.

152. Silk claimed that payments by Micra to Folwell's companies were in connection with the supply of Polish labour but it is not credible that Folwell operated as a provider of labour as well as materials and plant. It is of note that the police uncovered a fraud in respect of payments for Polish labour in which Folwell was implicated.

153. Cooke was asked about the way invoices were allocated to job numbers. It was put to him that Bagley would phone the quantity surveyor about an invoice, they said yes and she signed the invoice. This did not involve Folwell at all. Cooke agreed with this and also agreed that for the Solaglas invoices, the same process applied. He confirmed Bagley was Hosier's partner by then.

154. In evidence, Hosier agreed that this was the process but suggested another process for the first time in proceedings. He said that Folwell would say he had some cheap paint or baths which were not required for any particular job at that point in time and he, Hosier, would check they were cheaper. They would sign them off and put them in the lock ups. This was why they were allocated to the wrong jobs. The price of those jobs would be inflated looking better than it was. He said this happened once or twice every few months.

155. Hosier confirmed several people would sign off the invoices – there were two quantity surveyors at the time. Hosier said Folwell brought his invoices in. Jones and Bagley would get them signed off by someone on site. He said that he did not know anything about building and knew nothing about what happened on site.

156. In a document from the Hosier trial there is a table setting out 637 invoices. Agreed Fact 19 relates to CHB and SS invoices with LS job numbers and the date ranges. 453 invoices were authorised by L Bagley or LB and 44 had 'TWH' on them. Hosier's full name is Terrance William Hosier. He agreed that this was him and said if there was no one there he would sign off invoices. The rest had site details but no authorisation, job number or unidentified.

157. It is also of note that Jon Bishop, formerly of Micra, came to work for the Appellant as a quantity surveyor, specifically then performing the function of approving Folwell's invoices. He subsequently became a director of the Appellant.

158. Mr Biggs submitted that the evidence in the report of the accountant Cook as to consistency of profit margins is less significant than the changes in expenditure on purchases and the sudden appearance of figures for closing stock (which thereafter remained constant) which he confirmed might be consistent with difficulties in allocating stock and purchase invoices following the departure of Folwell.

159. 28. The quantity of false invoices and the amount of money concerned, £3.9m, was such that it is inconceivable that these would have been signed off by mistake.

160. There has been no sensible explanation in the evidence as to what the directors thought about the fact that Folwell was using four companies. The evidence supports the conclusion that the directors Kemery and Chapman were completely removed from the process. There is also evidence that Cooke was not present in the relevant period, although he accepted he did not conduct any due diligence in respect of the four companies or query their use. That leaves Messrs Hosier and Griffiths and later Bishop (who prior to his appointment was a person acting on behalf of the Appellant as a quantity surveyor approving invoices). It is of note that the majority of invoices were signed by Bagley (now Lisa Hosier). It is also of note that from those central potential witnesses the Appellant has elected to call evidence only from Hosier who attempted to distance himself from the mechanics of the operation.

161. Kemery agreed that there was a substantial increase in profitability for the company from 2007-2008 and that this was down to introduction of Messrs Hosier and Griffiths. The totality of the evidence supports the contention that Hosier effectively took over control of what became a construction business under his leadership and control.

162. There was willing participation by Hosier and other directors in the Solaglass fraud and the under-declaration of turnover in relation to the scrap sales.

163. The directors and in particular Hosier, had cash hoards and put large quantities of cash through bookmakers in circumstances where Folwell withdrew £2.8m in cash.

164. Hosier held a property in which a cannabis factory was found by police in circumstances where Folwell was concerned in the farming of cannabis. It was submitted that Hosier's evidence on this point is not to be preferred to that of Watts whose recollection of conversations with Hosier were recorded in contemporaneous notes of meetings with the Respondents.

165. Even if the directors were not aware that there were no supplies or even if supplies were in fact made, it would still have been apparent that this was a VAT fraud as it was known within the Appellant and specifically by Messrs Cooke and Hosier that Folwell was invoicing in the name of four different entities. There was no legitimate reason for that and yet it was never questioned. No checks were made on the companies because it was known that these companies were just pseudonyms for Folwell.

166. The Appellant has submitted that the Respondents have not demonstrated a connection to tax loss for the full amount because Smart Services declared taxable supplies of £134,164 on its VAT returns and CH Construction Supplies declared taxable supplies of £437,146 on his VAT returns. The Respondents submitted that it is improbable that these sums relate to the Appellant's payments as it is improbable that Folwell would make a partial declaration in that way and there are other credits that can account for the declared figures. The Tribunal prefers the submission by the Respondents.

DECISION

167. The Tribunal has decided that the assessments were issued within the one year time limit specified in section 77(6)(b) of the Value Added Tax Act 1994. Until Mr Jackson received the jury bundle of Material from the Folwell trial on 24 April 2015 he did not have sufficient information or evidence to enable him to issue an assessment.

168. There is sufficient evidence that Hosier knew that the loss of VAT was brought about deliberately. The fact that the vast majority of the invoices in question were signed off either by Bagley or Hosier leads the Tribunal to the conclusion that they were aware of the fraud. No explanation was provided by Mr Brown or Hosier as to why Bagley, who was in a

relationship with Hosier at the time and is now his wife, was not called or why Griffiths were not called as witnesses.

169. We conclude that it is likely that Bagley knew of the fraud but if she was not aware of it she was acting under the influence and directions of Hosier (who had the necessary knowledge) when allocating job numbers.

170. The Tribunal finds that the loss of tax was fraudulent and that at the very least Hosier knew this. It is possible that Griffiths was also aware of the fraud but as he did not appear as a witness the Tribunal is unable to come to a definite conclusion about his involvement.

171. The Tribunal finds that the evidence before it shows that the majority of items listed in the fraudulent invoices were not in fact supplied.

172. As the Tribunal has decided that the loss of tax was a deliberate fraud by the Appellant the penalties were issued within time.

173. The appeal against the assessment and against the penalties is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

174. 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.

**ALASTAIR J RANKIN MBE
TRIBUNAL JUDGE**

Release date: 17th JUNE 2024