



Neutral Citation: [2025] UKFTT 00800 (TC)

Case Number: TC09566

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal reference: TC/2021/00840
TC/2021/00843
TC/2022/00844
TC/2021/00845

Value added tax – Kittel denials – did the appellants know of the connection to fraud? - no - did the appellants have ‘blind eye’ knowledge? – no - should the appellants have known of the connection to fraud? – yes – appeals dismissed.

Sitting in public at Taylor House, London, EC1

Heard on 10-13 February 2025
(reading day 7 February 2025)

Judgment date: 30 June 2025

Before

**TRIBUNAL: JUDGE KELVAN SWINNERTON
MEMBER CATHERINE FARQUHARSON**

Between

**OPUS LABOUR SERVICES LIMITED (IN LIQUIDATION) (1)
MR JASON GERALD GILLER (2)**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Mr T Brown, counsel (instructed by Morgan Rose Solicitors).

For the Respondents: Ms J Vicary, counsel (instructed by HM Revenue and Customs’ Solicitor’s Office).

DECISION

Introduction

1. This case relates to appeals against five decisions by the Respondents.
2. In relation to VAT periods 07/18 to 04/19, a decision dated 19 February 2020 (resent on 2 March 2020) to impose on Opus Labour Services Limited (“Opus”) a penalty (“the First Opus Penalty”) in the sum of £383,119.20 pursuant to s.69C of the Value Added Tax Act 1994 (“VATA94”). The decision was upheld by review dated 15 February 2021 although the sum was reduced to £333,504.60.
3. In relation to VAT periods 07/18 to 04/19, a decision dated 30 April 2020 to impose a personal liability notice (“the First Personal Liability Notice”) on Mr Jason Giller (“Mr. Giller”) pursuant to s.69D VATA94 for 100% of the First Opus penalty. This decision was upheld by review dated 15 February 2021 albeit the sum also was reduced to £333,504.60.
4. In relation to VAT periods 07/19, 10/19 and 99/99, a decision dated 4 November 2020 denying Opus’s claim to input tax in the sum of £454,394 pursuant to s.73 VATA94. The right of Opus to deduct input tax was denied on the grounds that the relevant transactions were connected with a scheme to defraud the Respondents of VAT and that Opus knew, or should have known, that this was the case (the principle in the case of *Axel Kittel v Belgian State (C-439/04)*). This decision was upheld by review dated 15 February 2021.
5. In relation to VAT periods 07/19, 10/19 and 99/99, a decision dated 4 November 2020 to impose on Opus a penalty (“the Second Opus penalty”) in the sum of £136,318.20 pursuant to s.69C VATA94. The decision was upheld by review dated 15 February 2021.
6. In relation to VAT periods 07/19, 10/19 and 99/99, a decision dated 12 March 2021 to impose a personal liability notice (“the Second Personal Liability Notice”) on Mr Giller for 100% of the Second Opus Penalty. No review of this decision was requested.
7. Additionally, two decisions are not subject to an appeal. The first of these two decisions relates to a letter dated 10 December 2019 from the Respondents notifying Opus that it was to be deregistered for the purposes of VAT. This decision was made in accordance with paragraph 13 of Schedule 1 to VATA94 and the principle in the *Ablessio* case (*Valsts ienemumu dienests v Ablessio SIA C-527/11*). Namely, that the Respondents believed that Opus was using its VAT registration solely or principally for fraudulent purposes.
8. The second of the two decisions not appealed relates to a letter dated 10 December 2019 by the Respondents notifying Opus that, for the periods 07/18 to 04/19, input tax in the sum of £1,277,064 (amended to £1,147,682) had been denied on the basis of the Kittel Principle.

The hearing and evidence

9. We considered all of the documentation provided which comprised of a hearing bundle of 4667 pages, an authorities bundle of 891 pages, a supplementary bundle of 143 pages and skeleton arguments from both parties.

10. We heard evidence on the first day of the hearing from HMRC Officer McGing who provided seven witness statements. On the second day, we heard evidence remotely from Officer Pickles of HMRC. We heard evidence at length from Mr. Giller for part of the second day and all of the third day of the hearing.

11. We were provided also with witness statements from Senior Officer Simon Everitt within the Fraud Investigation Service of HMRC (in relation to Radcliffe Civils Ltd), from HMRC Officer Gavin William John Stock (in relation to Shelton Solutions Limited) and from Mrs Sarah Davey (who joined Opus in September 2019 as the Finance Manager to take on and run all of the accounting procedures). Neither Mr Everitt, Mr Stock nor Mrs Davey were called to give evidence.

12. We heard submissions from both parties on the fourth and final day of the hearing. A transcript was provided for each day of the hearing.

13. When considering all of the evidence provided, we have taken care not to restrict ourselves to assessing each piece of evidence on its own and in isolation to the other evidence. We have adopted that approach because circumstantial evidence is not a chain where a break in one link breaks the chain. It is a cord in that one strand might be insufficient to sustain the weight but three stranded together might be sufficient (*R v Exall (1866) 4 F & F 922*, per Pollock CB, approved by the Upper Tribunal in *HMRC v CCA Distribution Ltd [2015] UKUT 513 at Para [91]*). Case law also states that it is necessary to guard against over-compartmentalisation of relevant factors and to stand back and consider the totality of the evidence.

Background facts

14. The background facts are not disputed and come principally from HMRC's evidence.

15. Opus was incorporated on 24 October 2016 under company registration number 10441549. The nature of the business, as detailed at Companies House, was '*Temporary employment agency activities*'.

16. Opus was registered for VAT from 1 November 2016 and remained registered until its deregistration under the *Ablessio* Principle on 11 December 2019.

17. With respect to the periods relevant to this case Opus had a sole director, Mr Giller.

18. Mr Giller was also the majority shareholder of Opus given that he held 75% of the shares of Opus. The remaining shares in Opus were held by Mrs. Gillian Michele Fallows, the wife of Mr Giller. Mr Giller recruited an additional member of staff, named Rachel, in March 2017.

19. Opus entered into administration on 9 January 2020. Irvin Milton Cohen and Gary Paul Shankland of Begbis Traynor LLP were appointed as Joint Administrators of Opus and it is they who have brought the appeals on behalf of Opus.

20. During the relevant periods, Opus purchased supplies of payroll services from a number of companies. The principal companies relevant to this appeal are:

1. RWR Contract Management Limited (“RWR Ltd”)
2. Extreme Business Solutions Limited (“Extreme Ltd”)
3. Shelton Solutions Limited (“Shelton Ltd”)
4. Kernow Contracting Services Limited (“Kernow Ltd”) and
5. ATC Nationwide Limited (“ATC Ltd”) (referred to collectively as “the Payroll Companies”).

21. Opus dealt directly with all of those five companies. Additionally, RWR Ltd acted as a buffer company between Opus and Radcliffe Civils Ltd. ATC Ltd also acted as a buffer company between Opus and both M & M Recruitment Ltd and Pro Delta Recruitment Ltd.

22. Opus engaged the Payroll Companies to provide all (100%) of its payroll services in respect of the periods under appeal. Opus outsourced its payroll function to the Payroll Companies starting with RWR Ltd. ATC Ltd was the last of the Payroll Companies engaged.

23. In short, it is alleged by the Respondents that the Payroll Companies were defaulting suppliers who fraudulently defaulted on their obligations to make payments of VAT (and Construction Industry Scheme (‘CIS’) deductions which are not the subject of these appeals) to the Respondents and/or were ‘buffers’ in chains which led directly to the loss of VAT.

24. Opus operated as a recruitment company providing staff to customers within the construction industry. Specifically, Opus supplied workers to carry out asbestos removal at building sites throughout the country. These workers carried out their roles in return for payments which the workers were to receive from the Payroll Companies (or their suppliers) net of any sums owing to the Respondents.

25. The estimated turnover of Opus for the first 12 months of trading was £100,000.

26. With respect to the VAT periods 07/18 to 07/19, the input tax denied ranged from £222,516 to £362,238 for each VAT period. For the periods of 10/19 and 99/99, it was £130,950 and £56,497 respectively.

27. Opus had a factoring facility latterly with Clydesdale Bank (“Clydesdale”). Typically, Mr Giller would notify Clydesdale of its intention to raise an invoice for a specific amount for a specific client and request 90% of the funding. Clydesdale would check with the insurers and confirm whether there was sufficient cover. Once confirmed, Opus would raise the invoice to its customer with attached timesheets. Opus would then receive 90% of the invoice value from Clydesdale and would use this money to pay the payroll provider. The client would then pay for their purchase from Opus directly into the Clydesdale factoring account. Clydesdale would then remit the remaining monies to Opus less its factoring fee in the region of 0.5%.

28. The VAT charged on the supplies of payroll services was not remitted to the Respondents.

29. Tempus Labour Ltd (“Tempus Ltd”) operated alongside Opus. Mr Giller was the ultimate decisionmaker for Tempus Ltd despite his wife also being a director. Tempus Ltd was itself subject to a decision to deny input tax (in the amount of £253,737) under the Kittel Principle which has not been challenged or appealed.

30. The manner in which the Payroll Companies invoiced Opus appeared to be as if Opus was being charged the standard rate of VAT on its own supply of staff rather than using the Payroll Companies to administer payroll and being charged for that. The Respondents did not, though, raise that point in their Statement of Case of 12 May 2021 nor in the Amended Statement of Case of 1 August 2023. It was not raised in their skeleton argument and neither did it form part of the decisions to deny input tax or was it mentioned in any of the witness statements of HMRC.

The issues to be determined

31. In respect of the denial of input tax, the Tribunal will need to be satisfied of the following matters:

- i. Whether or not there is a tax loss?
- ii. If so, whether or not that loss resulted from a fraudulent evasion?
- iii. If so, whether or not the transactions that are the subject of this appeal are connected with that evasion?
- iv. If so, whether or not the Appellants knew or should have known that the transactions were connected to fraud?

32. In their response dated 12 June 2023 to the Fairford Directions given by the Tribunal, the Appellants accepted the accuracy of the relevant transaction chains and accepted that there was a tax loss in relation to all of the transactions except for two transactions relating to ATC Ltd where the Respondents were not able to identify any defaulting trader. The Appellants also accepted that the tax losses were fraudulent except for the tax losses relating to the two transactions in respect of ATC Ltd. Consequently, save for the two transactions relating to ATC Ltd, the only issue to be determined was whether or not the Appellants knew or should have known that the transactions were connected to fraud.

33. Subsequently, in December 2024, the Appellants applied to amend their response to the Fairford Directions. It appeared that certain concessions previously made in relation to tax loss and connection to fraud were being withdrawn for a number of defaulters/buffers. The application was made on the basis that two of HMRC's officers, namely Officer Pickles and Officer McGing, may have been in a common-law-relationship. The application of the Appellants to amend their response to the Fairford Directions was granted.

34. After the closure of evidence, Mr Brown stated that the Appellants now only contested the issue relating to whether or not the Appellants knew or should have known that the transactions were connected to fraud. Issues (i) to (iii) above have, therefore, been conceded. Issue (iv), whether or not the Appellants knew or should have known that the transactions were connected to fraud, is the only remaining issue to be determined.

The law

35. In relation to the operation of the VAT regime, domestic legislation governing the recovery of input tax is contained in sections 24 to 26 of VATA94.

36. The evidential requirements to be satisfied by a trader seeking to exercise his right to deduct input tax are set out within the Value Added Tax Regulations 1995 (SI 1995/2518) (“the VAT Regulations”), particularly in Regulations 13, 14 and 29(2) of the VAT Regulations.

37. With respect to considering the denial of a claim to input tax where a transaction is alleged to be connected with fraud, the starting point is the judgment of the CJEU in the joined cases of *Axel Kittel v Belgium and Belgium v Recolta Recycling SPRL* (C439/04 and C-440/04).

38. It was stated in *Kittel* that the right to deduct input tax will be lost where a taxable person ‘knew or should have known’ that his transaction was connected with the fraudulent evasion of VAT. That has come to be known as ‘the Kittel Principle’.

39. Paragraph 56 of *Kittel* states:

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

40. In the case of *Mobilx Ltd (in administration) v Commissioners for HMRC* [2010] EWCA Civ 517, the element of “knowledge” was considered in detail.

41. Paragraph 59 of *Mobilx* sounded a note of caution in respect of attempts to improve upon the Kittel principle. It states:

“The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who “should have known”. Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in Kittel”.

42. With respect to ‘the only reasonable explanation’ phrase, Mrs Justice Proudman (sitting in the Upper Tribunal in the case of *GSM Export (UK) Limited and Another v The Commissioners for HMRC* [2014] UKUT 0529 (TCC)) confirmed that *Mobilx* does not purport to change the test in *Kittel*. At [19], it is stated:

“However, Mobilx does not purport to change the test in Kittel’s case. The requirement as to the taxpayer’s state of mind squarely remains “knew or should have known”. The reference to “the only reasonable explanation” is merely a way in which HMRC can demonstrate the extent of the taxpayers’ knowledge, that is to say, that he knew, or should have known, that the transaction was connected with fraud, as opposed to merely knowingly running some sort of risk that there might be such a connection”.

43. In *Red 12 Trading Ltd v Revenue & Customs* [2010] STC 589 at [109-11], it was stated that it is necessary to consider individual transactions in their context, including drawing inferences from a pattern of transactions, and to look at the totality of the deals effected by the taxpayer and their characteristics and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them.

44. It is not necessary for a taxpayer to know specific details of the fraud being perpetuated. It was stated in *Fonecomp Ltd v HMRC* [2015] STC 2254 by Lady Justice Arden in the Court of Appeal at [51] that:

...the holding of Moses LJ does not mean that the trader has to have the means of knowing how the fraud that actually took place occurred. He has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transaction to which his transaction is connected. The participant does not need to know how the fraud was carried out in order to have this knowledge. This is apparent from paras 56 and 61 of Kittel cited above. Paragraph 61 of Kittel formulates the requirement of knowledge as knowledge on the part of the trader that 'by his purchase he was participating in a transaction connected with fraudulent evasion of VAT'. It follows that the trader does not need to know the specific details of the fraud".

45. With respect to due diligence, we should take account of, but not focus unduly, on the question of whether the trader has acted with due diligence (Moses LJ in *Mobilx* at [82]).

46. The task of the First-tier Tribunal is to apply the impersonal standard of the reasonable businessman. Namely, would the reasonable businessman have concluded that the taxpayer ought to have known that the only reasonable explanation for the transactions was that they were connected with fraud (*S&I Electronics plc v HMRC* [2015] STC at [64]). The question of 'means of knowledge' involves applying an objective test: whether, even if the taxpayer did not actually know that its transactions were connected with fraud, a reasonable businessperson with ordinary competence in its position would have known (*HMRC v Beigebell Ltd* [2020] UTUK 176 (TCC)).

The burden and standard of proof

47. HMRC bears the burden of proof in relation to the issues to be determined. The standard of proof is the balance of probabilities.

The case of the Appellants in summary

48. The Appellants submit that Opus had legitimate reasons for contracting with the various suppliers and that none of those reasons related to fraud. The workers were paid on a weekly basis as is the norm within the industry. The Appellants did not have any contact with HMRC in respect of potential VAT fraud until receiving a letter on 21 July 2019 (which was dated 15 July 2019). With respect to the allegation that Mr Giller must have known of missing trader fraud within the industry by virtue of his previous employment, that is denied and it is asserted that there is no evidence of this. Opus maintains that it carried out meaningful due diligence in

order to satisfy itself that the transactions were genuine. It did so by, in particular, verifying that the suppliers were registered with HMRC for Gross Payment Status (“GPS”).

49. The purpose, in short, of GPS is to demonstrate that a company is approved to hold gross payments. The Appellants maintain that, by having been granted GPS by the Commissioners, Opus was aware that the Commissioners must have carried out checks into the suppliers which included satisfying HMRC of criteria relating to acting as a Construction Industry Scheme (CIS) subcontractor and passing a test to qualify for GPS. Opus submits that it carried out due diligence on suppliers and concluded that there was nothing to prevent it outsourcing its payroll function to them and that there was no issue relating to VAT fraud by another person.

The case of the Respondents in summary

50. In short, it is alleged by the Respondents that the Payroll Companies were defaulting suppliers who fraudulently defaulted on their obligations to make payments of VAT (and Construction Industry Scheme (‘CIS’) deductions which, as stated above, are not the subject of these appeals) to the Respondents and/or were ‘buffers’ in chains which led directly to the loss of VAT. Kernow Ltd, Shelton Ltd and Extreme Ltd at all material times were the fraudulent defaulter in the relevant transactions with the Appellant. RWR Ltd and ATC Ltd acted as both fraudulent defaulter and buffer company in their transactions with Opus. The tax loss was occasioned by the fact that the VAT charged on the invoices raised by the Payroll Companies and duly paid by Opus was not remitted to the Respondents.

51. Opus consecutively utilised the services of the Payroll Companies all of whose transactions were directly traced to a fraudulent evasion of VAT. The Respondents contend that this consecutive use of fraudulent companies cannot be explained as coincidental.

52. Prior to transactions that form the subject of this appeal, Mr Giller was employed as the Managing Director of Ebrit Labour Services Ltd (which later became National Resourcing Solutions) from October 2014 until 31 October 2016. Due to Ebrit Labour Services Ltd being given education prior to and during Mr Giller’s employment on supply chain fraud, the Respondents contend that Mr Giller would have been aware of this information which included numerous veto (or deregistration) letters, educational letters relating to due diligence (setting out that HMRC had identified increasing problems with VAT fraud and unpaid taxes through the use of labour providers within the construction industry), tax loss letters, and a visit in February 2015 during which due diligence and VAT Notice 726 were discussed.

53. On 9 August 2018, Opus was visited by the Respondents with Mr Giller present at the visit. By letter dated 15 July 2019, Opus was advised of the prevalence of fraud within the labour supply trade sector with the letter including a link relating to the criminal facilitation of tax evasion. On that same date, Opus was placed on the Respondents MTIC Continuous Monitoring Program with two visits made by the Respondents to Opus on 2 August 2019 and 11 November 2019.

54. The Respondents contend that, had due diligence been properly carried out, Opus would have known that the disallowed transactions which form the subject of these appeals were connected to fraud.

Discussion

VAT awareness

Ebrit Services Ltd and Ebrit Labour Services Ltd

55. The witness statement of Mr Giller details his professional background. That included three years spent studying for the ACCA (the Association of Chartered Certified Accountants) exams, moving into accountancy recruitment, setting up an IT recruitment consultancy and taking up employment with Ebrit Services Limited and then Ebrit Labour Services Ltd when the latter became an active trading company in about October 2014. Ebrit Labour Services Ltd was incorporated as a private company on 20 March 2014.

56. Mr Giller states [at 12]: *“My role was to develop the operation and grow sales which I successfully did, growing the number of workers out working from 88 in Oct 2014 to 250 at the point of sale in October 2016”*.

57. At the hearing, Mr Giller gave evidence that he was based at the Rickmansworth site, that Ebrit Labour Services Ltd had about 6 or 7 staff and that both Mr Channa Saman Ariyadasa and Mr Darren Wood (registered directors) were also based at the Rickmansworth site. Ebrit Services Ltd had approximately 25 staff such that the total combined staff of both Ebrit Services Ltd and Ebrit Labour Services Ltd was in the region of 30 people. Both of these entities were closely connected.

58. On cross-examination, Mr Giller was referred to a number of letters from 17 October 2012 to 14 August 2015 sent by HMRC. Some of these letters were addressed to ‘Ebrit Services Limited’ and some to ‘Ebrit Services & Ebrit Labour Services Ltd’. Mr Giller was not named or referred to in any of those letters nor in any note of a meeting between HMRC and Ebrit Services & Ebrit Labour Services Ltd.

59. The letter from HMRC dated 9 June 2014 is addressed to Mr Ariyadasa (also known as Mr Saman) at Ebrit Services Ltd & Ebrit Labour Services Ltd. It is headed ‘Use of Labour Providers – Advice on Due Diligence’. It is stated (in the third paragraph) that: *“HMRC has identified increasing problems with fraud and unpaid taxes through the use of labour providers in the Agricultural and Food Processing Sectors, Construction, Hotels and Leisure, Security and other labour intensive industries”*. The following paragraph referred to an enclosed copy of the HMRC Notice ‘Use of Labour Providers – Advice on due diligence’ which includes *“details of the kind of due diligence checks businesses should be undertaking (and fully recording) to avoid dealing with high-risk businesses and individuals”*.

60. The letter from HMRC dated 28 July 2014 is addressed to Mr Wood and Mr Ariyadasa at Ebrit Services & Ebrit Labour Services Ltd. It refers to a visit of HMRC during the previous week on 22 July 2014. That is about three months before Mr Giller took up his position. It refers to the main purpose of the meeting having been related to the due diligence undertaken in relation to the engagement of sub-contractors, *“in particular, when you use sub-contractor services provided through payroll companies”*. Reference is made in the letter to four veto

letters (which are all dated 22 July 2014) having been sent in respect of companies used by Ebrit Services & Ebrit Labour Services Ltd. On cross-examination, Mr Giller accepted that the company that he was about to join (in October 2014) had been given a lot of advice by HMRC, prior to his joining, relating to due diligence.

61. Moving forward about five months or so from the point in time when Mr Giller joined Ebrit Labour Services Ltd, HMRC sent two very similar letters both dated 17 March 2015 addressed to Ebrit Services Limited & Ebrit Labour Services Limited. The first sentence of these letters states: *“I am writing to advise you that HMRC have identified that some of your transactions have been connected with tax losses, i.e. a failure to account for VAT by suppliers earlier in the transaction chain”*.

62. The letters detail that, in respect of purchases of labour from GS Services London Ltd and Workingslant Ltd, at least one participant in the supply chain has failed to meet its VAT liability. Later, both letters refer (amongst other points) to the need to undertake sufficient due diligence commensurate with the perceived risk *“to satisfy yourselves as to the integrity of your suppliers and customers and of the underlying supply chains”* and reference is again made to HMRC’s leaflet ‘Use of Labour Providers – Advice on Due Diligence’. Those letters came after a meeting, not attended by Mr Giller, that took place on 4 February 2015 during which due diligence, VAT Notice 726 and joint and several liability were discussed.

63. The two letters detailed above were followed by a letter dated 22 April 2015 and addressed to Ebrit Services Ltd. It is headed ‘Warning’. In short, it states that a business called Hermitage Umbrella Ltd has been deregistered for VAT purposes with effect from 16 April 2015 and that any input tax claimed in relation to transactions involving this company may be subject to verification.

64. In respect of the same company, a tax loss letter dated 28 July 2015 was sent to Ebrit Labour Services Ltd. This stated: *“I am writing to advise you that HMRC have identified that some of your transactions have been connected with tax losses, i.e. a failure to account for VAT by suppliers earlier in the transaction chain”*. It contained the same warning about undertaking sufficient due diligence and again referred to HMRC’s leaflet ‘Use of Labour Providers – Advice on Due Diligence’.

65. Pausing there, in summary HMRC submit that Mr Giller must have been made aware by Mr Wood and/or Mr Saman of the issues identified above (relating to the integrity of supply chains and connection with tax losses) at the point of taking up employment with Ebrit Services Ltd. Mr Giller vehemently refuted this on a number of occasions when it was put to him on cross-examination. Mr Giller was equally vehement in his denial of having any knowledge at all of the issues identified above at any point during his employment with Ebrit Services Ltd or Ebrit Labour Services Ltd. For reasons that we will set out, we do not accept that claimed lack of knowledge of Mr Giller to be either plausible or credible.

66. Mr Giller’s job title was Managing Director although he was not a registered director at Companies House. Ebrit Labour Services Ltd comprised of a small team led by Mr Giller. At the hearing, Mr Giller confirmed that he was next in the chain of command after Mr Wood and Mr Saman and that he took instructions directly from them. Mr Giller had oversight of the operations of Ebrit Labour Services Ltd. At the hearing, he was asked: *“So, you’re effectively overseeing the operational side of the business from the finding of the worker through to the*

supply to the end customer. You have oversight over all of that is perhaps the short way of putting it”? Mr Giller answered: “*Yes, absolutely...*”.

67. The evidence of Mr Giller was that Mr Wood selected the payroll provider and that Mr Giller or another member of his team would assemble the necessary information to be sent to the payroll provider on a weekly basis which included collating timesheets, raising invoices, and preparing an Excel spreadsheet with a file of information which was then sent to the payroll provider.

68. Given the leading role of Mr Giller as Managing Director of a small team, his taking instructions directly from Mr Wood (who selected the payroll provider) and Mr Saman, his overseeing of the whole operational side of the business, and his intimate involvement with the payroll process, we fail to see how Mr Giller could have been, as he claims, oblivious to not just the historical problems that were in existence when he commenced his employment but also, importantly, the continuation of those problems that endured during his tenure of two years.

69. We also fail to see any logical or reasonable explanation as to why Mr Wood or Mr Saman would not have made Mr Giller aware of the enduring issues relating to the integrity of the supply chain. Mr Wood and Mr Saman would have gained no benefit from failing to inform Mr Giller of these issues. To the contrary, not informing Mr Giller of these issues would have resulted in an increased risk that such problems could continue and impact detrimentally upon the company. That makes no sense to us.

70. In conclusion on this point, we find that it is more likely than not that Mr Giller would have known of the issues relating to the integrity of the supply chain at Ebrit Labour Services Ltd at some point during his employment and, certainly, before his employment there ended and before he started Opus in October 2016.

Opus Labour Services Ltd

71. Mr Giller states that he outsourced the general bookkeeping to Minney & Co, a firm of chartered accountants that Mr Giller had dealt with on a business and personal level for over 20 years. The witness statement of Mr Giller states: “*At no time throughout my engagement with Minney & Co did they inform me that it was standard practice to check the VAT numbers of the Company’s suppliers. I requested that my accountants provide a supporting witness statement however unfortunately they did not feel comfortable doing so*”.

72. The witness statement of Mr Giller states that, in about February or March 2018, he decided to outsource payroll because, in short, it was taking up too much of his time due to the number of workers utilised by the company having trebled.

73. On 9 August 2018, Opus was visited by Officer Joseph Tilsar of HMRC. Mr Giller was present at the meeting. A letter dated 14 August 2018 followed the meeting. That letter, amongst other points, sought supporting timesheets for invoices in connection with RWR Ltd. The note of the meeting did not make any express reference to discussions about VAT fraud. It stated (amongst other points) that: “*Giller said he verified the payroll companies on CIS and any 20% men paid directly to Opus*”.

74. In a notification dated 29 October 2018, HMRC informed Opus of a change in RWR Ltd's tax treatment status. Specifically, that it had lost its Gross Payment Status and, consequently, from that date all payments should have been made net (and subjected to 20% deductions). At that point in time, Opus had been trading with RWR Ltd for about 5 months.

75. On 20 December 2018, HMRC wrote to Mr Giller referring to the notification of 29 October 2018 relating to the change in RWR Ltd's tax treatment status. The letter went on to state that deductions of £35,280 should have been made from a gross amount of £176,403 and that HMRC was proposing to raise a determination in the sum of £35,280 to recover the deductions due. No response was received to that letter and a determination was raised subsequently in that same amount on 22 January 2019. No formal appeal was made by Opus in respect of that determination albeit Mr Giller did refer to not having received the letter of 29 October until 15 November 2018.

76. Having to pay this sum of money, which was certainly not insignificant for a company of the scale of Opus was, we find, a clear indication to Opus of the costly consequences that could result from issues relating to the supply chain. This transpired to be the first of five consecutive suppliers who were all fraudulent traders.

77. Moving forward about six months, HMRC wrote to Opus on 15 July 2019. That letter advised Opus of the prevalence of fraud within the labour supply trade sector. It stated: *"This letter is being sent to you as a company that trade[r]s in the above sectors, as we are concerned that your business could be at risk of involvement in supply chains that are connected with fraud. Where supplies to a business are found to be connected to fraud, the business may be unable to recover the VAT it was charged on those supplies"*. At that point in time, Shelton Ltd and Extreme Ltd had also lost their GPS and both within four or five months of Opus beginning to trade with them. Shelton Ltd lost its GPS on 13 March 2019 and Extreme Ltd on 6 June 2019.

78. The letter of 15 July 2019 included a link to HMRC's leaflet entitled 'Use of Labour Providers – Advice on Due Diligence' and VAT Notice 726.

79. On the same date (15 July 2019), Opus was placed on HMRC's MTIC Continuous Monitoring Program. Two visits were made subsequently to Opus by HMRC.

80. The first of these visits was on 2 August 2019. HMRC's leaflet entitled 'Use of Labour Providers – Advice on Due Diligence' and VAT Notice 726 were handed to Mr Giller at the meeting. The note of that meeting refers to discussions relating to (amongst other points) due diligence and the need for improvements to be made. Reference was made to obtaining trade references, visiting premises and carrying out a check on credit ratings. None of those checks had been undertaken at the time of the visit.

81. The note of the meeting states: *"RM (Officer McGing) referred to earlier CIS returns and to the use of Extreme Business Solutions Ltd, Kernow Contracting Services Ltd and Shelton Solutions Ltd. JG confirmed these were payments for Payroll companies used in the past said JG but due to inefficiencies they are no longer working with them. Bad choices said JG. JG to provide the contact details at each of these companies. RM discussed with JG whether he had obtained trade references before working with these companies, adding that this may have given him an idea of their performance history in the trade. JG agreed this was*

a good idea and he will take forward to add to their requirements before engaging payroll companies. JG said he hadn't visited the premises of these companies as the contracts were prior to JT (Officer Tilsar) visits and due diligence discussions" [our underlining].

82. In relation to the underlined sentence immediately above, Officer Tilsar visited Opus on 9 August 2018. Opus began trading with Shelton Solutions Ltd in late November 2018, with Extreme Business Solutions in January 2019 and with Kernow Contracting Services Ltd in April 2019. Clearly, the contracts (or the commencement of a trading relationship) with these companies were not prior to, but were after, the visit of Officer Tilsar and after related due diligence discussions between Mr Giller and Officer Tilsar. Mr Giller confirmed at the hearing that due diligence discussions had taken place with Officer Tilsar during the meeting on 9 August 2018.

83. The lack of taking up trade references, visiting premises and undertaking credit checks is to be considered also in the context of what Mr Giller said at the meeting of 2 August 2019: *"JG said that post JT's visit, a supplier form had been put in place before they engage them. Companies House is now checked, VAT numbers are now checked, and Sites/offices are visited"*.

84. Despite stating that a supplier form had been put in place, it has not been provided. Neither, we find, was a process put in place to systematically carry out checks as claimed in line with a supplier form.

85. Within four weeks of this first meeting with Officer McGing, the first four of the payroll companies used by Opus had all been deregistered for VAT purposes. Kernow Ltd on 15 August 2019, Extreme Ltd on 28 August 2019 and both Shelton Ltd and RWR Ltd on 3 September 2019. These deregistration or veto letters advised of the cancellation of the VAT numbers of the traders with whom Opus had been connected and contained information relating to fraud within labour supply chains.

86. During the second visit of Officer McGing to Opus on 11 November 2019, there were discussions again with Mr Giller relating to due diligence and improvements that needed to be made.

Particulars of dealings with traders

RWR Contract Management Ltd

87. RWR Ltd was the first of the defaulting companies. It is both instructive and revealing with respect to the approach taken by the Appellants in ensuring the integrity of the supply chain.

88. RWR Ltd was incorporated at Companies House on 27 January 2014. Its nature of business as declared at Companies House was *'development of building projects'* (rather than supplies of payroll services).

89. RWR Ltd was registered for VAT purposes from 1 July 2015. It was deregistered for VAT purposes by a letter dated 4 August 2019 taking effect four weeks from that date.

90. Opus began trading with RWR Ltd in May 2018 with the earliest invoice dated 2 May 2018.
91. There was no documentary contractual arrangement in place between Opus and RWR Ltd.
92. In relation to RWR Ltd, input tax was denied for Opus in respect of the periods 07/18, 10/18 and 01/19.
93. RWR Ltd had previously supplied National Resourcing Solutions Ltd (which took over Ebrit Labour Services Ltd).
94. RWR Ltd submitted VAT returns until 06/18. Thereafter, no other VAT returns were filed but CIS receipts showed that the company continued to receive income after that period.
95. RWR Ltd acted as a buffer company between Opus and Radcliffe Civils Ltd in the relevant transactions prior to 1 July 2018 (May and June 2018) and as a fraudulent defaulter thereafter.
96. Radcliffe Civils Ltd was registered for VAT from 1 February 2017 to 1 November 2018 and filed 'nil' VAT returns for 04/17 and 07/17 but no subsequent VAT returns. It did not declare any CIS payments for workers. At the time of its insolvency, the company owed a VAT debt to HMRC of £6,416,952.40.
97. The witness statement of Mr Giller states that he was introduced to RWR Ltd by an unidentified customer. He states: *"From what I recall, in the latter half of 2017, I was introduced to RWR by one of our customers. Due to the passage of time, I can't recall specifically which customer made the introduction, although it was likely Furn Contracts, Omega or eBrit Services"*.
98. Mr Giller, in his witness statement, details that he then met with a person named 'Kat' and had a one-hour meeting at Kat's office in Hemel Hempstead. Mr Giller gave evidence that he wrote his witness statement himself and that he typed it up himself.
99. At the hearing, the evidence of Mr Giller with respect to how Opus was introduced to RWR Ltd contradicted what was detailed in his witness statement. Initially, Mr Giller stated that he received a cold call from Mr Miah even though Opus had started trading with RWR Ltd in May 2018 which was three months prior to Mr Miah becoming a director of RWR Ltd. Mr Giller then stated that he did not know if Mr Miah called him in May 2018. He stated also that he did not recall how the meeting with Kat had been arranged, that he had not taken a note of his meeting with Kat and then stated that possibly there was an electronic record of the meeting but he had not checked to establish whether such a record existed.
100. We found the evidence of Mr Giller relating to how Opus became engaged with RWR Ltd to be improvisatory, lacking in any substance and not credible.
101. In his witness statement, Mr Giller stated in relation to charges: *"I asked Kat what the charges were for paying the workers, she explained the weekly fee paid by the worker would be £15 and this would be deducted from workers weekly pay and shown on their payslip, so as*

to allow the worker to claim that back as a business expense when they completed the self-assessment return”.

102. At the hearing, Mr Giller gave evidence that payment of a weekly fee in this way (which was common to all of the Payroll Companies) was “...a very, very well-trodden path within many – and I’m going to say temporary labour, and I don’t just mean construction. Within temporary staffing businesses, the outsourcing of the payroll is a very, very well-trodden path”.

103. On 2 August 2018, the director of RWR Ltd company changed from Robert William Carr to Shifon Miah. The Respondents visited Mr Miah on 14 August 2018. Mr Miah did not have any experience in the sector.

104. Mr Miah purchased RWR Ltd for the amount of £30,000 which was taken from RWR Ltd itself. RWR Ltd has not traded since the appointment of Mr Miah.

105. No further checks are evidenced as being made by Opus when the director of RWR Ltd changed from Mr Carr to Mr Miah.

106. HMRC’s note of the meeting with Opus on 11 November 2019 details that Mr Giller had never met Mr Miah prior to engaging the services of RWR Ltd. “*RM repeated her earlier question as to who was the point of contact for RWR. JG said Shifon Miah. RM asked if they met. JG said no, all correspondence was email/telephone. She asked how he knew that he was speaking with Shifon Miah. JG said he trusted he was...RM asked how JG was introduced to Shifon Miah. JG paused and said he couldn’t remember how it had all taken place*”.

107. As stated earlier, Mr Carr was the director of RWR Ltd prior to Mr Miah becoming the director in August 2018. The evidence of Mr Giller is that he never met Mr Carr nor Mr Miah. At the hearing, Mr Giller stated that he possibly made a check on RWR Ltd although, in his witness statement, he makes no reference to having carried out any such check. The evidence of Mr Giller at the hearing was that he did not, at any stage, verify who were the directors of RWR Ltd. We find, on a balance of probabilities, that Mr Giller made no checks at all relating to any directors of RWR Ltd prior to starting to trade with RWR Ltd or thereafter.

108. The statement of Mr Giller asserts that he verified the GPS status of RWR “*via Opus’s Gov portal*” but that he no longer has access to this portal because the company is in liquidation. The statement details that he verified the VAT registration number (VRN) of RWR “*via VIES webpage*” (the VAT Information Exchange Service of the EC). We have not been provided with evidence of such checks and we find, on a balance of probabilities, that such checks were not carried out.

109. The email footer of emails between Opus and RWR Ltd referred to RWR Ltd as RWR Contracts Management (and not RWR Contract Management Limited).

110. Invoices from RWR Ltd did not state RWR Contract Management Limited but stated ‘RWR Mangement Ltd’ (as spelt on the invoices). That is not a minor discrepancy. We find that it is a blatant discrepancy. We find that it is cause for serious concern if a company cannot repeatedly get its own name even close to correct on its own invoices.

111. We find that the incorrect email footer and, particularly, the incorrect invoices were red flags that should have raised serious concerns on the part of Opus. We have not been provided

with evidence that any attempt was made by Opus to ask about these discrepancies. We find that nothing was done to ascertain why the invoices bore an incorrect company name.

112. With respect to invoices from RWR Ltd (and the Payroll Companies generally) to Opus, the evidence of Mr Giller at the hearing was that the “*payroll provider will raise an invoice for the gross payroll that the workers have earned and put on the VAT for their services*”. Mr Giller confirmed that this was in the context that the service of the payroll company was not a supply of staff but a supply of payroll service. The evidence of Mr Giller also was that all payroll providers in the UK send an invoice in that format.

113. As referred to earlier, the way in which the Payroll Companies invoiced Opus (adding VAT on the whole payroll and not just the payroll service) did not form part of the pleaded case of the Respondents and appears to have been raised for the first time on cross-examination of Mr Giller. We were not provided with an explanation as to why it had not been raised previously by the Respondents. Mr Brown stated that to raise the issue at this stage was prejudicial to the Appellants.

114. Mr Brown stated also that the Appellants had not had the opportunity to adduce evidence that it is the industry norm to do this nor any opportunity to put forward a technical argument that the suppliers were correct in charging VAT on their invoices. Those are fair points. That said, in our view it is difficult to understand and it appears highly irregular to say the least as to why RWR Ltd and the Payroll Companies generally would be charging VAT on the supply of staff by Opus.

115. No request was made by Opus to verify that the bank accounts for RWR Ltd were, in fact, held by RWR Ltd. That is detailed in the note of the meeting between Opus and HMRC on 11 November 2019.

116. In August 2018, on the change of directorship, the bank details for RWR Ltd changed. In relation to invoices dated on or after 7 November 2018, the bank account detailed on the invoices belonged not to RWR Ltd but to BPL Build Ltd, a totally different entity. BPL Ltd was not connected to RWR Ltd and was deregistered by way of the *Ablessio* principle on 1 July 2020. On dissolution, it owed a VAT debt of £12,115,597.03.

117. There are a number of additional points that should have caused concern for Opus. Purchase invoices from RWR Ltd were received in an editable excel format which would allow customers to edit issued invoices. The invoices displayed the address of 39-41 Chase Side, Southgate, London N14 5BP which has never been the registered address for RWR Ltd. RWR Ltd did not appear to have a website.

118. It was put to Mr Giller at the hearing that, on the basis of little more than a cold call and a claimed (but unsubstantiated) meeting with a person named Kat, Opus had engaged with RWR Ltd and paid over a substantial sum of monies in the first month of trading and thereafter.

119. At various points during his evidence, when asked whether any of the issues about RWR Ltd had caused him concern, he stated that he had learned a great deal during the last five years and possibly they would now cause him concern. We have real difficulty in accepting that as credible. Mr Giller had operated in the recruitment sector for many years. He had been the Managing Director of a business (Ebrit Labour Services Ltd) that operated in the

same space as Opus. He was experienced in the sector. He was a part qualified accountant. We find that he should have been well aware of the necessary steps to take in order to verify that RWR Ltd was a company with which Opus should trade. We find, though, that those steps were not taken. We find also that the approach to due diligence by Opus evidenced in respect of RWR Ltd set a pattern that was followed subsequently in respect of the remainder of the Payroll Companies. It is an approach that, in our view, is best described as slapdash.

120. Officer Pickles was the appointed officer of HMRC for the business of RWR Ltd. In his witness statement, it is stated: *“The details and circumstances surrounding the purchase of RWR, and the subsequent actions of the business are highly unusual given the director’s lack of experience, and the agent’s significant background in business and accountancy. However, taking all of the evidence into consideration, it is clear that regardless of whether RWR were a fraudulent defaulter or the victim of a hijack, deliberate actions have been taken to ensure HMRC suffered a significant fraudulent tax loss of VAT”*.

121. The statement of Officer Pickles later states: *“For the reasons set out in this statement, and on balance of probability, I consider that RWR’s VAT number and business details were hijacked for the transactions that took place after Mr Miah took over as director of RWR”*. That view was confirmed by Officer Pickles at the hearing.

122. We do not find that the conclusion of Officer Pickles alters our view to any extent in relation to the inadequacy of the approach taken by Mr Giller with respect to the integrity of the supply chain.

Extreme Business Solutions Limited

123. Extreme Ltd was incorporated at Companies House on 9 August 2012.

124. In relation to Extreme Ltd, input tax was denied for Opus in respect of the periods 01/19 and 04/19.

125. Matthew Morris was a director of the company from 9 August 2012 to 29 August 2018 as was Andrea Morris. Mark Liddle was a director of the company from 22 August to 22 November 2018. James Hales was a director of the company for a few weeks from 22 November to 18 December 2018 and Davide Cangiano was appointed as a director of the company from 18 December 2018 to date.

126. Extreme Ltd was registered for VAT purposes from 1 December 2012. The company was registered with the intention of providing *“IT Business Solutions”*.

127. The company filed VAT returns for periods up to and including the 08/18 period but failed to file any further VAT returns.

128. Extreme Ltd had CIS Gross Payment Status from 21 June 2018 to 6 June 2019.

129. Prior to HMRC’s supply chain investigation, Extreme Ltd was under an HMRC CIS enquiry. On 26 April 2019, HMRC Officer Tilsar visited the registered business address of the company. The premises was a storage facility that rented out offices.

130. On 6 June 2019, HMRC Officer Leith decided that there was sufficient evidence to remove Extreme Ltd's GPS on the grounds that they had knowingly provided false information to register.

131. On 9 August 2019, HMRC Officer McGing wrote to Extreme Ltd stating that a supply chain enquiry was being opened into the company. On 21 August 2019, she visited the registered business address of the company with HMRC Officer Davies. A report of that visit is included in the documents made available to us. On 28 August 2019, Extreme Ltd was removed from the VAT register.

132. Opus dealt with Extreme Ltd for a period of about three and a half months from 3 January 2019 to 18 April 2019.

133. The evidence of Mr Giller at the hearing was that Extreme Ltd was introduced to Opus by one of its customers and he referred to On Tap Plumbers and Grant Walker Engineering. The witness statement of Mr Giller refers to being introduced to Extreme Ltd at a meeting between On Tap Plumbers, Grant Walker Engineering and Extreme Ltd. However, Mr Giller gave a different account of how the introduction took place (about two years prior to the date of his witness statement) at the meeting with Officer McGing on 11 November 2019. The note of that meeting refers to David Cangiano of Extreme Ltd calling Mr Giller and then coming in for a chat.

134. When asked on cross-examination to explain the discrepancy in these accounts, Mr Giller stated that prior to the November 2019 meeting with Officer McGing he had just been released from hospital due to meningitis, that his recollection of events had not been as good as he would have wanted it to be and that he should not have attended the meeting given his condition. We understand that Mr Giller may well still have been feeling unwell at the time of the November 2019 meeting, particularly as he had spent two weeks in hospital. The meeting on November 2019 was also of significant duration. That said, we do not accept that this is a credible explanation for what we find are contradictory accounts as to how Extreme Ltd was introduced to Opus. We find that it is more likely than not that the earlier-in-time account, that set out in the note of the meeting of November 2019, is how Extreme Ltd was introduced to Opus and that it was not via an existing customer of Opus but rather via a cold call.

135. There was no formal contractual arrangement in place between Opus and Extreme Ltd.

136. With respect to invoices from Extreme Ltd to Opus, none of them displayed a VAT registration number and they are, therefore, strictly invalid. At the November 2019 meeting, Mr Giller stated that he had noticed this and requested the VAT registration number from David Cangiano but could not remember when he had done so. That, though, does not alter the position that none of the invoices displayed a VAT registration number and that Extreme Ltd continued to provide invalid invoices.

137. At the hearing, Mr Giller gave evidence that he had requested invoices displaying a VRN from Mr Cangiano and was sure that "*we have them somewhere*". We reject this assertion which we find was an improvisatory explanation of Mr Giller. An example of coming up with something to detract from the reality. The reality, we find, is that Opus at no time received invoices from Extreme Ltd displaying a VRN and that this was a clear red flag which was ignored.

138. On cross-examination, Mr Giller was directed to various invoices. Invoice number 0327 was in the total amount of £10,062.75 yet that figure was detailed as the VAT figure (instead of £1,677.13). This invoice bore the date of 02/01/19. Mr Giller was directed to another invoice with a different date (17/01/19) and with different amounts but with the same invoice number of 0327. These were basic discrepancies that jumped out to the reader. They were red flags. We find that Mr Giller did not make any attempt to investigate these issues.

139. Mr Giller could not recall at the meeting in November 2019 whether or not he had checked the website of Extreme Ltd. Mr Giller stated that he checked the VAT registration number of Extreme Ltd via VIES but accepted that this had not been printed off and had not been evidenced. We find that no such checks were carried out by Mr Giller prior to starting to trade with Extreme Ltd.

140. Mr Giller gave evidence that he did not recall checking the accounts of Extreme Ltd.

141. The invoices detail the business address for Extreme Ltd as Orchard Business Park, Forsyth Road, Woking GU21 5RZ yet they were issued more than 5 months after the company vacated that address.

142. The only known customers of Extreme Ltd are Opus and Tempus Labour Ltd which are connected companies.

Shelton Solutions Limited

143. Shelton Ltd was incorporated at Companies House on 3 February 2017. It was dissolved at Companies House on 3 December 2019.

144. The business activity of the company was declared as '*other activities of employment placement agencies*'.

145. It was registered for VAT purposes from 3 February 2017 to 13 April 2019.

146. HMRC's letter of 13 March 2019 to Opus stated that Shelton Ltd's GPS had been cancelled with immediate effect.

147. Opus traded with Shelton Ltd from 29 November 2018 to 25 April 2019. The letter from HMRC to Opus informing Opus that RWR Ltd had lost its GPS status was dated 29 October 2018 (although Mr Giller maintains that it was received on 15 November 2018). In any event, prior to starting to trade with Shelton Ltd, Opus had been made aware that RWR Ltd had lost its GPS status.

148. There was no formal contractual arrangement in place between Opus and Shelton Ltd.

149. In relation to Shelton Ltd, input tax was denied for Opus for the periods of 01/19 and 04/19.

150. Shelton Ltd filed VAT returns for the periods of 02/18 to 11/18. It did not declare any other VAT returns thereafter.

151. Despite being registered as a contractor on CIS, Shelton Ltd filed nil returns throughout its registration. It never declared any employees with respect to its PAYE scheme.

152. Shelton never responded to HMRC enquiries such that the responsible HMRC officer was not able to confirm whether there was an onward supply chain.

153. A director of the company, Cathal Murphy, was visited at his home address by HMRC officers and stated that he had never heard of Shelton Ltd and was not an acting director of the company.

154. At the hearing, Mr Giller gave evidence that Opus was introduced to Shelton Ltd via a cold call from Charlie Scott who was a business development (or sales) person. Mr Giller did not know that the address of the company was a serviced office building nor why the registered address on the invoices omitted to state the street name (High Road) and referred only to 741 Balfour House, Finchley (rather than Balfour House, 741 High Road, Finchley). Mr Giller never checked the registered address of Shelton Ltd at Companies House nor visited its premises. Mr Giller did not check how long Shelton Ltd had been trading prior to starting to trade with the company (nor that it had been incorporated the year prior to starting to trade with Opus), did not check the accounts of the company (which was dormant) nor meet with or speak to any of the directors of the company. Mr Giller could not say that he had checked the VAT number of Shelton Ltd and was not able to evidence that he had. Mr Giller could not say that he had checked the website of Shelton Ltd.

155. HMRC Officer Tilsar visited the premises of Shelton Ltd in February 2019 and it was confirmed that Shelton Ltd had moved out of the premises months earlier. As stated above, Opus continued to trade with Shelton Ltd until 25 April 2019.

156. In relation to invoices received from Shelton Ltd, none of them were dated. There was a hashtag in place of a date. Mr Giller gave evidence that Opus had never received dated invoices from Shelton Ltd. When asked to explain why none of the invoices were dated, Mr Giller suggested by way of an explanation that the field on an Excel file may not have been formatted to display the date. It was put to Mr Giller that this was another example of his being keen to invent an explanation on the spot to try to find his way out of the situation. We agree. In any event, no invoices with dates have been provided for Shelton Ltd.

157. Mr Giller was also taken to the VAT figure on the invoices which was to three decimal places. The invoices provided by Shelton Ltd, therefore, did not contain a date and the VAT figure on each was displayed to three decimal places (an invalid currency).

158. The only due diligence carried out by Opus, other than the discussion between Mr Giller and Charlie Scott, was a GPS check.

159. In respect of why Opus continued trading with Shelton Ltd until 25 April 2019, which was about 6 weeks after being informed that Shelton had lost its GPS, Mr Giller appeared to offer an explanation that a reference to Shelton Ltd may have been due to a miscoding (such that a payment had not in fact been made by Opus to Shelton). We find that this was another example of pure invention by Mr Giller. We find that Opus continued to trade with Shelton Ltd after having been informed that it had lost its GPS in full knowledge of the ramifications of doing so.

Kernow Contracting Services Ltd

160. Kernow Ltd was incorporated at Companies House on 21 August 2018.

161. It was registered for VAT purposes from 1 December 2018.

162. The registered office and principal place of business were both 71-75 Shelton Street, London, Greater London WC2H 9JQ.

163. Opus began trading with Kernow Ltd on 4 April 2019 just over seven months after it had become incorporated.

164. There was no formal contractual arrangement in place between Opus and Kernow Ltd.

165. In relation to Kernow Ltd, input tax was denied for Opus for the periods of 04/19 and 07/19.

166. Kernow Ltd filed one VAT return for the 02/19 period. That declared a turnover of £3142 with VAT of £628.36.

167. It did not declare any other VAT returns.

168. It did not file any CIS returns.

169. Kernow Ltd was deregistered for VAT purposes with effect from 5 August 2019.

170. Assessments were raised against Kernow Ltd for the period 05/19 for £218,145 and for the period 99/99 of £62,278. These assessments included the transactions with Opus during the period 28 February 2019 to 25 April 2019 and during the period 2 May 2019 to 20 June 2019. VAT was charged on these invoices but not remitted to the Respondents.

171. Kernow did not respond to or appeal against the decisions to de-register the company or raise the assessments.

172. Mr Anthony Ivan Hugh was listed as the majority shareholder of Kernow Ltd and remained the sole director until 20 March 2019. His termination of appointment was notified to Companies House on 9 July 2019. On 4 June 2019, a document was filed at Companies House to notify that Miss Nicola Doran became a director of Kernow Ltd from 20 March 2019. At the hearing, Mr Giller gave evidence that he did not know who the directors of Kernow Ltd were and neither did he check who they were.

173. The Respondents visited the premises at 71-75 Shelton Street, London, Greater London, WC2H 9JQ on 5 August 2019. Mr Juan Lopez, an employee of 1st Formations Limited (a formation agent) confirmed that Kernow Ltd did not operate from that address.

174. The Employer Business Service of the Respondents confirmed that there were no employees of Kernow Ltd.

175. In respect of how Opus was introduced to Kernow Ltd, this was by way of a cold call to Mr Giller.

176. Mr Giller did not meet either Mr Hugh nor Miss Doran.

177. Mr Giller asserts, in his witness statement, that CIS status and VAT VIES checks were carried out in relation to Kernow Ltd. No documentary evidence has been provided to support that assertion. We find, on a balance of probabilities, that no such checks were carried out by Opus.

178. Purchase invoices were received from Kernow Ltd via email in an editable excel format.

179. The registered address and principal place of business for Kernow Ltd (71-75 Shelton Street) was also the address of Tempus Labour Ltd of which Mrs. Gillian Giller (the wife of Mr Giller) was the sole director prior to Mr Giller becoming a director on 1 December 2021. At the hearing, Mr Giller confirmed that he was the ultimate decisionmaker at Tempus Labour Ltd and that his wife had been a director in name only.

180. We find that Mr Giller would have been aware of this shared address with Kernow Ltd and that this was a clear red flag.

181. The website of Kernow Ltd was of poor quality. That was accepted by Mr Giller at the meeting with HMRC on 11 November 2019. The note of that meeting states Mr Giller as having said: *"I see what you mean 15 year old boy could have knocked this up in his bedroom"*. At the hearing, Mr Giller could not confirm if he had ever gone onto the website of Kernow Ltd. We find, on a balance of probabilities, that Mr Giller did not check the website of Kernow Ltd.

182. In relation to the invoices of Kernow Ltd, certain of the invoices did not detail any issue date given that the date section was left blank. Two of the invoices of Kernow Ltd detailed a sequence number of No.58 and each had differing supply values. These were basic points and were more than minor issues that should have raised concerns at Opus but did not.

183. In summary, the approach to maintaining the integrity of the supply chain and to due diligence adopted by Opus in relation to Kernow Ltd followed the same pattern as it had for RWR Ltd, Extreme Ltd and Shelton Ltd beforehand. It was entirely inadequate.

ATC Nationwide Ltd.

184. ATC Ltd was incorporated at Companies House from 29 January 2018. It was registered with the intention to provide *'temporary employment agency activities'*.

185. It was registered for VAT purposes from 1 February 2018 to 13 February 2020.

186. The registered address was 21 Reddicap Trading Estate, Sutton Coldfield, B75 7BU.

187. All of the business activities of ATC Ltd were outsourced to third party payroll providers.

188. Opus traded with ATC Ltd from May 2019 to December 2019.

189. ATC Ltd acted as a buffer between Opus and defaulting traders from 23 May 2019 to 31 May 2019. From 1 June 2019 onwards, ATC Ltd became a fraudulent defaulter.

190. There was a contractual arrangement in place between ATC Ltd and Opus. This was the sole instance of there being a contractual arrangement being in place between Opus and any of the Payroll Companies.

191. That said, and significantly, the contract between ATC Ltd and Opus was for the provision of construction services by Opus to ATC Ltd. It had nothing at all to do with the purported supply in question of payroll services by ATC Ltd to Opus.

192. In relation to ATC Ltd, input tax was denied for Opus for the periods of 07/19, 10/19 and 99/99.

193. The company filed VAT returns up to and including the 05/19 period. All VAT returns beyond that period remain outstanding.

194. ATC Ltd was registered as a contractor and a subcontractor for CIS. It did not file any CIS returns declaring payments for the outsourced payroll.

195. In respect of how Opus was introduced to ATC Ltd, someone called Dean and two colleagues of Dean came to the Hemel Hempstead office of Opus. Mr Giller did not know the surname of Dean.

196. The meeting came about after Mark Seymour had found Mr Giller on LinkedIn in May 2019. Mark Seymour was appointed as a director of ATC Ltd in October 2019 about four months after Opus began trading with ATC Ltd.

197. The contract between ATC Ltd and Opus states that Opus will provide services to ATC Ltd. Opus is the contractor and ATC Ltd is the client. At the hearing, Mr Giller accepted that the contract that he signed with ATC Ltd had, based on the provisions of the contract, absolutely nothing to do with the provision of payroll services. It did not provide for the provision of payroll services by ATC Ltd to Opus. On the contrary, it provided for the provision of undefined services by Opus to ATC Ltd.

198. At the hearing, Mr Giller gave evidence that he did not look at the accounts of ATC Ltd nor did he check who were the directors of the company at Companies House.

199. Mr Giller confirmed at the hearing that he did not carry out any checks to verify the banking details of ATC Ltd. Nor did Opus obtain a credit report or trade references for ATC Ltd.

200. Mr Giller accepted that, whilst Opus was trading with ATC Ltd, deregistration letters had been received by Opus in respect of Kernow Ltd (15 August 2019), Extreme Ltd (28 August 2019), as well as Shelton Ltd and RWR Ltd (both dated 3 September 2019). In short, all four of the payroll companies that Opus had traded with starting in May 2018 had been deregistered for VAT purposes within 16 months.

201. Mr Giller asserts, in his witness statement, that CIS and GPS checks were carried out in relation to ATC Ltd. No documentary evidence has been provided to support that assertion. We find, on a balance of probabilities, that no such checks were ever carried out by Opus.

202. In short, we find that the approach of Opus to due diligence procedures in relation to ATC Ltd mirrored that adopted in relation to the first four of the Payroll Companies. It was a common approach. A completely lax approach. It illustrated a pattern of repeated failings to carry out basic commercial checks. Basic checks that offered protection against the risk of fraud.

203. After the visit of Officer McGing on 2 August 2019 and the receipt of the four deregistration letters within the space of four weeks thereafter, it was submitted on behalf of the Respondents that there was no wholesale appraisal by Mr Giller of due diligence or the contract with ATC Ltd. We agree and so find. The only additional checks that Mr Giller appeared to carry out were principally to obtain a copy driving licence of Mark Seymour, a copy passport for Gemma Silvers (a director from 29 January 2018 until 10 October 2019), and an undated screenshot showing a credit balance of £3,055.15 on the VAT account of ATC Ltd. That, we find, indicated no meaningful departure by Mr Giller from the woeful approach to due diligence up to that point in time.

Knowledge

204. The question comes down to whether or not Mr Giller engaged in the relevant transactions actually knowing that they were connected to fraud or whether he ought to have known that the relevant transactions were connected to fraud. Either is sufficient for a denial under the *Kittel* Principle. In reaching a conclusion, we have assessed carefully the totality of the evidence.

Actual knowledge

205. As the principal at Opus with respect to the relevant transactions, it is Mr Giller's knowledge that is attributable to Opus for the purpose of the *Kittel* test.

206. Our conclusion is that Mr Giller did not actually know of the connection to fraud. We have stopped short of finding that he actually knew of the connection to fraud because to do so would be to find that Mr Giller was a fraudster who was prepared to commit fraud over an extended period of time and at the same time as being under scrutiny by HMRC. We have reached the conclusion that Mr Giller is not that person.

207. In reaching that conclusion, and with respect to the connection of Opus to an overall scheme to defraud HMRC, we have considered the colour-coded diagram (exhibited to Officer McGing's witness statement of 11 January 2023) which set out key individuals involved in the scheme and its associated companies. We have taken into account that the principal points relied upon by the Respondents in that respect appear to be the connection of Mr Giller with Mr Francis Boyle and that Kernow Ltd shared a business address with Tempus Ltd.

208. In relation to Mr Francis Boyle, he became a director of National Resourcing Solutions Ltd on 31 August 2016. Mr Wood and Mr Ariyadasa were directors of that company from 20 March 2014 until 31 August 2016. Mr Giller's unchallenged evidence was that he met Mr

Francis Boyle (the new owner of Ebrit Services Ltd and Ebrit Labour Services Ltd) only once and that Mr Giller left his employ at Ebrit Labour Services Ltd on bad terms which illustrated a far from amicable relationship between Mr Francis Boyle and Mr Giller.

‘Blind-eye knowledge’

209. It is well established that blind-eye knowledge requires a proactive decision not to look and that it approximates to knowledge. It requires there to be a deliberate decision not to obtain confirmation of what might be suspected or not to check. It is dishonest for a person to deliberately shut their eyes to facts which they would prefer not to know. If they do so, they are taken to have actual knowledge of the facts to which they shut their eyes. It was stated in *Manifest Shipping Company Limited v Uni-Polaris Company Limited and Others* [2001] UKHL 1 [at 112] that:

*“Blind-eye” knowledge approximates to knowledge. Nelson at the battle of Copenhagen made a deliberate decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. It is, I think, common ground – and if it is not, it should be – that an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence. Lord Blackburn in *Jones v. Gordon* (1877) 2 App Cas 616, 629 distinguished a person who was “honestly blundering and careless” from a person who “refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind – I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover”. Lord Blackburn added “I think that is dishonesty”.*

210. We have concluded, with some reservations, that Mr Giller did not have “blind-eye” knowledge of the connection to fraud. We do not consider, on a balance of probabilities, that Mr Giller suspected that certain facts may have existed and that he chose to refrain from taking steps to confirm their existence.

Constructive knowledge

211. We have no doubt, though, and find that Mr Giller failed to think about the facts that were directly in front of him and, equally, we find that he failed to consider and realise the implications of those facts.

212. We find that his failure to make checks can be characterised as being seriously negligent. We have, in reaching that conclusion, taken into account carefully that the facts in this case involve Opus having traded directly with five consecutive fraudulent traders one after another. The relationship with the first, RWR Ltd, commenced in May 2018. The relationship with the fifth, ATC Ltd, commenced 12 months later in May 2019. It might be said that one or two fraudulent traders could be attributed to bad luck but five in a sequence or pattern of one after another in this manner and demonstrating a repeating pattern of failures is, in our view, entirely beyond the realm of what could be characterised as misfortune.

213. Mr Giller was subjected to lengthy and robust cross-examination during the course of many hours over two days. As stated above, at times we found his evidence to be noticeably improvisatory, inventive and lacking in substance, particularly as to the entirely inadequate approach taken towards commercial due diligence and the carrying out of checks. That in the

context of Opus paying over substantial sums of money (often in the region of £20,000 on a weekly basis) to companies about which it knew next to nothing and when, clearly, Opus also had to be very mindful of its cashflow position given its reliance upon credit.

214. We found Mr Giller to be an experienced person in business. He had worked at a number of businesses prior to setting up Opus. We reject entirely, as submitted, that Mr Giller only became aware of VAT fraud in mid-July 2019 on receipt of HMRC's letter of 15 July 2019 which included a link to HMRC's leaflet entitled 'Use of Labour Providers – Advice on Due Diligence' and VAT Notice 726.

215. We have found that Mr Giller became aware of VAT fraud prior to his leaving the employ of Ebrit Labour Services Ltd in October 2016 and, therefore, prior to starting Opus. Consequently, we find that his approach at Opus was in no way sufficiently circumspect about his trading connections and maintaining the integrity of the supply chain.

216. It is no answer for Mr Giller to argue, as he seeks to do, that he was not told by his accountant nor told expressly by HMRC of what checks he must carry out in order to seek to maintain the integrity of the supply chain. His approach was one of simply not caring whether or not his counterparties were fraudsters.

217. Mr Giller referred on a number of occasions in his evidence, with respect to due diligence discussions and checks, to that being guidance and that he was not being told to do it. That, in our view, misses the point. The point, clearly, is that undertaking proper due diligence and carrying out routine commercial checks is about seeking to avoid being a party to fraud and keeping the monies of the company safe. It is commercial common sense.

Conclusion

218. Having taken into account all of the circumstances and having drawn together all of the strands, we find that HMRC has proved to an extent well beyond the balance of probabilities that the Appellants should have known that the relevant transactions were connected to the fraudulent evasion of VAT.

219. The appeals are dismissed.

220. We are grateful to counsel for all of their assistance.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

221. 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.

Release Date: 30th JUNE 2025