



TC07777

Value Added Tax – Input tax – Taxpayer claimed refund of input VAT on the basis that taxable supplies were made to the taxpayer – Whether an ‘economic activity’ was carried out - Taxpayer not entitled to refund of input VAT - appeal dismissed - Penalties for inaccurate returns – appeal dismissed – penalties reduced to careless inaccuracies.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal number: TC/2018/03447
TC/2019/00300**

BETWEEN

Y4 EXPRESS LIMITED

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE KELVAN SWINNERTON
MRS JO NEILL (MEMBER)**

**Sitting in public at Taylor House, Roseberry Avenue, London on 13, 14, 15 and 16
January 2020.**

Mr T Brown of counsel for the Appellant.

**Mr Eyles-Rushe, litigator of HM Revenue and Customs’ Solicitor’s Office for the
Respondents.**

DECISION

INTRODUCTION

1. This is an appeal against a decision of HMRC of 27 April 2018 that Y4 Express Limited (“Y4”) is not eligible for a refund of VAT in respect of the VAT periods from 10/13 to 02/17. It relates also to the issue of a VAT assessment for £119 for the VAT period 05/16.
2. The tax in dispute totals £463,114 and relates to invoices from Pat Ning Man, Colemead Limited and Yodel Delivery Network Limited (“Yodel”). Y4 does not now dispute the denial of input tax in respect of Staycourt Ltd which amounts to £1228.
3. Y4 also appeals against a decision of HMRC of 24 December 2018 with respect to the charging of penalties in the amended amount of £267,429.33 under Schedule 24 of the Finance Act 2007 (‘FA 2007’) calculated on the basis of inaccuracies in the VAT returns of Y4.

THE HEARING AND EVIDENCE

4. HMRC produced a bundle of documents for the hearing. Both HMRC and Y4 produced additional documents at the hearing. We accepted all of these documents as evidence.
5. At the hearing, we heard witness evidence on behalf of HMRC from Mr Joe Burns who was previously an officer in the Fraud and Bespoke Avoidance Team within the Fraud Investigation Service of HMRC. We accepted in evidence on behalf of HMRC a witness statement from Ms Antonia Donovan, an officer in HMRC’s Pre-Clearance Team, who was unable to attend the hearing due to reasons of ill-health.
6. On behalf of Y4, we heard evidence from Mr William Yeung, who is currently the company secretary of Y4. We also heard evidence from Mr Kenny Fung (appointed a director of Colemead Limited in September 2013), from Mr Pat Ning Man and from Mr Samuel Yeung who was the company secretary of Y4 until April 2016 and who is the brother of Mr William Yeung.

THE FACTS

7. Y4 operates from business premises at Newport Road, Hayes, Middlesex. It was incorporated on 27 May 2010 and arranges for the importation of goods from companies based in China and Hong Kong. Y4 collects goods from the airport, stores them if required, and sorts and arranges delivery of the goods to the final customer.
8. Formerly, Y4 also acted as a fulfilment house and imported goods owned by companies in China and Hong Kong which it stored in its warehouse until the goods were sold. Y4 is no longer registered under the Fulfilment House Due Diligence Scheme.
9. Y4 uses delivery companies such as UPS, DPD, Yodel and Royal Mail (“RM”) with respect to the physical movement of the goods imported from the companies in China and Hong Kong. These delivery companies carry out the delivery of goods required by Y4. Y4 would have contracts with these delivery companies with respect to the delivery of goods and typically settle the cost of the deliveries on a monthly basis with these delivery companies.

10. In relation to RM, Y4 made use of a scheme for high-volume customers known as Printed Postage Impressions (“PPI”). In order to become a PPI customer, Y4 opened an account with RM and was allocated a unique number. As a PPI customer, Y4 was required to make daily declarations of the items that it sent by way of the Online Business Account (“OBA”). The OBA was accessed through RM’s secure website. The details entered on the OBA were used by RM to calculate the amount owed by Y4 and in relation to which RM would issue invoices to Y4. A benefit of this scheme for high-volume customers was that of paying lower rates for deliveries.

11. RM carried out spot checks of the use of the PPI scheme by its customers in order to ensure that the correct details were being entered on the OBA and that the correct amounts were being paid by PPI customers.

12. In about June 2013, RM raised concerns with Y4 that the items declared by Y4 under the PPI scheme were being understated. Subsequently, Y4’s PPI account with RM was suspended and Y4 was unable to arrange for delivery of items by RM using the PPI scheme.

13. Y4 contested the suspension of its PPI account by RM. A long-running dispute ensued between Y4 and RM that endured for about three years after which Y4 agreed to pay RM the sum of approximately £600,000 in 2016. Throughout the period of the dispute between Y4 and RM, Y4 was not able to operate its PPI account with RM.

14. Mr Pat Ning Man (“Mr Man”) was approached by Mr Samuel Yeung at some point in 2012 with respect to opening a business account with RM in Mr Man’s name for use by Y4. Mr Man considered this as a favour to a friend rather than as a business venture with a view to making a profit. Mr Samuel Yeung explained to Mr Man that the reason for the request was because he did not want an existing supplier to know that goods were being supplied to Y4 by another supplier which would have become apparent from the RM statements that the supplier in question sometimes asked to see.

15. An e-mail dated 26 March 2012 from Mr Man to Mr Samuel Yeung refers to the Online Business Account finally being set up and also refers to attaching “the word docs Royal Mail sent to me”. Mr Man entered into a written agreement with RM. We were not provided with the written agreement entered into between RM and Mr Man. Mr Man’s account with RM did not become active until July 2013.

16. Mr Man provided the details of his OBA with RM to Y4. That enabled Y4 to access the OBA and to use RM as a delivery company.

17. Mr Man had access to the OBA but did not check it daily. He would monitor it to make sure that there were enough funds made available to him by Y4 to make payment of what was owed to RM.

18. Mr Man facilitated the access by Y4 to his account with RM in order to enable Y4 to use it for their business.

19. Mr Man was not involved with the arrangement of deliveries of Y4 carried out by RM. On occasion, Mr Samuel Yeung would telephone Mr Man in relation to discrepancies with respect to the RM account of Mr Man.

20. The amounts involved in the use by Y4 of Mr Man’s account with RM were significant and varied depending upon the flow of business.

21. Initially, Y4 transferred the amount owed to RM to the personal bank account of Mr Man who would, when those monies had cleared, then pay RM. Subsequently, a direct debit mandate was set up by Mr Man for payment to be made automatically to RM.
22. Y4 was aware of the amounts to be paid to RM given its access to the OBA of Mr Man but did not have access to the bank account of Mr Man.
23. There was no written contract between Y4 and Mr Man relating to the use by Y4 of Mr Man's account with RM. The agreement between Y4 and Mr Man was verbal.
24. RM issued invoices to Mr Man. Y4 prepared and issued invoices from Mr Man to itself.
25. Y4 was to ensure that VAT returns were prepared and filed for Mr Man.
26. Mr Man did not check whether or not any VAT returns were filed in relation to the activity with Y4. No such VAT returns for Mr Man were filed.
27. Mr Man operated a business named Ecstatic Arts from about 2010 which was VAT registered. Mr Man made use of an accountant with respect to that business but did not inform his accountant of the activity with Y4 albeit he had some concerns as to the activity that he had entered into with Y4.
28. Mr Fung was approached by Mr Samuel Yeung in late 2013 with respect to opening an account with RM on behalf of Y4. Mr Samuel Yeung did not explain in any detail to Mr Fung why he wanted access to this RM account other than stating that he wanted access to another RM account for Y4. No mention was made to Mr Fung of the ongoing dispute between RM and Y4. Mr Fung was informed by Mr Samuel Yeung that a company would be formed of which Mr Fung would be the sole director and that the application for the RM account would be made in the name of that newly-formed company. Mr Fund did this as a favour for Mr Samuel Yeung and Y4.
29. In September 2013, Mr Fung was appointed a director of Colemead Limited ("Colemead"). Colemead had no other employees.
30. An account with RM was opened in December 2013 in the name of Colemead. An e-mail dated 11 December 2013 from RM to Mr Fung details the acceptance by RM of Colemead's application. The use of the services of RM by Colemead is stated to be subject to a credit check and was also said to be subject to Our General Terms and Conditions, Our Account Terms, The licence for use of Royal Mail Printed Postage Impressions (PPIs), the Royal Mail United Kingdom Post Scheme, The Overseas Letter Post Scheme, and Specific Terms for Parcels.
31. Colemead agreed to the various terms and conditions of RM with respect to the use of the services of RM. We were not provided with the various terms and conditions entered into between Colemead and RM.
32. This RM account of Colemead was active from April 2014 until December 2016. Mr Fung provided the access details of the OBA of Colemead with RM to Y4. That enabled Y4 to access the OBA and to use RM as a delivery company.
33. Y4 transferred monies to Colemead in time for payment to be made automatically by direct debit to RM by Colemead in relation to the monies owed to RM with respect to Colemead's account with RM.

34. Y4 would place sufficient funds into the bank account of Colemead to meet the payments due to RM. Y4 was aware of the amount of funds to be transferred given that Y4 had access to the OBA of Colemead. Mr Fung would, on occasion, deal with discrepancies relating to the Colemead account with RM.
35. The amounts involved in the use by Y4 of the OBA of Colemead varied and could be significant sums.
36. Mr Fung was not involved with the arrangement of deliveries of Y4 undertaken by RM.
37. RM issued invoices to Colemead. Y4 prepared and issued invoices from Colemead to itself. Mr Fung did not see or approve any of these invoices and did not check the bank statements of Colemead as to the activity on the bank account. There was no written contract between Y4 and Colemead relating to the use of Colemead's account with RM. Mr Fung's only activity was to set up the account with RM and provide the log-in details of the account with RM to Y4.
38. The arrangement between Colemead and Y4 was verbal, informal and hands-off with no specific terms attached to it. Mr Fung was informed by Y4 that Y4 would arrange for an accountant to handle the tax affairs of Colemead.
39. Yodel is a courier company that was used by Y4. A Delivery Network Limited Service Agreement was entered into by Yodel and Y4. The copy agreement provided to us was signed by Ms Julie Soni of Yodel on 12 December 2013.
40. Clause 3.23 of that agreement states as follows: *“The Client shall be prohibited from re-selling the Services to any third party unless Yodel’s prior written consent has been obtained. In the event that the Client re-sells the Services without Yodel’s prior written consent, Yodel shall have the right to immediately terminate the Agreement.”*
41. Y4 is the “Client” under the Agreement. “Services” are defined as *“services for any Parcel or any associated services as specified in this Agreement and more particularly described in each Service Schedule”*. Yodel was, therefore, to provide delivery services solely to Y4 under the terms of the agreement unless prior written consent was obtained from Yodel for those services to be provided to a third party.
42. In respect of Yodel, the invoices in relation to which Y4 claims input tax were addressed to 4PX. Y4 provided other invoices relating to Yodel that were addressed from Yodel to Y4 and which were accepted by HMRC for VAT purposes.
43. On 5 July 2016, the First-tier Tax Tribunal upheld a decision of HMRC disallowing import VAT claimed by Y4 for goods in relation to which it had not taken title. Those proceedings are not connected with the current proceedings.
44. During verification of VAT repayment claims made by Y4 for the periods from 07/13 to 04/15, Ms Antonia Donovan of HMRC identified invoices from Mr Man that were similar in appearance to invoices raised by Y4. This resulted in Mr Samuel Yeung accepting, on 26 August 2016, the offer to enter the Contractual Disclosure Facility (“CDF”). This facility provides the opportunity to make a full disclosure in exchange for agreement that a criminal investigation will not be opened.

45. Various meetings took place between Y4 and their representatives and HMRC on 16 November 2016, 9 December 2016, 20 January 2017, 30 June 2017, 10 December 2017 and 13 December 2017 which included discussions in respect of the arrangements between Y4 and Mr Man and between Y4 and Colemead. At the meeting on 13 December 2017, Mr Burns of HMRC expressed an opinion that Y4 was not entitled to reclaim the VAT on invoices received from Mr Man and Colemead.

46. On 16 and 17 January 2018, Ms Antonia Donovan and Mr Richard Gelder of HMRC visited the premises of Y4 and prepared a report relating to that visit. The report made reference, amongst other things, to input VAT having been claimed for invoices from Yodel and Staycourt Ltd which had been issued to 4PX Ltd and not issued to Y4.

47. On 27 April 2018, Mr Burns of HMRC issued a decision denying the reclaim of VAT and also detailing an assessment to VAT of £119 for the period 05/16.

48. On 25 May 2018, SKS (GB) Ltd lodged an appeal with HM Courts & Tribunal Service on behalf of Y4. On 24 December 2018, Mr Burns of HMRC issued penalties in the revised amount of £280,722.51.

THE ISSUES FOR THE TRIBUNAL

49. In respect of Mr Man, Colemead and Yodel, the issue is whether or not Y4 received taxable supplies and incurred input tax that it is entitled to recover.

50. In respect of the penalties charged, the issue is whether or not HMRC was correct to charge penalties and in the amounts calculated.

THE LAW

Input VAT

51. The principal EU provisions are contained in Council Directive 2006/112/EC (“the Principal VAT Directive”). The domestic implementing provisions are to be found in the Value Added Tax Act 1994 (“VATA 1994”).

52. Article 2 of the Principal VAT Directive provides that “*the supply of goods for consideration within the territory of a Member State by a taxable person acting as such*” shall be a transaction which is subject to VAT.

53. Article 2 of the Principal VAT Directive also provides that the “*supply of services for consideration within the territory of a Member State by a taxable person acting as such*” shall be a transaction which is subject to VAT.

54. The definition of “taxable person” is detailed in Article 9 of the Principal VAT Directive. This states that:

(1) “Taxable person” shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

55. Section 4 of VATA 1994, which implements Articles 2 and 9 of the Principal VAT Directive, states:

(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.

56. Section 94 of VATA 1994 defines “business” as including “any trade, profession or vocation”.

57. Article 14(1) of the Principal VAT Directive defines “supply of goods” as follows:

“ ‘Supply of goods’ shall mean the transfer of the right to dispose of tangible property as owner”.

58. Article 24(1) of the Principal VAT Directive defines “supply of services” as follows:

“ ‘Supply of services’ shall mean any transaction which does not constitute a supply of goods”.

59. Article 73 of the Principal VAT Directive defines the taxable amount as:

“in respect of the supply of goods or service ... everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party”.

60. Article 168 of the Principal VAT Directive allows a taxable person the right “in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person”, to deduct VAT due or paid “in respect of supplies to him of goods or services carried out by another taxable person”.

61. Article 220(1) of the Principal VAT Directive provides that every taxable person shall ensure that for goods or services that have been made to another person, an invoice shall be issued either by himself or by his customer.

62. Regulation 13(3A) of the VAT Regulations 1995 allows for an invoice raised by a customer to be deemed as a valid VAT invoice provided that an agreement was in place between the customer and the supplier. Regulation 13(3B) of the VAT Regulations 1995 sets out the requirements for such invoices.

Penalties

63. Paragraph 1 of Schedule 24 FA 2007 provides:

“(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.”*

64. The list of documents to which these provisions apply includes a VAT return.

65. Paragraph 3 provides that:

“(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)”.*

SUBMISSIONS ON BEHALF OF THE RESPONDENT

66. Mr Eyles-Rushe submitted that Y4 has deliberately and, with concealment in relation to Colemead and Mr Man, claimed input tax from suppliers who were not making taxable supplies to Y4. It is also submitted that, regardless of whether or not Mr Man and Colemead made taxable supplies to Y4, Y4 does not hold sufficient evidence for a reclaim of input VAT.

67. With respect to Mr Man, it was stated that after having opened the account with RM the only activity of Mr Man was, during an initial period, in arranging for the transfer of funds to be paid into his personal account by Y4 to meet the amount owed to RM. Subsequently, a direct debit was set up which resulted in the monies due to RM being taken automatically from the personal account of Mr Man.

68. Mr Man did not process orders, did not interact with customers and did not seek new customers. In short, Mr Man did not pursue any activities of any significance.

69. With respect to Colemead, it was likewise submitted that the only activity of Mr Fung was in opening the account with RM and that payments to RM were made by direct debit automatically from the account of Colemead.

70. Reference was made to the indicators laid out by Judge Gibson in the case of *Customs & Excise Commissioners v Lord Fisher [1981] (STC 238)* and it was submitted that none of the indicators in the Fisher case are met with respect to Mr Man or Colemead.

71. It was acknowledged that more recent EU and UK case law, demonstrated in the decisions of *Wakefield College v Revenue & Customs Commissioners EWCA Civ 952 [2018] STC 1170*, *Gemeente Borsele v Staatssecretaris van Financien C-520/14 [2016] All ER CA 166*, and *Commission of the European Communities v Finland C-246/08 [2009] ECR-I-10605*, has highlighted that the Fisher tests should be used as indicators of whether economic activity has taken place but that these indicators should not detract from the tests set out in EU case law.

72. With respect to the tests set out in EU case law, it was contended that the tests were not met because there is no direct link between the services provided and the consideration received by the supplier and there was no intention to obtain income on a continuing basis.

SUBMISSIONS ON BEHALF OF THE APPELLANT

73. Mr Brown submitted that the primary case of Y4 is that there has been a taxable supply from both Mr Man and Colemead to Y4.

74. Y4 was provided with the use of a RM account on a daily basis and the use of that RM account could have been withdrawn by Mr Man or Colemead at any time.

75. Reference was made to the case of *Revenue & Customs Commissioners v Airtours Holiday Transport Ltd [2016] STC 1509* where it was stated that a fundamental criterion is for there to be a consideration of economic realities (paragraph 45) which may differ from the contractual position. That case related to Airtours (the taxpayer) and its creditors who instructed a professional services firm (PwC) to prepare a report on the financial position of Airtours. The original terms of appointment were addressed to the engaging institutions (or creditors) of Airtours and it was stated that the report was for the sole use of the engaging institutions who countersigned the terms of appointment. The taxpayer was also a signatory to the contract and paid the invoices of PwC. The issue was whether or not Airtours could deduct VAT as input tax.

76. In respect of Y4, it was submitted that there has been a supply of services based upon a verbal agreement which had been carried out for consideration with payments having been made by Y4 to Mr Man and to Colemead.

77. The case of *Saudacor-Sociedade Gestora de Recursos e Equipmentos da Saude Dos Acores SA v Fazenda Publica C-174/14 [2016] STC 681* was referred to. Specifically, paragraph 32 which states:

“The possibility of classifying a supply of services as a transaction for consideration requires only that there is a direct link between that supply and the consideration actually received by the taxable person. Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration for the service supplied to the recipient”.

78. Reference was made to the *Wakefield College* case amongst others and to the need, after having concluded that the supply was made for consideration, to address whether the supply constitutes an economic activity for the purposes of the definition of ‘taxable person’ in Article 9. In that respect, a wide-ranging enquiry of all the objective circumstances in which the goods or services are supplied must be examined.

79. It was submitted that valid VAT invoices were provided and that, if valid VAT invoices had not been provided, HMRC should have exercised its discretion and were unreasonable in denying input VAT.

DISCUSSION

Input VAT

80. The skeleton argument of HMRC relies heavily upon the criteria or indicators set out in the *Fisher* case. That case concerned Lord Fisher (the taxpayer) whose main hobby was shooting and who, in order to finance his hobby of shooting, invited guests to join his shoots.

Those guests made contributions with the purpose of the contributions being to cover the cost of the shoots. Lord Fisher also made equal contributions.

81. It was held that the supply of services by the taxpayer for which the contributions were received was not made in the course of a business carried on by the taxpayer. By reference to the criteria laid out in the *Fisher* case, HMRC submitted that the activities of Mr Man and Colemead Limited do not fall within the course or furtherance of a business carried on by them.

82. Mr Brown for the Appellant did not accept that the correct approach to be adopted was to apply or focus upon the Fisher indicators and referred us to various cases including to the case of *Longridge on the Thames v Revenue & Customs* [2016] STC 2362. Paragraph 84 of the Longridge case states that the courts must give effect to CJEU law and must do so despite domestic authorities or practice to the contrary. That is the approach that we have adopted in this appeal.

83. The *Longridge* case relates to a claim made by a charity to recover VAT paid on the construction of a centre on the basis that the supply of services to the charity in the course of the construction of the centre was zero-rated because it was a building intended for use solely for charitable purposes. In the *Longridge* case, it was stated by LJ Arden that:

“In my judgment, the domestic authorities have developed in a way which means that they now diverge in some respects from the test to be applied in determining whether an activity of providing services to a recipient who makes a payment constitutes an economic activity resulting in a liability to VAT. In Finland [Commission of the European Communities v Finland C-246/08 [2009] ECR-I-10605], for instance, the focus was on whether there was a sufficiently direct link between the payment and the service. The Fisher criteria (see para [79], above) by contrast omit reference to the connection or proportionality of the payment for the service”. (paragraph 85)

“The Fisher criteria direct attention to (a) seriousness of the enterprise (b) the regularity of the activity (c) the substantiality of the activity (d) the organisational features of the enterprise (e) the predominant concern of the activity and (f) a comparison with commercial providers of the same service. These factors may have a role to play but they cannot displace the approach required by CJEU jurisprudence”. (paragraph 86)

84. The *Finland* case concerned whether or not, in the Republic of Finland, VAT should be levied on legal advice services provided by public legal aid offices in return for part payment by the recipient of the advice. The part payment made by a recipient of legal aid services was not calculated solely upon the basis of fees but also depended upon a recipient’s income and assets. The Court found that the link between the legal aid services provided by public offices and the payment to be made by the recipients was not sufficiently direct for that payment to be regarded as consideration for those services and, accordingly, for those services to be regarded as economic activities.

85. We were also referred to passages from the *Wakefield College* case. That case concerned whether the supply of services to a taxpayer college (a charity and supplier of further education) for the construction of a new building qualified for zero-rating for VAT purposes.

86. The *Wakefield College* case, at paragraph 52, states:

“Whether there is a supply of goods or services for consideration for the purposes of art 2 and whether that supply constitutes economic activity within art 9 are separate questions. A supply for consideration is a necessary but not sufficient condition for an economic activity. It is therefore logically the first question to address. It requires a legal relationship between the supplier and the recipient, pursuant to which there is reciprocal performance whereby the goods or services are supplied in return for the consideration

provided by the recipient: see, for example, the judgment in Borsele at para 24. That is what is meant by ‘a direct link’ between the supply of the goods or services and the consideration provided by the recipient: see Borsele at para 26 and contrast Apple and Pear Development Council v Customs and Excise Comrs.”

87. The *Borsele* case concerned the provision of school transportation services in the municipality of Borsele in the Netherlands. In brief, the municipality of Borsele claimed that it was a taxable person for the purposes of VAT. It provided school transport services in return for payment of contributions. One third of the parents of pupils for whom school transport was provided paid contributions. Those contributions accounted for 3% of the overall transport costs.

88. The Court stated that:

“In that regard, it should be noted that, according to settled case-law, a supply of services is effected ‘for consideration’, within the meaning of Article 2(1)(c) of the VAT Directive, and is therefore taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.” (paragraph 24)

89. The Court went on to state:

“However, the fact that the price paid for an economic transaction is higher or lower than the cost price is irrelevant to the question whether a transaction is to be regarded as a ‘transaction effected for consideration’. The latter concept requires only that there is a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person”. (paragraph 26)

90. The Court concluded that the fact that approximately one third of the parents in question pay a contribution towards school transport permitted the inference that the municipality of Borsele supplied services for consideration for the purposes of Article 2(1)(c) of the VAT Directive. The Court also concluded that the existence of a supply of services for consideration is not sufficient to establish the existence of an economic activity within the meaning of Article 9(1) of the VAT Directive and concluded:

“It therefore follows from that lack of symmetry that there is no genuine link between the amount paid and the services supplied. Hence it does not appear that the link between the transport service provided by the municipality in question and the payment to be made by parents is sufficiently direct for that payment to be regarded as an economic activity within the meaning of Article 9(1) of the VAT Directive.” (paragraph 34)

91. In respect of the meaning of ‘economic activity’, we were referred to (amongst others) the following passages of LJ David Richards from the *Wakefield College* case relating to the present state of the law:

“Having concluded that the supply is made for consideration within the meaning of art 2, the court must address whether the supply constitutes an economic activity for the purposes of the definition of ‘taxable person’ in art 9. The issue is whether the supply is made for the purposes of obtaining income therefrom on a continuing basis. For convenience, the CJEU has used the shorthand of asking whether the supply is made for ‘remuneration’. The important point is that ‘remuneration’ here is not the same as ‘consideration’ in the art 2 sense, and in my view it is helpful to keep the two terms separate, using ‘consideration’ in the context of art 2 and ‘remuneration’ in the context of art 9”. (paragraph 54).

“Whether art 9 is satisfied requires a wide-ranging, not a narrow, enquiry. All the objective circumstances in which the goods or services are supplied must be examined: see the judgment in Borsele at para 29. Nonetheless, it is clear from the CJEU authorities that this does not include subjective factors such as whether the supplier is aiming to make a profit. Although a supply ‘for the purpose of obtaining income’ might in other contexts, by the use of the word ‘purpose’, suggest a subjective test, that is clearly not the case in the context of art 9. It is an entirely objective enquiry”. (paragraph 55)

“Mr Prosser QC for the College submitted that whether there was ‘a sufficiently direct link’ between the services and the charge made was an important circumstance, while Mr Puzey submitted that ‘direct link’ does not feature in the analysis”. (paragraph 57)

“I regard this as a largely semantic point. The word ‘link’, whether ‘sufficient’ or ‘direct’, is used as no more than shorthand to encompass the broad enquiry as to whether the supply is made for the purpose of obtaining income. It is not a separate test, or one of the factors to be considered when addressing the central question”. (paragraph 58)

Colemead Limited

92. Y4 claims input tax in the amount of £208,829 relating to Colemead.

93. Colemead did not exist until shortly after Mr Fung was approached by Mr Samuel Yeung in the second half of 2013. Mr Fung and Mr Samuel Yeung have known each other for 20 years or so since they were children. Mr Fung is, by background, a software developer. He was previously employed on a full-time basis as a software developer from about mid-2013 until about mid-2017 which encompasses the whole period of time from when he was approached by Mr Samuel Yeung until Y4 no longer made use of the RM account of Colemead.

94. Mr Fung was the sole director of Colemead. Colemead had no customers or activity other than the arrangement entered into with Y4. Mr Fung characterised the arrangement with Y4 as his doing a personal favour for Mr Samuel Yeung and Mr William Yeung. That personal favour took the form of a verbal agreement between Mr Fung and Mr Samuel Yeung. The evidence of Mr Fung at the hearing was that there was no written agreement recording the arrangement and that there were no terms of the arrangement between Colemead and Y4.

95. By his own account, Mr Fung had a totally hands-off approach with respect to the arrangement with Y4 such that the RM account that he opened for use by Y4 was operated freely by Y4 without involvement from him. He stated at the hearing that the only thing that he did was to set up the RM account and then provide the log-in details of the RM account to Mr Samuel Yeung. That appears to us to be an accurate summary of the substance of what Colemead did for Y4.

96. In short, it consisted of opening up an account with RM in the name of Colemead and then allowing Y4 to operate that RM account without any involvement from Colemead over a period of about two and a half years. Colemead, therefore, facilitated the use of its RM account by Y4. Colemead was not involved with the arrangement of deliveries made by RM.

97. The invoices from Colemead to Y4 were prepared by Y4. The evidence of Mr Fung at the hearing was that he did not remember seeing any of those invoices nor did he remember approving any of those invoices. He did not look at any bank statements of Colemead to see what was going into or out of the bank account of Colemead because his understanding was that he did not need to be involved and he trusted both Mr William Yeung and Mr Samuel Yeung.

98. The bundle for the hearing contained a single sample sales invoice from Colemead to Y4 dated 02/07/2014 which, by way of description, stated: “*Postage fees 2014-06-20 to 2014-06-26*”. The amount was stated as £3,555.17 with a net amount of £2,962.64 and VAT of £592.53. Other invoices were provided during the course of the hearing such as an invoice dated 11/12/2014 which, by way of description, stated: “*Postage fees 2014-11-28 to 2014-12-04*”. The amount was stated as £10,490.78 with a net amount of £8742.32 and VAT of £1748.46. The amount of £10,490.78 represents the amount to be paid to RM for the delivery services provided by RM. In spite of the fact that Colemead recharged that amount to Y4, Colemead did not provide delivery services to Y4.

99. In relation to the VAT returns for Colemead, Y4 arranged for an accountant (Man & Co) to deal with those VAT returns. Mr Fung did not know who it was at Man & Co that prepared the VAT returns for Colemead and neither did he know why the VAT returns for Colemead had been submitted late. He signed the VAT returns provided to him because he was told that a signature was required from him. His evidence at the hearing was that he had no understanding as to what it was that underpinned the figures on the VAT returns of Colemead and neither did he have any knowledge as to what was happening with Colemead with respect to VAT.

100. As referred to in the *Wakefield College* case earlier, it was held that a supply for consideration was a necessary but not sufficient condition for an economic activity. It was also held that the issue was whether or not the supply was made for the purposes of obtaining income therefrom on a continuing basis.

101. With respect to income received by Colemead from Y4, neither the witness statement of Mr Samuel Yeung nor the witness statement of Mr William Yeung makes any reference at all to Y4 providing Colemead with income in respect of their arrangement.

102. The witness statement of Mr Fung states: “*Colemead’s income for providing this [these] services to Y4 was to be earned on a commission basis. What I actually received was irregular payments of 300GBP as postage commission in bank statements*”.

103. At the hearing, the evidence of Mr Fung was that Colemead received irregular payments from Y4 that were labelled ‘commission’. Mr Fung was not able to provide any detail as to this ‘commission’ (or income) that Colemead received from the arrangement with Y4. No terms were agreed between Colemead and Y4 as to the amount of any income to be received by Colemead from Y4. Neither was there any agreement as to the timing or basis of calculation of any income to be received by Colemead from Y4.

104. The word ‘commission’, in a commercial context, commonly means an amount of money to be paid based upon an amount of sales generated. A greater amount of sales results in a greater amount of commission. Mr Fung was not able to offer any explanation as to what was meant by the word ‘commission’ in the context of the arrangement of Colemead with Y4.

105. There was no agreement for Y4 to pay Colemead a fixed amount per month for use of the RM account and neither was there any agreement between Y4 and Colemead for Y4 to pay Colemead a sum dependent upon the amount of usage by Y4 of the RM account. Nor was there any agreement between Y4 and Colemead for Colemead to be paid on any other basis.

106. Additional invoices were provided during the course of the hearing following a request from the Tribunal. Certain of these copy invoices contained the description of ‘Postage Commission’. By way of example, the Colemead invoice dated 30/12/2014 to Y4 for the amount of £500 contains the description ‘Postage Commission’ detailing a net figure of £416.67 and VAT of £83.33. Other such invoices detail an amount of £300. Y4 provided a

copy purchase daybook for the period 02/15 which contains an entry, amongst others, dated 30/12/2014 of £500 detailed 'Colemead Ltd – cash'.

107. No explanation has been provided by Y4 or Mr Fung as to why one invoice contains an amount of £500 and another invoice contains an amount of £300. It is clear that there is no correlation or link between the amount of 'postage commission' and the amount of business transacted by Y4 passing through the RM account. Higher amounts of business passing through the RM account of Colemead used by Y4 did not result in a higher amount of 'postage commission'. There is no connection between any income (or remuneration) received by Colemead and the value to Y4 of being able to use the RM account of Colemead. At most, it appears that regular monthly payments (rather than irregular payments as claimed by Mr Fung) were made by Y4 to Colemead in the form of income to Colemead and that these payments may have been made as reward for the effort that Colemead went to in setting up the RM account for use by Y4, for allowing it to remain open and for, on occasion, dealing with any ongoing issues.

108. Colemead, after taking the necessary steps to have a RM account opened in its name, did little or nothing other than to allow the RM account to remain open. In respect of article 2 of the Principal VAT Directive, we do not find that the arrangement between Colemead and Y4 is sufficient to constitute a supply of goods or services for consideration for the purposes of article 2.

109. Even if we had found that the test for a supply for consideration under article 2 was satisfied, we find having considered all the objective circumstances that there was no 'economic activity' for the purposes of article 9 considering all the objective circumstances. Mr Fung opened and allowed use by Y4 of the RM account due to a longstanding friendship with both Mr Samuel Yeung and Mr William Yeung. We do not accept that the arrangement between Colemead and Y4 was one that was, or would be, entered into as a means of obtaining income in that the payments that appear to have been made by Y4 to Colemead had no agreed basis. Neither do we accept that the arrangement was entered into by Colemead for the purposes of obtaining income on a continuing basis.

110. We do not, therefore, accept that Y4 received taxable supplies from Colemead relating to delivery services in respect of which Y4 is able to reclaim input VAT.

Pat Ning Man

111. Y4 claims input VAT in the amount of £173,257 relating to Mr Man.

112. At the time that he was approached by Mr Samuel Yeung to open a RM account for use by Y4, Mr Man was engaged in selling items online through his company, Ecstatic Arts. He did that from about 2010 until about 2013 or 2014. He made use of an accountant to assist him with matters of VAT relating to that company.

113. Mr Man gave evidence at the hearing that he opened the RM account in his own name and did so as a favour for a friend rather than as a business venture. He was not informed by Mr Samuel Yeung at any time of any dispute that Y4 had with RM or that RM had stopped Y4 from having use of a RM account. Mr Man facilitated the use of his RM account by Y4. Mr Man was not involved with the arrangement of deliveries made by RM.

114. At the hearing, Mr Man stated that he did not remember seeing any of the sales invoices of Pat Ning Man that were prepared by Y4. He was not asked to agree or approve any of those invoices and had no input or involvement in their production. After the end of an initial period, payment of the monies owed to RM with respect to the use of the RM account by Y4 was made

automatically such that no involvement was required from Mr Man. He did not check whether or not any VAT returns for Pat Ning Man had been prepared as he trusted that Mr Samuel Yeung had done this for him and because he was told that is what would happen.

115. The bundle for the hearing contained two sample sales invoices from Pat Ning Man to Y4. One of those invoices, dated 08/04/2015, states by way of description: “*Postage fees 2014-03-02*”. The amount was stated as £37.26 with a net amount of £31.05 and VAT of £6.21. There is no mention on that invoice of any commission or charge of Pat Ning Man separate to the amount of postage fees themselves. The invoice reflects the amount of fees to be paid to RM. In spite of the fact that Mr Man recharged that amount to Y4, Mr Man did not provide delivery services to Y4.

116. Additional invoices were provided during the course of the hearing following a request from the Tribunal. By way of example, the invoice from Pat Ning Man to Y4 dated 21/08/2013 states an amount of £18,257.89 for “*Postage fees 2013-08-13 to 2013-08-15*”. The invoice dated 30/10/2013 states an amount of £33,715.70 for “*Postage fees 2013-10-18 to 2013-10-24*”.

117. The witness statement of Mr Man states that his role was to ensure that payment was made to RM and that providing this service to Y4 gave him experience that he found useful in his own business life. It also states that: “*I did not make any profit from the business as the purchase invoices I received from the Royal Mail were matched in value by the sales invoices raised by Y4*”.

118. The witness statement of Mr Man makes no reference at all to receiving any income in relation to the arrangement entered into with Y4. The witness statements of both Mr Samuel Yeung and Mr William Yeung make no reference to any income being paid to Mr Man in respect of the RM account.

119. At the hearing, with respect to receiving income from Y4 for opening up and allowing use of the RM account, Mr Man gave evidence that he received a payment (or income) on one or maybe two occasions from Y4 throughout the time that Y4 had use of the RM account but that he did not have a good recollection of the one or maybe two payments that he received.

120. It is clear that no terms were agreed between Mr Man and Y4 as to any income to be received by Mr Man from Y4 with respect to the allowed use of the RM account by Y4.

121. We were provided with some invoices from Pat Ning Man to Y4 that refer to ‘Postage Commission’. By way of example, an invoice dated 30/08/2013 for the amount of £500 contains the description ‘Postage Commission’ detailing a net figure of £416.67 and VAT of £83.33. Other such invoices detail an amount of £500. Y4 provided a copy purchase daybook for the period 02/15 which contains an entry, amongst others, dated 30/12/2014 of £500 detailed ‘Pat Ning Man – cash’.

122. Mr Man had no recollection of having received any payment of this or any other amount. The clear thrust of his evidence was that the arrangement that he entered into with Y4 was not carried out in order to derive any income for himself and that he received one or maybe two payments. The documentation provided, however, points to Mr Man having received a payment from Y4 on more than one or two occasions. Mr Man was, though, not able to provide any explanation at all as to any agreed basis for any payment received by him for use by Y4 of his account with RM. Higher amounts of business passing through the RM account of Mr Man used by Y4 did not result in a higher amount of ‘postage commission’ paid to him by Y4. There is no connection between any income (or remuneration) received by Mr Man and the value to Y4 of being able to use the RM account of Mr Man.

123. We do not, therefore, accept that the arrangement between Mr Man and Y4 was sufficient to constitute a supply of goods or services for consideration for the purposes of article 2 of the Principal VAT Directive.

124. Even if we had found that the test for a supply for consideration under article 2 was satisfied, we find having considered all the objective circumstances that there was no 'economic activity' for the purposes of article 9. Mr Man opened and allowed use by Y4 of the RM account due to a longstanding friendship between Mr Man and both Mr Samuel Yeung and Mr William Yeung. We do not accept that Mr Man approached the arrangement with Y4 as a means of obtaining income. Similarly, we do not accept that the arrangement was one that was or would be entered into for the purposes of obtaining income on a continuing basis.

125. We do not, therefore, accept that Y4 received taxable supplies from Pat Ning Man in respect of which Y4 is able to reclaim input VAT.

126. Both Colemead and Mr Man entered into a delivery service agreement with RM which constituted a legally binding agreement. Despite the terms and conditions of those agreements with RM not having been provided to us, we consider it reasonable to assume that those agreements would have contained a contractual provision similar to that found in the Yodel Service Agreement entered into by Y4 which was referred to earlier. Namely, a provision that expressly prohibited Y4 from re-selling the delivery services to a third party. In other words, preventing the delivery services of RM being provided to Y4.

127. In any event, it is not in dispute that RM had expressly prohibited Y4 from making use of the PPI scheme of RM which is the very reason why Y4 sought a way around that prohibition by engaging the assistance of Mr Fung and Mr Man. RM refused to provide such services to Y4.

128. RM issued invoices to Colemead in accordance with the OBA of Colemead. Colemead then made payments in respect of those invoices from its bank account directly to RM. Similarly, RM issued invoices to Pat Ning Man in accordance with the OBA of Mr Man. Mr Man then made payments from his bank account directly to RM with respect to those invoices. We agree with HMRC that RM provided services to Colemead and to Pat Ning Man.

Yodel

129. Yodel is a delivery service company. Y4 claims input VAT of £81,028 relating to Yodel. Of that amount, £42,976 relates to the 07/14 period and £38,052 relates to the 02/15 period.

130. It is not in dispute that the invoices in respect of which Y4 claims input VAT were not addressed to Y4 but instead addressed to 4PX. Y4 used to work with 4PX in a joint venture.

131. It is contended by HMRC that the VAT on the invoices addressed to 4PX is not recoverable by Y4 because Y4 has not satisfied the requirement that a supply was made to Y4.

132. Y4 accepts that the invoices are not valid VAT invoices but submitted that HMRC should have exercised discretion and, in the circumstances, should have accepted that the invoices related to Y4 and not 4PX.

133. At the hearing, Mr Burns on behalf of HMRC gave evidence that Y4 had been given ample opportunity to explain why the invoices from Yodel were addressed to 4PX apparently in error but, despite being afforded such opportunity, no explanation had been forthcoming from Y4.

134. Mr William Yeung gave evidence that he arranged the agreement between Y4 and Yodel. He stated that Y4 allowed 4PX to use the Yodel account that it had use of in order to arrange

deliveries of orders of 4PX. 4PX never paid Yodel directly and the payments to Yodel relating to 4PX activity with Yodel were all made by Y4. When asked what benefit Y4 derived from doing this, he stated that it could be considered as a goodwill gesture.

135. Mr Samuel Yeung gave evidence at the hearing that he did not know it was a problem that the name of the entity to which the invoices were addressed from Yodel was not that of Y4.

136. It is not in dispute that the Yodel invoices are not valid VAT invoices. The witness statement of Mr Willian Yeung reiterates that Yodel has a service agreement with Y4 and that it is not clear why Yodel has addressed some invoices to 4PX. By way of a possible explanation, it is stated that some invoices may have been addressed in error to 4PX and that Yodel has been unable to assist in re-issuing the invoices to Y4.

137. We do not accept that explanation. Y4 and 4PX are separate entities and we fail to see what difficulty or objection there would be on the part of Yodel if Yodel had, in fact, made a mistake as to who their invoices had been addressed. We do not accept that the invoices were incorrectly addressed. Neither do we accept that Y4 is entitled to claim input VAT in respect of the invoices from Yodel addressed to 4PX and not to itself.

138. We do not accept that there was any taxable supply to Y4 with respect to the Yodel invoices.

Penalties

139. The Amended Statement of Case of HMRC refers to six distinct kinds of inaccuracy identified in respect of Y4's VAT returns.

140. At the outset of the hearing, HMRC stated that there are now only two kinds of inaccuracy that are in dispute with respect to penalties.

141. HMRC provided an amended Schedule of Penalties during the course of the hearing which detailed a total figure in dispute for penalties of £267,429.33.

142. The first kind of inaccuracy that remains in dispute relates to Colemead and Pat Ning Man in respect of which the amount of penalties is £229,143.60.

143. The second kind of inaccuracy in dispute relates to Yodel in respect of which the amount in dispute is £38,285.73.

144. The total amount for these two inaccuracies is £267,429.33.

145. The penalty provisions of Schedule 24 of FA 2007 state that the range of the penalty percentage depends upon the type of behaviour and upon whether it was a 'prompted' or 'unprompted' disclosure. A prompted disclosure results in a narrower penalty range and a higher starting point for the penalty range.

146. The disclosure is unprompted if it is made when the person making it has no reason to believe that HMRC has discovered it or is about to discover it. Otherwise, the disclosure is prompted.

147. The maximum penalty percentage, where applicable, is 30% of the potential lost revenue for careless behaviour, 70% of the potential lost revenue for deliberate but not concealed behaviour and 100% of the potential lost revenue for deliberate and concealed behaviour. Whether or not an inaccuracy is concealed or not depends upon whether a person makes arrangements to conceal it.

148. The potential lost revenue, in respect of an inaccuracy, is the amount that arises as a result of correcting an inaccuracy in a return or document, an incorrect repayment or an incorrect claim.

149. A reduction in a penalty may be given where a person (a) tells HMRC about it (b) gives HMRC reasonable help in quantifying the inaccuracy or (c) allows HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected.

Colemead and Pat Ning Man

150. HMRC maintains that the disclosures were prompted and that the behaviour of Y4 was deliberate and concealed. It is not in dispute between the parties that the disclosures were prompted.

151. It is contended by HMRC that Y4 filed VAT returns, all in November 2015, that included figures which derived from non-taxable supplies in order to increase its VAT repayment position. It did so via Mr Samuel Yeung who approved and signed off the returns and whose behaviour is attributable to Y4.

152. HMRC contends also that Mr Samuel Yeung later produced falsified invoices to support the claim and that he knew or must have known that, in the absence of invoices, repayment of VAT could not be claimed. The production of falsified invoices, it is maintained, amounts to an attempt to conceal his deliberate behaviour.

153. Y4 contends that the invoices provided to support the claim for input VAT have not been falsified and that they were provided to support claims with respect to what were believed to be genuine taxable supplies.

154. Schedule 24 FA 2007 does not define the word ‘deliberate’. HMRC submitted at the hearing that a deliberate inaccuracy occurs when a person gives HMRC a document which they know contains an inaccuracy and that this involves a subjective test. We were referred to the case of *Auxilium Property Management Ltd v HMRC [2016] UKFTT 0249 (TC)*. We were also referred to the case of *Anthony Clynes v HMRC [2016] UKFTT 369 (TC)* with respect to the meaning of ‘deliberate’ as follows:

“In a sense, in the context we are concerned with, simply filling in a VAT return with particular information can be held to be a deliberate act (in the sense of being undertaken with intent or a set purpose of filling in the form) whether or not the person knew or had any consciousness as regards the accuracy of the information. Our view is that such an interpretation cannot be correct on a purposive interpretation looking at the natural wording and the scheme and the context of the overall provisions. The term is used in the context of an “inaccuracy” which was “deliberate” on the relevant person’s part. The fact that the deliberate conduct is tied to the inaccuracy, indicates that for this penalty to apply the person must have, in a subjective sense, acted with some level of knowledge or consciousness as regards the inaccuracy. In the case of a Company we take the relevant awareness or knowledge to be that of the relevant officers, such as the appellant acting as director, acting on its behalf.” (paragraph 83)

155. In considering whether or not Y4 made a deliberate inaccuracy, the question is not whether a reasonable taxpayer might have made the same error or whether this particular taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a matter of the knowledge and intention of the particular taxpayer at the time. Specifically, the knowledge and intention of Mr Samuel Yeung attributable to Y4.

156. In that respect, the impression gained by us from the evidence of Mr Samuel Yeung given at the hearing was that Y4 had considerable difficulty in providing its own VAT returns and associated paperwork and that, in terms of documentation, the documentary processes of Y4 were far from optimal and not at all well-organised. We also gained the impression that the focus of Mr Samuel Yeung appeared to be upon generating business and that, quite evidently and detrimentally, not enough time or proper attention was given to ensuring that the associated documentary processes were in place within the business.

157. Taking account of all the circumstances and of the knowledge and intention of Mr Samuel Yeung in particular, we find that Mr Samuel Yeung held the belief, although mistaken, that Y4 was able to claim input VAT with respect to the arrangements entered into with Colemead and Pat Ning Man. We do not find that the inaccuracy was a deliberate inaccuracy because we do not accept that Mr Samuel Yeung knowingly and intentionally provided inaccurate VAT returns or other documents to HMRC.

158. Dealing with the issue of any concealment for the sake of completeness, the evidence of Mr Burns (formerly of HMRC) was that the invoices from Colemead and Pat Ning Man were not created at the time of use of the RM account but were created only after the event. In short, that invoices were created several years after the use by Y4 of the RM account and not contemporaneously with the ongoing use of Y4 of the RM account. That said, it was acknowledged on cross-examination by Mr Burns that it was not possible to know when the invoices from Colemead and Pat Ning Man were created by Y4.

159. The evidence of Mr Samuel Yeung at the hearing was that the invoices created by Y4 relating to Colemead and Pat Ning Man were created contemporaneously within two or three days of receipt of the invoices from RM. Based upon all of the available evidence, we do not accept that the invoices prepared by Y4 for Colemead and Pat Ning Man were falsified or that they were created several years after the RM invoices to which they related.

160. A careless inaccuracy takes place due to the failure by a taxpayer to take reasonable care (see *Timothy Harding v The Commissioners for HMRC [2013] UKUT 0575 (TCC)* which related to income tax and a penalty for careless inaccuracy within a self-assessment return).

161. Mr Samuel Yeung gave evidence that he has limited knowledge of VAT which we accept. It is equally clear that Mr Samuel Yeung and his brother were both, perhaps partly due to their relative youth, quite inexperienced in business at the point in time that Y4 was established. That said, Mr Samuel Yeung set up the business that is now Y4 as a sole trader in 2010. On incorporation of Y4 on 27 May 2010, Mr Samuel Yeung and his brother William were both appointed as directors of Y4. Mr Samuel Yeung was also the company secretary of Y4 until he resigned from that role on 1 April 2016 although he continues to be involved with Y4. Put simply, Mr Samuel Yeung has, from its inception, always been involved with the affairs of Y4 in one guise or other. He has also, for a significant period of time, held positions within Y4 that bring with them significant responsibilities in the context of the business affairs of a company as has his brother William. It is also clear from the amount of business transacted through RM alone that Y4 carried out a not insignificant amount of business.

162. We conclude that Mr Samuel Yeung must, on any reasonable basis, have considered that there was a possibility that Y4 was not entitled to claim input VAT with respect to the invoices that it generated due to the arrangements with Colemead and Pat Ning Man. We conclude also, therefore, that there was a careless inaccuracy on the part of Y4.

163. In relation to any reduction for the quality of disclosure, the Appellant has been afforded the maximum reduction for helping of 40% and the maximum reduction for giving access to records of 30%. With respect to telling, the reduction was 10% in a range from 0% up to 30%. We see no basis to amend the reduction allowed for telling of 10%. Consequently, we make no changes to the total reduction already allowed by HMRC of 80%.

164. The penalty range for a prompted disclosure relating to a careless inaccuracy is 15% to 30%.

165. The revised penalty amount is as follows:

Maximum penalty less minimum penalty (penalty range): $30\% - 15\% = 15\%$

Penalty range multiplied by total reduction: $15\% \times 80\% = 12\%$

Maximum penalty less total reduction ('penalty percentage'): $30\% - 12\% = 18\%$

PLR relating to inaccuracy multiplied by penalty percentage: $\pounds 381,906 \times 18\% = \pounds 68,743$.

Yodel

166. HMRC maintains that the disclosure was prompted and that the behaviour was deliberate due to the amounts involved and the number of invoices. There is no issue of any concealment. There is no dispute between the parties that the disclosure was prompted.

167. There are two relevant periods – the 07/14 period and the 02/15 period.

168. HMRC details that, in the 07/14 period, the amount of input VAT claimed was $\pounds 112,311$ of which $\pounds 42,976$ derived from 36 Yodel invoices addressed to 4PX equating to about 38.2% of the total input VAT claimed by Y4.

169. HMRC does not consider that a discrepancy of this size between the amounts of input tax that Y4 was actually incurring and the amount that it was claiming could have been missed carelessly when the VAT returns for the relevant periods were approved by Mr Samuel Yeung.

170. HMRC does not consider also that the number of invoices found in Y4's records is consistent with them having been carelessly included by Y4. Consequently, HMRC considers that Y4 deliberately included the Yodel invoices addressed to 4PX in calculating its input VAT in the 07/14 and 02/15 periods in order to increase its claim to a repayment of tax.

171. Y4 contends that the invoices issued by Yodel were incorrectly addressed to 4PX instead of being addressed to Y4 and that the invoices did contain Y4's account number (57083487). Y4 knew that it had received services from Yodel and did not believe that it was doing anything incorrectly by relying upon the invoices that it had received to support its claim for input VAT.

172. The fact that the account number on the invoices from Yodel to 4PX is the same account number as used by Y4 is a potential explanation for the behaviour of Y4. That said, the entity to which the invoices were addressed was clearly not Y4.

173. In considering whether or not Y4 made a deliberate inaccuracy, as stated above, the question is not whether a reasonable taxpayer might have made the same error or even whether

this taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time.

174. It has been stated earlier that our impression of the evidence of Mr Samuel Yeung at the hearing was that his focus was upon generating business. We also gained the impression that this led, quite evidently and detrimentally, to Mr Samuel Yeung not spending enough time or giving proper attention to ensuring that the associated documentary processes were in place within the business.

175. Taking account of all the circumstances and of the knowledge and intention of Mr Samuel Yeung in particular, we do not find that the inaccuracy was a deliberate inaccuracy because we do not accept that Mr Samuel Yeung knowingly and intentionally provided inaccurate VAT returns or other documents to HMRC.

176. A careless inaccuracy, again as stated above, takes place due to the failure by the taxpayer to take reasonable care. We reiterate the points made earlier in respect of Mr Samuel Yeung's longstanding and continuous involvement with the business of Y4 and conclude that Mr Samuel Yeung must, on any reasonable basis, have considered that Y4 was not entitled to claim input VAT in respect of the Yodel invoices in question. We conclude also that there was a careless inaccuracy on the part of the Appellant.

177. In relation to any reduction in the amount of the penalty for the quality of the disclosure, Y4 has been afforded 0% for telling, 35% for helping and 30% for giving access to records resulting in a total of 65%. There is no dispute between the parties in that respect and we see no basis to amend that reduction.

178. The penalty range relating to a prompted disclosure for a careless inaccuracy is 15% to 30%.

179. The revised penalty amount is as follows:

Maximum penalty less minimum penalty ('penalty range'): $30\% - 15\% = 15\%$

Penalty range multiplied by total reduction: $15\% \times 65\% = 9.75\%$

Maximum penalty less total reduction ('penalty percentage'): $30\% - 9.75\% = 20.25\%$

PLR relating to inaccuracy multiplied by penalty percentage: $\pounds 81,028 \times 20.25\% = \pounds 16,408$

180. The revised total penalty amount is, therefore, $\pounds 85,151$.

DECISION

181. We agree with HMRC that Y4 is not eligible for a refund of input VAT in relation to Colemead Ltd, Pat Ning Man or Yodel and we dismiss the appeal in respect of all periods.

182. For the avoidance of doubt, we dismiss the appeal of Y4 relating to the assessment of VAT of $\pounds 116$ in respect of the VAT period 05/16.

183. We agree that HMRC was correct to charge penalties. We have reduced the penalties charged to careless inaccuracies in respect of Colemead and Pat Ning Man and in respect of Yodel.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

184. 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.

KELVAN SWINNERTON

TRIBUNAL JUDGE

RELEASE DATE: 10 JULY 2020