



Neutral Citation: [2026] UKFTT 00268 (TC)

Case Number: TC09794

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2016/05431
TC/2017/00427/01924/02515

VALUE ADDED TAX – whether penalties for deliberate inaccuracy correctly calculated and whether deliberate inaccuracies attributable to the First Appellant – paragraph 9, Schedule 24, Finance Act 2007 – yes – appeal dismissed

INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS – whether amounts extracted from companies earnings – yes – whether First Appellant knew of paying company’s deliberate failure to deduct tax/NICs - regulation 72(5), Income Tax (Pay As You Earn) Regulations 2003 and regulation 86, Social Security (Contributions) Regulations 2001 – yes -appeal dismissed

Heard on: 10-11 and 13-14 November 2025

Judgment date: 17 February 2026

Before

**TRIBUNAL JUDGE MARK BALDWIN
MS GILL HUNTER**

Between

**PAUL ELLIS (1)
NORTH YORKSHIRE PROPERTIES LIMITED (2)**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellants did not appear and were not represented

For the Respondents: Howard Watkinson and Sam Way, both of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. These appeals arise out of the Appellant's ("Mr Ellis") involvement in various property development companies. Mr Ellis was either a co-director with Mr Darren Broadbent ("Mr Broadbent") or a sole director of several companies trading under the name "Skelwith.". The appeal primarily relates to the activities of the following companies:

- (1) Skelwith (Leisure) Ltd ("SLL"),
- (2) Skelwith Leisure (Raithwaite) Ltd ("SLRL"),
- (3) Skelwith Leisure (Raithwaite Cottage) Ltd ("SLRCL"),
- (4) Skelwith Leisure (The Keep) Limited ("SLTKL"),
- (5) Skelwith Leisure (Lake House) Ltd ("SLLHL")
- (6) Skelwith Group Limited ("SGL"),
- (7) Aspire (Citygate) Limited ("ACL"); and
- (8) North Yorkshire Properties Limited ("NYPL") (previously known as Skelwith Properties Limited).

2. The appeal concerns both indirect tax in the form of VAT, and direct tax in the form of income tax, and National Insurance Contributions ("NICs").

3. On the indirect tax side Mr Ellis appeals against Personal Liability Notices ("PLNs") now totalling £14,295,966 notified to him as director of three companies, SLL, SLRL and SLRCL, under paragraph.19(1) of Schedule 24 to the Finance Act 2007 ("FA 2007").

4. On the direct tax side, HMRC say that Mr Ellis and Mr Broadbent routinely extracted large sums of monies from the various companies concerned, little of which was properly recorded or accounted for at the time. HMRC concluded that these sums were earnings under general principles, and that the various companies had deliberately failed to (a) make the required deductions under the Pay As You Earn ("PAYE") system, and (b) pay the required NICs. By directions and decisions, enforced by closure notice amendments and discovery assessments as required, Mr Ellis has been charged the tax and NICs due on the payments made to him by all companies except NYPL. NYPL itself has been charged the tax and NICs due on the payments made by it to Mr Ellis and Mr Broadbent.

5. Mr Ellis appeals against:

- (1) Directions under regulation 72(5) of the Income Tax (Pay As You Earn) Regulations 2003 ("the PAYE Regs.") in respect of PAYE under-deducted for the tax years 2011/12 to 2014/15 on the ground that Condition B in regulation 72(4) is satisfied;
- (2) Discovery assessments for the tax years 2011/12 and 2014/15 pursuant to section 29 of the Taxes Management Act 1970 ("TMA"), following the Directions made under regulation 72(5) of the PAYE Regs.;
- (3) Closure notices for the tax years 2012/13 and 2013/14 pursuant to section 28A TMA, following the directions made under regulation 72(5) of the PAYE Regs.;
- (4) Notices for the tax years 2011/12, 2012/13, 2013/14 and 2014/15 pursuant to section 8(1)(c) of the Social Security Contributions (Transfer of Functions) Act 1999 ("SSCTFA").

6. The PAYE under-deducted, as reflected in the directions under the PAYE Regs. and subsequent discovery assessments and closure notice amendments, totals £1,680,710, which spans the four tax years from 2011/12 – 2014/15 and six of the companies from which Mr Ellis received monies. The Class 1 NICs in issue for the same years and companies total £110,029.24.

7. NYPL appeals against determinations made by HMRC under regulation 80 of the PAYE Regs. and a decision made under section 8 SSCTFA, that income tax and NICs were payable by NYPL which had not been paid to HMRC. These determinations were made on the basis that sums paid by NYPL to Mr Ellis and Mr Broadbent were payments of earnings, from which NYPL did not deduct tax under PAYE and in respect of which NYPL did not make the required NICs.

PROCEDURAL MATTERS

8. Notice of the substantive hearing was given to the parties on 9 September 2024.

9. On 29 September 2025 the Appellants wrote to the Tribunal asking for a postponement of the hearing. Mr Ellis (represented by Clarion Solicitors) wrote:

“I wish to inform the Tribunal that I am in the process of finalising an Individual Voluntary Arrangement (IVA) proposal, which will shortly be issued to my creditors, including HMRC. This process is being advanced with my advisers and is intended to provide a structured resolution to my financial affairs.

In light of the IVA proposal being actively prepared, I respectfully suggest that these Tribunal proceedings may be premature and risk unnecessary duplication of process and cost for all parties. I therefore ask that the Tribunal consider whether an adjournment or stay of proceedings would be appropriate, pending the outcome of the IVA proposal.

I also confirm, as previously communicated, that my witness, Mr Martin Chambers, is unwilling to attend the hearing.”

10. On 30 September Mr Ellis wrote again to say that he would not be calling any witnesses and asked the Tribunal to “grant a stay of these proceedings pending the outcome of the IVA process”. He said that it would be “a disproportionate and unnecessary use of Tribunal and [HMRC] resources to proceed to a full hearing when the matters in dispute may shortly be resolved within the IVA process”.

11. The Tribunal (Judge Bailey) refused this application and informed the Appellants that these proceedings would continue unless the court granted an interim order (in Mr Ellis’s IVA) which applies to these proceedings and warning that “If the Appellant’s witnesses do not attend the hearing to give oral evidence and be cross-examined, then the Tribunal panel will decide on the weight to be given to any statements filed; however, in the absence of a good reason for non-attendance, the weight given is likely to be limited.”

12. On 9 October Mr Ellis wrote to the Tribunal to say:

“Further to the Directions released on 8 October 2025, I write to confirm that, due to my relocation overseas for work commitments, I am unable to attend the forthcoming hearing in person.

For the avoidance of doubt, I remain the Appellant and continue to engage with these proceedings. However, I now reside primarily in Dubai and therefore request that the Tribunal either:

1 determine the appeal on the written evidence and submissions already filed, or

2 alternatively, permit a remote/video attendance should the panel consider that oral submissions are required.

In addition, I confirm that none of the Appellant's witnesses are able to attend the hearing in person or remotely. Their written statements should therefore remain on record and be given such weight as the Tribunal considers appropriate.

Finally, I am in the process of pursuing an Individual Voluntary Arrangement (IVA), and my Insolvency Practitioner is considering whether to seek an Interim Order under the Insolvency Act 1986 which may affect these proceedings. I will notify the Tribunal immediately should such an order be granted."

13. HMRC objected to the appeal being determined on the papers and so the Tribunal (Judge Fairpo) directed that the Tribunal must hold a hearing to determine this appeal (see rule 29 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 ("the FTT Rules")), and the hearing would take place in person as already advised.

14. At the start of the substantive hearing we considered whether we should proceed in the absence of the Appellants and considered that we should, as we were satisfied that the Appellants had been notified (indeed were well aware) of the hearing and that it was in the interests of justice to proceed with the hearing; see rule 33 of the FTT Rules.

15. The Appellants (through Mr Ellis) had indicated that they were content for the Tribunal to determine the appeals in their absence on the papers, but we considered a hearing (even with only HMRC present) to be important to enable us to navigate our way through the large volume of written evidence and the complex web of dealings between the various companies and individuals involved. We did not consider that this task could be undertaken on the papers alone. We should stress (as we have explained elsewhere) that we have read all the witness statements and other materials submitted by the Appellants and Mr Watkinson assured us that he was mindful of his duty to the Tribunal and had identified (from Mr Ellis's witness statements) the points he would have made had he been here. We do not consider that it would have been in the interests of justice to proceed any other way.

16. Because Mr Ellis did not appear before us, evidence was limited to a number of witness statements and their exhibits. The chronology of the principal witness statements is as follows:

(1) Officer Reilly swore his first witness statement on 10 October 2019, justifying his decisions on the PLNs, and then incorporating the direct tax side of the appeals on the information he had at that time.

(2) On 7 February 2020 Mr Ellis swore his first witness statement.

(3) Having read that witness statement, HMRC considered that Mr Ellis had access to a hitherto undisclosed reservoir of documents.

(4) HMRC applied for (and were granted) an order for disclosure.

(5) Disclosure was only then made after that. Mr Watkinson says that, in relation to HMRC's case on the PLNs, this disclosure provided a great deal of corroborative evidence for the initial view that was taken. It did not cause anybody to make a new decision. It just made people feel much more confident about what they had already decided.

(6) In his second witness statement, dated 4 August 2023, Officer Reilly narrates the contents of the disclosure and ties it into his earlier analysis, and to what Mr Ellis has said in his first statement before the disclosure was made.

(7) Mr Ellis responded with a second witness statement on 2 April 2024.

(8) Then there are much shorter third witness statements from Officer Reilly and Mr Ellis.

(9) There were also witness statements from Paul Borret, Martin Chambers, James Corr, Chris Mills and Tom Roseff, all providing evidence in support of Mr Ellis and NYPL's appeals

17. Officer Reilly appeared before us, but none of the Appellants' witnesses appeared before us. Despite the Appellants' witnesses not appearing before us (as directed – see [84] below), we have read the witness statements of the Appellants' witnesses and reflected them in this decision.

18. We also had a hearing bundle of 21,432 pages containing procedural documents and a very large number of documents exhibited to witness statements. Officer Reilly alone exhibited 1,124 documents across his three witness statements, 522 of which were exhibited to his second witness statement, where he links the documents disclosed by Mr Ellis following the Upper Tribunal's order (see *Paul Ellis & Anor v HMRC*, [2022] UKUT 00254 (TCC)) to HMRC's case.

19. The substantive hearing (which had originally been listed for 13 days plus two reading days) was spread over four days. The first two days were devoted to an extended opening by Mr Watkinson, during which he outlined HMRC's case and took us to the documents he would have asked Mr Ellis about if he had appeared before us. (Mr Watkinson said that he had 100 pages of questions he had intended to put to Mr Ellis in cross-examination). These documents were exhibited to Officer Reilly's second witness statement.

20. Many documents were exhibited by Officer Reilly and Mr Ellis replied with comments in his second witness statement. We have summarised only the documents Mr Watkinson drew our attention to or which Mr Ellis used to illustrate a point. We have not summarised every document in the hearing bundle. To do so would be disproportionate and achieve nothing. Where Mr Ellis made a point on one of these documents in his witness statements, we have reflected it in this decision. We should record that Mr Watkinson also drew our attention to points he thought Mr Ellis would make if he were with us, and we have of course carefully studied Mr Ellis's witness statements for ourselves.

21. The third day was an additional reading day, to allow the panel to catch up with the material which had been covered at pace during the hearing, and the final (very short) day gave the panel an opportunity to ask Officer Reilly questions on his witness statement.

22. The Appellants did not serve any kind of skeleton or summary of their case. We have distilled their case (which is not difficult to make out) from their grounds of appeal and the witness statements served on their behalf.

23. The Tribunal has recently learned (from HMRC) that Mr Ellis has been made subject to a bankruptcy order.

HMRC'S ALLEGATIONS IN MORE DETAIL

24. We set out below brief details of each of the companies and HMRC's detailed allegations against Mr Ellis by reference to each of them:

Skelwith (Leisure) Ltd (“SLL”)

25. SLL was incorporated on 28 February 2008 (in a previous name) with Mr Ellis and Mr Broadbent (and others) as directors from incorporation.

26. SLL was a property development company that was purportedly building a hotel and resort complex near the golf course at Flaxby, in North Yorkshire. An investment brochure for the project showed the estimated project cost as £31-£44m.

27. From period 11/08 to period 11/14 SLL reclaimed input tax of £25,078,975 on inputs of £125,063,916 as against outputs of £16,904,933. The inputs declared by SLL were some three times more than the estimated total maximum construction cost of the Flaxby project.

28. Despite SLL’s declared inputs of £125m, the hotel and resort at Flaxby were never actually built. A valuation report for the site dated August 2014 states in relation to the hotel “...development of this has not yet commenced.” and “Ground works have recently begun on the hotel.” HMRC say that SLL did not actually incur inputs of anything like £125m.

29. In his first witness statement Mr Ellis estimated SLL’s true expenditure as being £19m, suggesting that SLL’s inputs were overstated by some £106m (85%) and that its input tax was overclaimed by some £21.25m.

30. HMRC assessed SLL for input VAT of £21,298,961 falsely claimed on supplies it never in fact received. HMRC say that there does not appear to be any serious dispute as to the level of input tax overclaimed by SLL.

31. Consequent on the VAT assessments HMRC notified SLL of inaccuracy penalties on the deliberate and concealed basis totalling £15,859,163.80. The PLNs issued to Mr Ellis in respect of SLL attribute 50% of that liability to him.

32. During the tax years 2011/12 to 2014/15, Mr Ellis received the following payments from SLL:

- (1) 2011/12 - £450,000;
- (2) 2012/13 - £891,955;
- (3) 2013/14 - £700,000; and
- (4) 2014/15 - £219,300.

33. During 2011/12 to 2014/15, SLL did not deduct any PAYE income tax from its payments to Mr Ellis or make any NICs in respect of them. Further, Mr Ellis did not return any income or benefit from SLL on his self-assessment tax returns for those years. Mr Ellis did list SLL as his employer on his 2011/12 and 2012/13 returns but stated that he had received no income or benefits from SLL in those years. HMRC concluded that these sums were earnings on general principles.

34. On 29 August 2017, HMRC issued Mr Ellis with a notice of a direction under regulation 72 of the PAYE Regs. which stated that they were of the opinion that Mr Ellis had received payments from SLL knowing that it had failed to deduct sufficient tax and that accordingly SLL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of SLL Mr Ellis was made liable for tax of £1,032.012.

35. On 29 August 2017, HMRC issued closure notices and discovery assessments to Mr Ellis which assessed Mr Ellis and amended his self-assessment returns in respect of tax due on the sums received from SLL pursuant to the notice of direction. The closure notice

amendments and discovery assessments included (amongst other tax due) tax due in respect of the sums received from SLL, in the following amounts:

- (1) 2011/12 - £211,732;
- (2) 2012/13 - £445,614;
- (3) 2013/14 - £309,088; and
- (4) 2014/15 - £65,578.

36. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from SLL in the sums set out therein. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by SLL. In respect of SLL Mr Ellis was made liable for NICs of £58,386.88.

Skelwith Leisure (Raithwaite) Ltd (“SLRL”)

37. SLRL was a property development company engaged in refurbishing and expanding a luxury hotel and spa at an existing property at Raithwaite Hall, near Whitby on the North-East coast. The hotel was run on a day-by-day basis under a management contract by an unconnected party. SLRL was incorporated on 25 September 2008 with Mr Ellis and Mr Broadbent (and another) as directors from incorporation.

38. In VAT periods 08/10-11/14 SLRL claimed £10,607,846 input tax on inputs of £55,857,630 as against outputs of £12,792,454. In his first witness statement Mr Ellis estimated that SLRL’s true expenditure was £30.35m. However, that includes £7.1m for a separate building called “The Keep” and £2m in relation to a further separate building called “The Lake House”, each of which was handled by a separate special purpose vehicle which made its own VAT reclaims (SLTKL and SLLHL). On Mr Ellis’s estimates, SLRL’s true expenditure was some £21.25m, meaning an overstatement of its inputs by 60% and an overclaim of input tax of £6.35m. HMRC say that Mr Ellis knew that SLRL had not incurred anything like the claimed expenditure.

39. HMRC notified SLRL of assessments to VAT for various VAT periods in the years 2011 – 2013 totalling £6,419,702 (now reduced by £323,754 to £6,095,947) in falsely claimed input VAT on supplies it never received. HMRC say that the amount of SLRL’s remaining assessments does not appear seriously in dispute.

40. Consequent on the VAT assessments HMRC notified SLRL of inaccuracy penalties on the deliberate and concealed basis totalling £4,493,791.40, now reduced to £4,267,163.60. The PLNs issued to Mr Ellis in respect of SLRL attribute 50% of that liability to him.

41. During the tax years 2011/12 to 2014/15, Mr Ellis received the following payments from SLRL:

- (1) 2011/12 - £217,500;
- (2) 2012/13 - £15,750;
- (3) 2013/14 - £20,200; and
- (4) 2014/15 - £60,700.

42. During 2011/12 to 2014/15, SLRL did not deduct any income tax on its payments to Mr Ellis or make any NICs contributions in respect of them, and Mr Ellis did not return any income or benefit from SLRL on his self-assessment tax returns. Mr Ellis did list SLRL as his employer on his 2011/12 and 2012/13 returns but stated that he had received no income or benefits from SLRL in those years.

43. On 29 August 2017, HMRC issued Mr Ellis with a notice of a direction under regulation 72 of the PAYE Regs. which stated that HMRC were of the opinion that Mr Ellis had received payments from SLRL knowing that it had failed to deduct sufficient tax and that accordingly SLRL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of SLRL Mr Ellis was made liable for tax of £153,030.

44. Also on 29 August 2017, HMRC issued closure notices and discovery assessments to Mr Ellis. These assessed Mr Ellis to tax and amended his self-assessment returns in respect of tax due on the sums received from SLRL. The closure notice amendments and assessments included tax due in respect of sums received from SLRL, in the following amounts:

- (1) 2011/12 - £108,750;
- (2) 2012/13 - £7,875;
- (3) 2013/14 - £9,090; and
- (4) 2014/15 - £27,315.

45. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from SLRL in the sums set out therein. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by SLL. In respect of SLRL Mr Ellis was made liable for NICs of £10,647.08 (which should have read £14,647.08 but there was a transposition error on the notice of decision).

Skelwith Leisure (Raithwaite Cottages) Ltd (“SLRCL”)

46. SLRCL was a property development company engaged in developing cottages on the Raithwaite Hall estate to be marketed as holiday homes or for rental investment. SLRCL was incorporated on 10 July 2009 with Mr Ellis and Mr Broadbent (and another) as directors from incorporation.

47. In VAT periods 12/10-11/14 SLRCL reclaimed input tax of £12,077,127 on inputs of £60,553,775 as against outputs of £4,779,120. In his first witness statement Mr Ellis estimated that SLRCL’s expenditure was in the region of £6m, suggesting that SLRCL’s inputs were overstated by some £54.5m (90%) and input tax was overclaimed by some £10.8m. HMRC say that Mr Ellis knew that SLRCL had not incurred anything like the claimed expenditure. For VAT periods 03/11-05/14 HMRC assessed SLRCL or adjusted its returns to the value of £10,351,287 in falsely claimed input VAT on supplies it never received HMRC say that the amount of SLRCL’s assessment does not appear seriously in dispute.

48. Consequent on the VAT assessments HMRC notified SLRCL of inaccuracy penalties on the deliberate and concealed basis totalling £8,465,607.95. The PLN’s issued to Mr Ellis in respect of SLRCL attribute 50% of that liability to him.

49. During the tax years 2012/13 and 2014/14, Mr Ellis received the following payments from SLRCL:

- (1) 2012/13 - £67,250;
- (2) 2013/14 - £100,000.

50. During 2011/12 to 2014/15, SLRCL did not deduct any income tax from its payments to Mr Ellis and did not make any NICs in respect of them. Mr Ellis did not return any income or benefits from SLRCL on his self-assessment tax returns. Mr Ellis did list SLRCL as his

employer on his 2011/12 and 2012/13 returns but stated that he had received no income or benefits from SLRCL in those years.

51. On 29 August 2017, HMRC issued Mr Ellis with a notice of a direction under regulation 72 of the PAYE Regs. which stated that HMRC were of the opinion that Mr Ellis had received payments from SLRCL knowing that it had failed to deduct sufficient tax and that accordingly SLRCL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of SLRCL Mr Ellis was made liable for tax of £78,625.

52. Also on 29 August 2017, HMRC issued closure notices and discovery assessments to Mr Ellis. These assessed Mr Ellis to tax and amended his self-assessment returns in respect of tax due on the sums received from SLRCL. The closure notice amendments and assessments included tax due in respect of sums received from SLRC in the following amounts:

- (1) 2012/13 - £33,625;
- (2) 2013/14 - £45,000.

53. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from SLRCL in the sums set out therein. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by SLRCL. In respect of SLRCL Mr Ellis was made liable for NICs of £9,894.30.

Skelwith Leisure (The Keep) Ltd (“SLTKL”)

54. SLTKL was incorporated on 22 December 2011 with Mr Ellis and Mr Broadbent as directors and shareholders from incorporation. SLTKL’s purpose was to develop an annex at the Raithwaite Hall development called “The Keep”. On 21 September 2011 Mr Ellis emailed a cost plan for SLTKL to Dickinson Dees showing total costs of £4.5m. SLTKL filed dormant company accounts for the year to 31.12.12.

55. For VAT periods 08/12-11/14 SLTKL’s VAT returns declared inputs of £45m and reclaimed input tax of £8.9m (including large inputs for periods 08/12-12/12 when the company was said to be dormant). SLTKL’s declared outputs for the same period were £734k. HMRC were not initially provided with any complete business records for SLTKL and considered that there was insufficient evidence to raise an assessment on SLTKL.

56. In his first witness statement Mr Ellis stated SLTKL’s true expenditure to be approximately £7m. On Mr Ellis’s figures, SLTKL’s inputs were overstated by £38m (85%) with input tax of £7.6m overclaimed. HMRC say that Mr Ellis knew that SLTKL had not incurred anything like the claimed expenditure.

57. During the tax years 2013/14 and 2014/15, Mr Ellis received the following payments from SLTKL:

- (1) 2013/14 - £598,000;
- (2) 2014/15 - £119,500.

58. SLTKL did not operate any PAYE scheme. For 2013/14 and 2014/15, SLTKL did not deduct any income tax from its payments to Mr Ellis and did not make any NICs contributions in respect of them. Mr Ellis did not return any income or benefits from SLTKL on his self-assessment tax returns for those tax years.

59. On 29 August 2017, HMRC issued Mr Ellis with a notice of a direction under regulation 72 of the PAYE Regs. which stated that HMRC were of the opinion that Mr Ellis had received payments from SLTKL knowing that it had failed to deduct sufficient tax and

that accordingly SLTKL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of SLRCL Mr Ellis was made liable for tax of £322,875.

60. Also on 29 August 2017, HMRC issued closure notices and discovery assessments to Mr Ellis. These assessed Mr Ellis to tax and amended his self-assessment returns in respect of tax due on the sums received from SLTKL. The closure notice amendments and assessments included tax due in respect of sums received from SLTK in the following amounts:

- (1) 2013/14 - £269,100;
- (2) 2014/15 - £53,775.

61. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from SLTKL in the sums set out therein. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by SLTKL. In respect of SLTKL Mr Ellis was made liable for NICs of £20,796.18.

Skelwith Leisure (Lake House) Ltd (“SLLHL”)

62. Mr Ellis was a director and 50% shareholder in SLLHL. SLLHL’s purpose was to refurbish a separate property at the Raithwaite Estate called “The Lake House”.

63. From VAT period 04/12 – 01/15 SLLHL’s VAT returns declared inputs of £2.7m and reclaimed input tax of £542k. SLLHL’s declared outputs for the same period were £87k. HMRC have not been provided with any complete business records for SLLHL and considered that there was insufficient evidence to raise an assessment on SLLHL. Mr Ellis explained in his first witness statement that SLLHL’s expenditure post purchase of the property was approximately £500k. On Mr Ellis’s figures, SLLHL’s inputs were overstated by £2.2m (81.5%) with input tax of £440k overclaimed. HMRC say that Mr Ellis knew that SLLHL had not incurred anything like the claimed expenditure.

64. Again, whilst HMRC did not, in the absence of business records, assess SLLHL for VAT, they say that its own false claims of input tax remain relevant to this appeal as part of the picture showing systematic false claims to input tax made by the Skelwith companies, that were attributable to Mr Ellis and Mr Broadbent.

Skelwith Group Ltd (“SGL”)

65. SGL was incorporated on 20 August 2007. Mr Ellis was a director of SGL from incorporation, and sole director from 4 April 2013. Mr Ellis and Mr Broadbent were then SGL’s shareholders.

66. Mr Ellis applied for SGL to be registered for VAT with effect from November 2009 with a declared main business activity of management of real estate on a fee or contract. Mr Ellis applied to cancel SGL’s VAT registration on 3 April 2013 on the basis that he had signed the forms in anticipation of a deal selling properties on a commission basis, this did not happen, and he was unaware that the forms had been submitted.

67. During the tax year 2013/14, Mr Ellis received payments from SGL totalling £100,000.

68. For 2013/14, SGL did not deduct any income tax from its payments to Mr Ellis and did not make any NICs contributions in respect of them. Mr Ellis did not return any income or benefits from SGL on his self-assessment tax return for the year.

69. On 29 August 2017, HMRC issued Mr Ellis with a Notice of Direction under regulation 72 of the PAYE Regs. which stated that HMRC were of the opinion that Mr Ellis had received payments from SGL knowing that it had failed to deduct sufficient tax and that

accordingly SGL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of SGL Mr Ellis was made liable for tax of £45,000.

70. On 29 August 2017 HMRC issued a Closure Notice which amended Mr Ellis's SA2013/14 return to include tax due on sums including those received by him from SGL, in the amount of £45,000.

71. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from SG. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by SGL. In respect of SGL Mr Ellis was made liable for NICs of £5,214.40.

Aspire (Citygate) Ltd ("ACL")

72. ACL was incorporated on 2 June 2010 as a building development company with Mr Ellis as the sole director at incorporation. Others were later appointed as directors of ACL, including Mr Broadbent, who was appointed on 8 January 2016, the same day on which ACL entered administration. Mr Ellis applied for ACL to be registered for VAT with effect from 1 September 2010 with a declared main business activity of property development and an estimated turnover in the next 12 months of £5m.

73. During the tax years 2011/12 to 2014/15, Mr Ellis received the following payments from ACL:

- (1) 2011/12 - £80,000;
- (2) 2012/13 - £8,000;.
- (3) 2013/14 - £3,000;
- (4) 2014/15 - £8,485.

74. ACL did not operate any PAYE scheme. During 2011/12 to 2014/15, ACL did not deduct any income tax from its payments to Mr Ellis and did not make any NICs contributions. Mr Ellis did not return any income or benefit from SLRL on his self-assessment tax returns for those years.

75. On 29 August 2017, HMRC issued Mr Ellis with a Notice of Direction under regulation⁷² of the PAYE Regs. which stated that HMRC were of the opinion that Mr Ellis had received payments from ACL knowing that it had failed to deduct sufficient tax and that accordingly ACL was not liable for the difference between any tax deducted from those payments and the tax that should have been deducted. In respect of ACL Mr Ellis was made liable for tax of £49,168.

76. In addition, on 16 October 2017, HMRC issued Mr Ellis with a decision under section 8 SSCTFA that he was liable to pay primary Class 1 NICs in respect of the sums received from ACL. The notice of decision also informed Mr Ellis that HMRC were of the opinion that he knew of a wilful failure to deduct those NICs by ACL. In respect of ACL Mr Ellis was made liable for NICs of £5,091.38.

North Yorkshire Properties Ltd ("NYPL")

77. NYPL was incorporated with the name Skelwith Properties Ltd on 5 January 2006 with Mr Ellis and Steven Ellis as its directors. Mr Ellis was sole director of NYPL from 4 April 2013. Mr Ellis applied for NYPL to be registered for VAT with effect from 1.8.09 with a declared main business activity of buying and selling real estate.

78. During the tax years 2011/12 to 2014/15, Mr Ellis received the following payments from NYPL:

- (1) 2011/12 - £35,752;
- (2) 2012/13 - £1,022,947;
- (3) 2013/14 - £906,007; and
- (4) 2014/15 - £48,396.

79. For the tax years 2011/12 to 2014/15, Mr Ellis did declare NYPL as an employer on his self-assessment tax returns, however, he only returned the following sums as income derived from that employment:

- (1) 2011/12 - £16,666;
- (2) 2012/13 - £4,999;
- (3) 2013/14 - £38,999.

80. In tax year 2014/15, Mr Ellis declared £96,000 in his self-assessment tax return as income from NYPL

81. In tax year 2014/15, Mr Broadbent received payments of £31,390 from NYPL

82. On 15 July 2016, HMRC issued determinations under regulation 80 of the PAYE Regs. to NYPL, that there was income tax payable in respect of the following years and in the following sums which had not been paid to HMRC:

- (1) 2011/12 - £7,300.80 due in respect of Mr Ellis;
- (2) 2012/13 - £489,599.50 due in respect of Mr Ellis;
- (3) 2013/14 - £393,801.15 due in respect of Mr Ellis; and
- (4) 2014/15 - £3,340.00 due in respect of Mr Broadbent.

83. In addition, on 15 July 2016, HMRC issued a section 8 SSCTFA decision to NYPL that it was liable to pay primary and secondary Class 1 NICs in the sums of (a) £316,609.73 in respect of the earnings of Mr Ellis in the period 6 April 2012 to 5 April 2014, and (b) £1,049.28 in respect of the earnings of Mr Broadbent in the tax year 2014/15.

THE CORRECT APPROACH TO THE EVIDENCE

84. In its case management direction issued on 5 June 2023, the Tribunal directed that:

“At the hearing any party seeking to rely on a witness statement may call that witness to answer supplemental questions (but the statement shall be taken as read) and must call that witness to be available for cross-examination by the other party (unless notified in advance by the other party that the evidence of the witness is not in dispute).”

85. HMRC’s called their sole witness (Officer Reilly), who appeared before us and was available for cross examination. As we have already noted, none of the Appellants’ witnesses attended the hearing.

86. In *Reddrock Ltd v HMRC*, [2014] UKUT 61 (TCC), the Upper Tribunal (“UT”) considered an appeal where one of the grounds was that the First-tier Tribunal (“FTT”) had not given proper consideration to the evidence before it. The UT described what the FTT had done and commented on it as follows:

“[13] Reddrock served statements from five witnesses: Richard Galvin, Michael Galvin, Anthony Galvin, Mr Donnelly and Philip Harris. Mr Harris

is a chartered accountant who has acted for some time for Richard Galvin and his wife and their companies. Three of these witnesses gave oral evidence and were cross-examined: Richard Galvin, Anthony Galvin and Mr Donnelly.

[14] As regards the evidence of Michael Galvin and Mr Harris, the FTT at [9] stated that they had not been called by Reddrock to give evidence and that therefore counsel for HMRC had no opportunity to cross-examine them. The FTT continued, ‘In all the circumstances of the case we afforded little weight to their written evidence.’

[15] We do not consider that there can be any valid criticism of this approach. The witness statement of Mr Harris in fact contained no evidence which went directly to whether the relevant supplies had been made and whether the invoices were valid. The three-page statement of Michael Galvin contained in one paragraph (para 15) evidence which concerned the supplies and the invoices. He there stated that Richard Galvin had supplied him with copies of the 21 invoices in which Fowler was named and that ‘I can confirm that all of the materials were supplied’ to Reddrock’s yard at an address which is given. HMRC do not accept that Reddrock had a yard at the address given by Michael Galvin and they would for that and other reasons have wished to cross-examine Michael Galvin on this brief evidence. Michael Galvin was available to give evidence and indeed was present for two out of the three days of the hearing. No explanation has been given as to why he was not tendered for cross-examination. In a case which turns almost exclusively on the evidence of the witnesses, the FTT was in these circumstances right to afford ‘little weight’ to Michael Galvin’s written evidence.”

87. This is another case which turns almost entirely on the evidence, in particular that of Mr Ellis himself. In these circumstances and bearing in mind what the UT said in *Reddrock*, we consider that we would be justified in affording little weight to the evidence of the Appellants’ witnesses.

88. The question whether an adverse inference can be drawn from the absence of a witness was considered by the Supreme Court in *Efobi v Royal Mail Group Ltd*, [2021] UKSC 33 (“*Efobi*”). Lord Leggatt (with whom the other Justices agreed) made these observations:

“[41] The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324, [1998] Lloyd’s Rep Med 223 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are

inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.”

89. The question of adverse inferences arose in an earlier case involving a claim by HMRC for damages and interest arising out of an alleged unlawful means conspiracy to commit missing trader intra-Community VAT fraud involving exports and imports of mobile phones, *HMRC v Sunico A/S and ors*, [2013] EWHC 941 (Ch) (“*Sunico*”). There the defendants had indicated an intention to call two witnesses (referred to as “the Hirwanis”), who were their primary witnesses of fact, but during the substantive hearing, at the conclusion of HMRC’s case, the defendants’ counsel announced that there would be no oral evidence from either of the Harwanis. Proudman J made these comments:

“[91] [HMRC’s counsel] began by referring me to the familiar four principles summarised by Brooke LJ in *Wisniewski v Central Manchester Health Authority* ([1998] PIQR 324, at p 340:

“(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness’s absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.”

[92] These principles are especially applicable in cases which raise serious allegations of wrongdoing against a Defendant. In such circumstances, there is authority to suggest that a failure to give evidence is likely to lead to an adverse inference. In *Crawford v Financial Institutions Services Ltd* [2005] UKPC 40, (citing the well-known decision of the House of Lords in *Herrington v British Railways Board* [1972] AC 877, [1972] 1 All ER 749, [1972] 2 WLR 537) there were proceedings against the Defendant for misapplication of the funds of a bank which formed part of a group of companies of which the Defendant was the ultimate controller. The Privy Council said at 7:

“Despite the variety of serious allegations made in the pleadings against Mr Crawford, and the matters deposed to by the investigating accountants as calling for explanation, neither Mr Crawford nor any member of his family gave evidence before the Chief Justice. It is well settled that in civil proceedings the court may draw adverse inferences from a Defendant’s decision not to give or call evidence as to matters within the knowledge of himself or his employees.”

[93] Commenting on such decisions not to give or call evidence, Lord Walker observed at 12:

“The weight to be attached to a Defendant’s failure to testify varies with the circumstances of the case. It is plain that in this case the Chief Justice

and the Court of Appeal attached a good deal of weight to Mr Crawford's silence, and their Lordships are satisfied that they were right to do so. Mr Crawford was the chairman and chief executive of the Bank, the Building Society and the Merchant Bank. It is an irresistible inference that he was the directing mind behind Regardless, Holdings and the rest of the group. The consolidated proceedings raised many grave issues as to his stewardship of the whole group of companies. His failure to testify was a strong indication that he had no satisfactory answer to what was alleged against him."

[94] The effect of the drawing of an adverse inference from a party's failure to adduce materially relevant evidence was usefully summarised by Brown LJ (as he was then) in *Benham Ltd v Kythira Investments Ltd* [2003] EWCA Civ 1794, [2004] NLJR 21 in the following terms at 30:

"The point is worth making too even in those cases where the Defendant elects to call no evidence. True, as Mance LJ made plain in [*Miller (t/a Waterloo Plant) v Margaret Cawley* [2002] EWCA Civ 1100], the only issue then is whether the Claimant has established his claim on the balance of probabilities. But it must be recognised that he may have done so by establishing no more than a weak prima facie case which has then been strengthened to the necessary standard of proof by the adverse inferences to be drawn from the Defendant's election. Such adverse inferences can in other words tip the balance of probability in the Claimant's favour".

90. In *Wetton v Ahmed*, [2011] EWCA Civ 610 ("*Wetton*"), the liquidator of a company sought a declaration that the respondents to the proceedings were liable to repay the amount of the directors' loan accounts and compensation for misfeasance and breach of fiduciary duty. There was a lack (described by Arden LJ at [11] as an "absence") of contemporary documentation or other independent oral evidence to confirm the oral evidence of the respondents. Against that background, Arden LJ (with whom Aikens and Patten LJJs agreed) made these comments:

"[12] There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out merely by reference to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence, ...

[14] In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence."

91. These events took place a long time ago and we are confronted by a mixture of untested (in cross examination) witness evidence and fragmentary documentary evidence. The

documentary evidence HMRC hold was largely obtained from Mr Ellis through a (heavily contested) discovery process. Neither HMRC nor insolvency practitioners appointed over the various companies hold anything like complete sets of corporate documentation, so much so that (as we have seen), despite estimating enormous financial losses on account of falsely claimed input tax, HMRC have been unable to make a “best judgment” assessment on some of the companies involved.

92. In a case concerning allegations of abuse during the Kenyan Emergency of 1952, *Kimathi v The Foreign and Commonwealth Office*, [2018] EWHC 2066 (QB), Stewart J made the following comments about the courts’ approach to evidence:

“[95] In recent years there have been a number of first instance judgments which have helpfully crystallised and advanced learning in respect of the approach to evidence. Three decisions in particular require citation. These are:

- Gestmin SGPS SA v Credit Suisse (UK) Limited - Leggatt J (as he then was)

- Lachaux v Lachaux - Mostyn J

- Carmarthenshire County Council v Y - Mostyn J

[96] Rather than cite the relevant paragraphs from these judgments in full, I shall attempt to summarise the most important points:

i) Gestmin:

- We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.

- Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of “flash bulb” memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.

- Events can come to be recalled as memories which did not happen at all or which happened to somebody else.

- The process of civil litigation itself subjects the memories of witnesses to powerful biases.

- Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.

- The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. “This does not mean that oral testimony serves no useful purpose... But its value lies largely... in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”.

ii) Lachaux:

•Mostyn J cited extensively from Gestmin and referred to two passages in earlier authorities. I extract from those citations, and from Mostyn J's judgment, the following:

"Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance..."

"...I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities..."

•Mostyn J said of the latter quotation, "these wise words are surely of general application and are not confined to fraud cases... it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty."

iii) Carmarthenshire County Council:

•The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness.

•However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of Gestmin, Mostyn J said:

"...this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context."

93. The points we draw from these authorities are as follows:

(1) The best approach is to base factual findings on inferences drawn from (ideally contemporary) documentary evidence and independently (of particular witnesses) known or probable facts.

(2) The real value of oral testimony lies largely in the opportunity it gives to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events.

(3) That said, oral testimony continues to be seen as valuable. Here too contemporaneous written documentation (or its absence) is an important check on credibility.

(4) Because cross-examination is an important feature of oral testimony, it is important that those who proffer themselves as witnesses of fact are prepared to be cross-examined. If they are not, less weight may be given to their testimony and adverse inferences may be drawn (most obviously, that they did not attend because they would have no good

answer to any question asked of them) and the effect of such inferences would be to bolster the opponent's case.

94. In relation to the large gaps in documentation, Mr Watkinson pointed us to a passage (echoed by Arden LJ in *Wetton* at [14]) in a Privy Council decision, *The Ophelia*, [1916] 2 AC 206, where Sir Arthur Channell, giving the advice of the Privy Council, said at p.229:

"In the cases as to spoliation of documents, the point has frequently arisen on the preliminary hearing on documents, and the question has been debated whether or not further proof should be allowed. This point cannot arise under the present procedure, and it may be that in some respects the old doctrine was rather technical. The substance of it, however, remains and is as forcible now as ever, and it is applicable not merely in prize cases, but to almost all kinds of disputes. If any one by a deliberate act destroys a document which, according to what its contents may have been, would have told strongly either for him or against him, the strongest possible presumption arises that if it had been produced it would have told against him, and even if the document is destroyed by his own act, but under circumstances in which the intention to destroy evidence may fairly be considered rebutted, still he has to suffer. He is in the position that he is without the corroboration which might have been expected in his case."

THE LAW

95. We set out below the legislation relevant to the steps which HMRC took against which Mr Ellis and NYPL appeal.

Assessments and Closure Notices

96. Section 29 TMA allows an officer of HMRC who discovers that income which should have been assessed to income tax has not been assessed, or has been under-assessed, to make an assessment in the amount, or the further amount, which ought in his opinion to be charged in order to make good to the Crown the loss of tax.

97. Section 28A TMA provides that an enquiry into a self-assessment return is completed when an officer of HMRC by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions. Subsection (2) goes on to provide:

"(2) A closure notice must either—

- (a) state that in the officer's opinion no amendment of the return is required, or
- (b) make the amendments of the return required to give effect to his conclusions."

98. Section 34 TMA provides that the normal time limit for making an assessment is four years after the end of the year of assessment to which it relates.

99. Section 36 TMA makes provision for cases where a loss of tax is brought about carelessly or deliberately: It provides:

"(1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).

(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax—

- (a) brought about deliberately by the person,

...

may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).”

Income Tax/NICs

100. The Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) charges “earnings” from an employment to income tax, and section 62 of that Act defines “earnings” as follows:

“(1) This section explains what is meant by “earnings” in the employment income Parts.

(2) In those Parts “earnings” , in relation to an employment, means—

(a) any salary, wages or fee,

(b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth, or

(c) anything else that constitutes an emolument of the employment.

(3) For the purposes of subsection (2) “money’s worth” means something that is—

(a) of direct monetary value to the employee, or

(b) capable of being converted into money or something of direct monetary value to the employee.”

101. The PAYE Regs. make provision for employers to deduct income tax on earnings from payments to employees and account for that tax to HMRC.

102. Section 6 of the Social Security Contributions and Benefits Act 1992 sets out the requirement for NICs to be paid in respect of earnings. There are two classes of contribution, “primary contributions”, which are the liability of the earner, and “secondary contributions”, which are the liability of the secondary contributor (typically the employer).

PAYE/NIC Notices and Directions

103. Regulation 72 of the PAYE Regs. provides as follows:

“(1) This regulation applies if-

(a) it appears to the Inland Revenue that the deductible amount exceeds the amount actually deducted, and

(b) condition A or B is met.

(2) In this regulation and regulations 72A and 72B-

"the deductible amount" is the amount which an employer was liable to deduct from relevant payments made to an employee in a tax period;

"the amount actually deducted" is the amount actually deducted by the employer from relevant payments made to that employee during that tax period; the employer from relevant payments made to that employee during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

(3) ...

(4) Condition B is that the Inland Revenue are of the opinion that the employee has received relevant payments knowing that the employer

wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(5) The Inland Revenue may direct that the employer is not liable to pay the excess to the Inland Revenue”

104. Section 8 SSCTFA provides as follows:

“(1) Subject to the provisions of this Part, it shall be for an officer of the Board –

...

(c) to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay.”

105. Regulation 86 of the Social Security (Contributions) Regulations 2001 ((the “NIC Regs.”) provides as follows:

“(1) As respects any employed earner’s employment—

(a) where there has been a failure to pay any primary contribution which a secondary contributor is, or but for the provisions of this regulation would be, liable to pay on behalf of the earner and –

...

(ii) it is shown to the satisfaction of an officer of the Board that the earner knows that the secondary contributor has wilfully failed to pay the primary contribution which the secondary contributor was liable to pay on behalf of the earner and has not recovered that primary contribution from the earner;

...

the provisions of paragraph 3(1) of Schedule 1 to the Act (method of paying Class 1 contributions) shall not apply in relation to that contribution.”

VAT Penalties

106. Paragraph 1 of Schedule 24 (“Schedule 24”) to the Finance Act 2007 (“FA 2007”) provides that a penalty is payable by a person (“P”) who (inter alia) gives HMRC a VAT return which understates a liability to tax (or contains a false or inflated claim to repayment of tax) and the inaccuracy was careless or deliberate on that person’s part.

107. As set out in paragraph 4 of Schedule 24, the level of penalty depends on the category of inaccuracy (essentially, whether it relates to a domestic or offshore matter) and whether the inaccuracy was careless (i.e. the inaccuracy was due to failure by P to take reasonable care), “deliberate but not concealed” (i.e. the inaccuracy was deliberate on P’s part but P did not make arrangements to conceal it) or “deliberate and concealed” (i.e. the inaccuracy was deliberate on P’s part and P made arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)). (Paragraph 3 of Schedule 24 explains the degrees of culpability just set out in parentheses.). Schedule 24 contains a number of other provisions affecting the quantum of the penalty (e.g. providing for it to be reduced where P makes disclosure to HMRC).

108. Paragraph 19 of Schedule 24 provides:

“(1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership “officer” means–

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c. 46)) ...”

109. In *CF Booth Ltd v HMRC*, [2022] UKUT 217 (TCC), the UT made these comments about the meaning of deliberate inaccuracy in the context of a corporate taxpayer:

“[36] It seemed to be common ground that the formulation used by the FTT in *Auxilium [Project Management Limited v HMRC]* [2016] UKFTT 249 (TC) was correct. In that case the FTT said:

‘[63] In our view, a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. 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.

[64] The test of deliberate inaccuracy should be contrasted with that of careless inaccuracy. A careless inaccuracy occurs due to the failure by the taxpayer to take reasonable care (see paragraph 3(1)(a) of Schedule 24 Finance Act 2007 and *Harding v HMRC* [2013] UKUT 575 (TCC) at [37]).’

[37] We agree with these comments of the FTT in *Auxilium*.

...

[44] The relevant knowledge [that the Appellant’s transactions were connected with the fraudulent evasion of VAT and therefore did not entitle it to input tax credit] is, moreover, that of the Appellant as a corporate entity, not that of the individual within the Appellant who completed the VAT returns. As the FTT noted in the 2017 decision at [315] in relation to the *Kittel* principle, it is not necessary for HMRC to identify an individual whose knowledge can be vicariously attributed to the Appellant. Similarly, in relation to the penalty assessment for deliberate inaccuracy, it is not necessary for HMRC to prove or plead that the individual who completed the VAT returns was aware of the deliberate inaccuracy. If it were otherwise, a penalty could simply be avoided by keeping the person completing the returns in the dark as to the Appellant’s knowledge that its transactions were connected with the fraudulent evasion of VAT.”

The Companies Act 2006 (“CA 2006”)

110. CA 2006 makes extensive provision in relation to companies and their directors. In particular, it imposes duties and requirements on directors, including:

- (1) To exercise independent judgment - section 173;
- (2) To exercise reasonable care, skill and diligence – section 174.

111. Section 386 CA 2006 requires every company to keep adequate accounting records. Section 386 (2) provides that:

“(2) Adequate accounting records means records that are sufficient–

- (a) to show and explain the company's transactions,
- (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
- (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act."

112. Section 413 CA 2006 requires a company (or the parent company of a group of companies) to show in notes to the individual company or group accounts:

- (1) advances and credits granted to directors, and
- (2) guarantees of any kind entered into on behalf of directors.

THE PLN APPEAL

Mr Ellis' Position and Evidence

113. As we have noted, neither NYPL nor Mr Ellis appeared and neither was represented. We set out below the position which (through a changing cast of representatives, in his grounds of appeal and in his witness statements) Mr Ellis has put forward to challenge the PLNs. Mr Ellis's position (set out largely in his two substantial witness statements) is as follows:

- (1) Mr Broadbent took over all the day-to-day accountancy procedures in the business and controlled all annual accounts etc. Mr Ellis and his fellow directors all felt comfortable that Mr Broadbent was focused on the financial accounting side of the business leaving Mr Ellis to focus on making deals happen.
- (2) Mr Broadbent worked mainly from home, attending the offices for directors' meetings and for his regular (monthly or every two month) meetings with Officer Smith of HMRC. Mr Broadbent was active on email and reassured Mr Ellis that he had the accounts and VAT returns (and all other tax matters) all under control. He ensured that only he dealt with HMRC. Mr Ellis says that the day before these meetings Mr Broadbent would come to the office with boxes of paperwork that he kept at his house. The paperwork would be neatly arranged in piles in the meeting room and then the door would get locked. Officer Smith would arrive in the morning, and the meetings took a long time.
- (3) The regular interaction with HMRC gave Mr Ellis comfort that Mr Broadbent was on top of the financial accounting and VAT returns and that they were accurate. As he put it, what was Officer Smith doing on her regular visits if not verifying that the figures in the VAT returns were verifiable and supported by the required evidence?
- (4) Mr Ellis says that Officer Smith had previously dealt with other businesses operated by Mr Broadbent, and he says there was a relationship of trust and familiarity between them, which was confirmed by the former Mrs Broadbent. Officer Smith carried out a tax inspection and found a couple of minor issues. He says that Officer Smith gave the internal accountant instructions of what to do and instructed her to run everything moving forward via Mr Broadbent, who she believed was capable and efficient in VAT and taxation, who would then liaise with Officer Smith. Mr Ellis says that he welcomed the "great relationship" between Mr Broadbent and Officer Smith. Mr Ellis says that Officer Smith trusted Mr Broadbent and even chased VAT repayments on his behalf.
- (5) The Flaxby property had been purchased from Alan Armstrong, who had agreed to £3.5m of the purchase price being deferred. From late 2014 Mr Armstrong began to try to repossess the property, because (Mr Ellis says) he saw that the land he had sold for £7m might now (with residential planning permission) be worth £120m. This led to a very lengthy period of litigation and resulting difficulties with investors. The position was resolved at the

end of 2015 and SLL was allowed to proceed with a sale of the property and planning. Mr Ellis considers that SLL sold the property for a price which was “way off” what it should have been, leaving him with a £40m personal liability on a guarantee to a finance provider.

(6) Mr Ellis says that in the early part of 2014 he noticed that Mr Broadbent had become more pressured with accounting matters and that HMRC started to contact the office more wanting to speak to him. This escalated into written correspondence surrounding the treatment of VAT by a group of investors known as HYPA. Mr Ellis says that the pressure escalated and more information was being sent to HMRC and further questions were being asked. Mr Broadbent appeared worried, although when pressed he reassured Mr Ellis that everything was under control and that he was dealing with it. Mr Ellis says that he had no reason to worry as Mr Broadbent had dealt with HMRC matters in the previous five or so years in what had appeared to be an effective manner.

(7) Mr Ellis says that around this time Mr Broadbent was seeking to distance himself from HMRC which is why Martin Chambers was all of a sudden the point of contact. He says that it is true that, in August 2014, the Skelwith accounting records in paper form were removed by a contractor. However, the electronic records were clearly not destroyed as can be seen from the very significant information held by the liquidators. He does not know if Mr Broadbent was behind this. When he found out about this Mr Ellis says he was furious. If there was some reason other than mistake for the loss of documents, Mr Ellis says that it can only be attributed to Mr Broadbent, and certainly not to him. Mr Ellis says that he challenged Mr Broadbent on numerous occasions regarding backing-up information and he had always made it quite clear that this had been done and everything was in order and under control.

(8) Mr Ellis was shocked when HMRC began a COP 9 investigation in October 2014. The group’s external accountant introduced Mr Ellis and Mr Broadbent to a tax advisor called Jerry Craggs from Craggs & Co based in Leeds, who explained the process. Mr Broadbent undertook to collate the required documents before the first scheduled meeting with HMRC in February 2015. At this meeting, which initially appeared to be going well, HMRC’s accountant questioned the quantum of VAT returns against actual expenditure. The numbers being discussed regarding expenditure of c.£120m seemed extremely excessive to Mr Ellis, who says he was totally shocked by the numbers which were being bandied around by HMRC as owing. Mr Broadbent subsequently assured him that HMRC had simply got the figures wrong and that he could prove this. Mr Broadbent agreed to provide Mr Craggs with the information he needed to resolve this issue.

(9) Before the meeting Mr Ellis completed a HMRC questionnaire. Although he thought there was no liability to HMRC, he followed the instructions of Mr Broadbent and Mr Craggs, who told him that HMRC would launch a criminal investigation if he denied liability, and ticked the boxes admitting a level of liability. In hindsight, he says that he should not have signed any COP 9 disclosure; he was not actually aware of any deliberate conduct.

(10) Mr Ellis says that he had a panic attack during the meeting; he was so shocked by the numbers being bandied around. Mr Craggs and Mr Broadbent told him that the companies had lost control of the projects, and this is where the numbers came from. He subsequently sent Mr Craggs the full package of personal information that he had requested. Mr Broadbent reassured Mr Ellis he was sending Mr Craggs all the information he needed. Mr Ellis trusted him to do that. Eventually, Mr Craggs started to chase Mr Ellis for material as Mr Broadbent was not providing what he needed. Despite Mr Broadbent, Mr Craggs and Mr Ellis meeting in London, where Mr Broadbent and Mr Ellis agreed (at Mr Craggs’ suggestion) to make a payment on account of around £1m, which shocked Mr Ellis, Mr

Broadbent again disappeared, appearing online sporadically and never coming into the office. Mr Ellis struggled to understand why it was taking Mr Broadbent so long to provide the information requested. The pressure was mounting and at the same time the litigation with the Armstrongs was becoming prolonged and costly

(11) Mr Ellis says that the summary of the main business ventures of the companies, copies of the VAT spreadsheets for SLL covering November 2008 – May 2010 and copies of draft “directors loan accounts” derived from transactions between the directors and the companies are not right because they are based on what was provided by Mr Broadbent. Similarly, he does not understand why (other than on Mr Broadbent’s instructions) Mr Craggs told HMRC that he and Mr Broadbent had been reckless.

(12) Mr Ellis’s relationship with Mr Broadbent deteriorated and the latter only occasionally appeared in the office.

(13) In June 2015 Mr Ellis received a very strange message from Mr Broadbent. From memory, he says it was something like “I’ve been attacked and am in hospital”. Mr Ellis was interviewed by the police who wanted to know who might have a grudge against Mr Broadbent. Mr Ellis provided the police with quite a lengthy list. Mr Ellis says that Mr Broadbent recovered pretty quickly; indeed, his new wife and a group of their friends flew off to Ibiza only a month after the stabbing. Mr Ellis was disappointed by social media posts evidencing considerable profligacy on Mr Broadbent’s part as the Skelwith group needed funding for the dispute with Mr Armstrong. Mr Ellis later discovered that this trip had been funded by a £500k insurance claim made by Mr Broadbent.

(14) Mr Ellis was surprised to arrive at the office in June 2015 to find that a provisional liquidator had been appointed over SLL and SLRCL and the group’s offices were being searched. Inevitably, this gave rise to difficulties with investors. Mr Ellis says that he has repaid all unsecured creditors using loans from family and friends. Mr Broadbent, on the other hand, has not engaged with unsecured creditors leaving Mr Ellis to deal with this on his own.

(15) In October 2015 Mr Ellis tried to meet Mr Broadbent, but he avoided him. Just before Christmas 2015 Mr Broadbent instituted proceedings against Mr Ellis accusing him (and two Skelwith employees) of attempted murder and fraud. Mr Ellis says that Mr Broadbent effectively accused him of paying a group of criminals to assault him and his wife and that this was an attempt on his life. He accused Mr Ellis of living a lavish lifestyle of private jets and extravagant holidays and defrauding him. These proceedings were later abandoned by Mr Broadbent.

114. As regards VAT, Deloitte (one of Mr Ellis’s previous advisers in relation to this matter) struggled to collate any information surrounding the VAT position of the companies. . However, Mr Ellis says that it is possible to make an assessment of the VAT fraud which occurred based on the information available and to show that HMRC’s assessment is not correct.

115. Assisted by his mother (who has 30 years’ bookkeeping experience) Mr Ellis says that he has gone through the VAT records available to him. He says that by the end of 2015 he had copies of VAT records (which he provided to Deloitte – the liquidators/administrators and HMRC also had this information) and he went through the VAT returns “to identify things which are in [his] view fraudulent”. He says that the Craggs spreadsheets (produced by HMRC) are “false” and produced by Mr Broadbent “to hide false entries which he used to submit VAT returns”.

116. Mr Ellis estimates the true amounts spent as follows:

- (1) SLL - £19m
- (2) SLRCL - £6.05m
- (3) SLRL- £21.25m

117. As already noted, the VAT overclaims assessed by HMRC are not far removed from the figures derived by Mr Ellis as a result of this exercise and recorded in his witness statement.

118. Mr Ellis says that, toward the end of 2016, the Deloitte work had been completed. He needed to try and find a new company to act to deliver this evidence and to take the investigation forwards at a more cost-effective level. Deloitte had done a good job on the directors' loan accounts, but at significant cost. Mr Ellis met Ruger Hutton of Clarion, who advised him in relation to personal insolvency matters and introduced him to Armstrong Watson. Tom Roseff of Armstrong Watson suggested investigating Mr Broadbent's financial relationship with the companies. Mr Ellis says that this led to him and Mr Chambers uncovering a significant account of damning emails and paperwork relating to Mr Broadbent's lifestyle and conduct with HMRC, and Mr Ellis decided that he needed to uncover the truth.

119. From their research they learned a lot about Mr Broadbent's opulent lifestyle, including a box at Manchester United, and an extremely expensive stag weekend for 12 in Las Vegas, hiring super yachts on his regular trips to Ibiza and taking money out of the business to fund the construction of his "15k square foot mansion" near Knaresborough.

120. Mr Ellis says that, in terms of how monies were taken out of the business, the process was normally that Mr Broadbent would contact him and tell him that funds were available in the businesses that could be withdrawn. Ms Coverdale, their clerical assistant, would contact him whenever monies needed to be repaid. They were always repaid on demand.

121. Mr Ellis says that he was not aware of the tax effect that any loan drawings he made from a company had. He did not know whether anything needed to be shown on his personal tax return and was being led by Mr Broadbent on this. He had no reason not to trust Mr Broadbent at the time. The companies' accountants took care of all the company tax affairs and the directors' personal tax returns.

122. As to his awareness of VAT fraud, Mr Ellis says it is clear from his reaction at the meetings with HMRC that this all came as a total shock to him. He says that, whilst he was involved in the financial affairs of the businesses, to the extent that he helped to get funding in place, that did not stretch in any way to the filing or preparation of the VAT returns. He would also authorise payments when Mr Broadbent was absent but he never saw payments which did not seem entirely legitimate (i.e. for works/costs actually being incurred).

123. In response to the documents Officer Reilly exhibited in his second witness statement, Mr Ellis made the following comments (in addition to the comments already noted):

(1) While he may have been included on some emails to do with the VAT position, it was not something he concerned himself with in detail as he understood these matters to be fully under the remit of Mr Broadbent, who took control of the VAT matters which included taking direct ownership of the relationship with HMRC and Officer Smith. The combination of Mr Broadbent taking direct control and ownership of the VAT matters and dealing directly with Officer Smith meant that there were a lot of matters that he had no knowledge of. Mr Ellis exhibited examples of correspondence directly between Mr Broadbent and Ms Smith which did not copy anyone else.

(2) From the limited visibility he had of Mr Broadbent's dealing with HMRC and Officer Smith, his impression was that Officer Smith respected Mr Broadbent in his capacity

as a Financial Director and considered him to be competent at his role generally. Officer Smith appeared content with the information and responses Mr Broadbent provided during their meetings (which took place on an almost monthly basis) and written correspondence.

(3) As regards his comments and involvement in correspondence to do with cashflow matters, he was only involved to the extent that he wanted to ensure any invoices or payments relating to his contacts, such as investors, lenders and other creditors, were settled in time to ensure a good continuing business relationship with those contacts. Mr Ellis exhibited a number of emails illustrating this as well as an email chain dated 17 November 2021 in which Mr Broadbent asked Mr Magnuszewski to transfer all the funds from the group account, to his Coutts sole account. This is an example of matters that Mr Ellis says he was not aware of. Here, he explains, Mr Broadbent is arranging for funds to be transferred to his own account without Mr Ellis's knowledge.

(4) Mr Ellis says that he did not prepare, and cannot comment on, the workings in many of the spreadsheets he was copied in on.

(5) He was not surprised by some of the VAT repayments as a lot of expenditure was being incurred in relation to the Flaxby project and he exhibited various emails and documents discussing the cost of the roundabout and access.

MARTIN CHAMBERS ("MR CHAMBERS")

124. Mr Chambers is a sales and marketing expert. He left school in 2001 and worked for a printing workshop for 5 years. Then he moved into car sales. In January 2010, he went to work for Mr Ellis at SLL. His job there was to sell off plan property and to look after customers.

125. Mr Ellis met Mr Broadbent in 2007. Mr Chambers understood his backstory was that he made money in electronics. Mr Ellis told him that Mr Broadbent was a successful businessman. Mr Chambers says he could tell early on that Mr Broadbent lived a lavish lifestyle. He had nice cars and possibly the best house in York. Mr Chambers thought he had accumulated his wealth from his previous business dealings.

126. Mr Chambers says that Mr Broadbent's role in the Skelwith companies was to act as finance director. He and he alone was responsible for dealing with the tax affairs of the companies. He, for example, exclusively liaised with the company accountants and HMRC. Mr Broadbent was not in the office regularly. When he was, he would predominantly be working on cash-flow projects, paying suppliers and dealing with other financial matters, including tax. He was the sole point of contact with Officer Smith, who was the company's tax inspector.

127. Mr Chambers says that he saw Officer Smith coming in every quarter and she and Mr Broadbent were locked together in a boardroom full of paperwork. Throughout all his time sitting next to and knowing Mr Broadbent, he says he was never made aware of any issues with HMRC.

128. Mr Chambers says that the first time anyone knew something was wrong with HMRC was a morning when the liquidators turned up. He says it was an extremely disturbing experience. In the weeks and months that followed, the extent of the issues became clear. After all the issues with HMRC came to the fore, Mr Ellis asked him to try to investigate what had gone wrong.

129. Mr Chambers says that he looked at Mr Broadbent's email account and found a large number of emails between him and Officer Smith of a very familiar tone, suggestive of a close relationship.

130. In addition to reviewing some of the emails Mr Broadbent exchanged with Officer Smith, he also identified emails from Mr Broadbent's work email which showed his spending, for example emails referring to insuring a diamond for a platinum banded ring for £35k, a payment of £77k for a car, asking for quotes for first class flights, a holiday costing £50k, a sound system for his house costing nearly £19k, buying a villa in Ibiza for EUROS 3.15m and a supercar for nearly £128k. Mr Chambers says that a lot of the invoices etc he saw cannot be linked to the companies' bank accounts, but he exhibited some examples of Mr Broadbent instructing Ms Coverdale, or Mr Magnuszewski to make transfers to settle his bills or make payments to him directly from the companies' bank accounts.

131. So far as his own contact with HMRC is concerned, he says that he never had any direct dealings with any of the financial or tax affairs of the companies. On occasion, however, Mr Broadbent would ask him to send emails to HMRC, largely to relieve any pressure which they were exerting on him.

PAUL BORRETT ("MR BORRETT")

132. Mr Borrett is a construction industry specialist. He went to work for Redrow Homes in 1985 and eventually became a director. He left around the year 2000 and became an independent contractor. Around 2005 he set up a company called DKNP Limited with Mr Broadbent. It acquired and developed an office building in Halifax. They carried out further property developments after that time, but they all collapsed in 2011/12 after the banking crash.

133. Mr Borrett became involved with SLL in January 2008 and remained a director until October 2011.

134. He says that Mr Broadbent's role at DKNP was to manage the financial and tax affairs of the company, on which he kept a close grip. Mr Borrett said he never dealt with HMRC directly, either at DKNP or Skelwith. He recalls that Officer Smith came to the Skelwith offices monthly when she met exclusively with Mr Broadbent.

135. Mr Broadbent has been shown copies of a note of the HMRC meeting in 2011, but has no recollection of that. He recalls discussing with their then auditors, Creers, the letter that concerned Bridgepoint Capital, but he does not recall a great deal about that either. He assumes that he would have thought that this was nothing more than some kind of honest mix-up.

136. He is not an accountant and took comfort from the fact that the accounts were being audited. Whenever he looked at anything financial, such as signing off the company accounts, everything looked in order. He was always concerned to make sure that the companies had enough money to pay suppliers and would check that with Mr Broadbent from time to time. He never had any dealings with the company's bank accounts, all of that was controlled by Mr Broadbent.

137. As far as VAT was concerned, Mr Broadbent was the sole point of contact with HMRC. Mr Borrett never suspected any VAT fraud. He, like Mr Ellis and many others, were under the impression that Mr Broadbent was on top of the financial and tax affairs of the business. He reassured them that everything was in order and Mr Borrett says no one had any reason to doubt that.

138. The development at Flaxby was sizeable. SLL agreed to purchase a 297-acre freehold golf course in 2008. This cost £7m. The amount of investment secured was enormous. Mr Borrett said that there were millions of pounds flowing in from pension funds and other investors. Between 2008 and 2012, an intensive programme was undertaken to get planning permission for the largest single hotel and conference facility in the north of England. Whilst

this process was underway, a new nine-hole golf course was constructed at a cost of around £1.5m.

139. SLRL and SLRCL agreed to purchase a 90-acre estate at Sandsend near Whitby. Again, this was a significant project and tens of millions of pounds of investment was secured, both debt and equity.

140. He and Mr Ellis had very different roles to that of Mr Broadbent at Skelwith. They were responsible for meeting investors and sellers, which was an intensive task. They would have board meetings, some of them with Richard Jackson, who was a prominent local businessman brought in to assist the growing business. Throughout this time, Mr Borrett attended construction meetings, and he and Mr Ellis remained very busy, leaving Mr Broadbent to handle the tax affairs of the businesses.

141. Mr Borrett says that everyone thought that Mr Broadbent made money from his previous business ventures. He lived an extremely extravagant lifestyle. He had one of the best homes in York and owned a boat. Mr Borrett understands that Mr Broadbent is the director of several new companies, which he thinks should be of concern to HMRC.

JAMES CORR ("MR CORR")

142. Mr Corr was 66 years old when he signed his witness statement in January 2020. He had been a chartered accountant throughout his professional career. He knew Richard Jackson well and Mr Jackson asked him to do some work with the Skelwith companies, as he was uncomfortable with the work being done by Mr Broadbent

143. Mr Corr says that he met Mr Broadbent on a handful of occasions and found him to be elusive. He rarely came into the office.

144. There were not many employees in the office, and he could see how everyone worked. No one other than Mr Broadbent had financial control of the company. No one else was tasked with tracking the financial side of the company's projects.

145. Mr Corr thought that Mr Broadbent was taking a lax approach to financial management. There were not the systems and checks in place over funding arrangements he would have expected. Records were few and far between. He cannot say whether there were records which were not provided to him.

146. Mr Corr found a great deal of reliance being placed on Mr Broadbent. Other staff did not have the requisite skills on the tax and finance side to do the required work. Mr Broadbent was very protective over his sphere of influence and trying to get information from him was very difficult. People avoided conflict with Mr Broadbent or failed to confront him. From speaking with others in the office, Mr Corr formed the view that Mr Broadbent was feared and something of a bully.

147. Mr Corr thought there was a stark difference between the way in which Mr Broadbent approached matters and the way in which Mr Ellis did. Mr Ellis clearly wanted to resolve issues that arose and get to the bottom of problems. Mr Broadbent was the opposite. He did little to help those around him to resolve issues that arose and the answers he gave were always rather vacuous.

148. Whilst he found Mr Broadbent elusive, Mr Corr did not see anything that amounted to fraudulent or dishonest activity. He says that he is sure that Mr Ellis was not involved in the financial or tax affairs of the Skelwith companies. There was clear separation of roles within the business.

TOM ROSEFF (“MR ROSEFF”)

149. Mr Roseff is a chartered accountant, who at the date of his witness statement in 2020 worked with BHP LLP in Leeds. He had previously worked in the Leeds office of Armstrong Watson and whilst there had carried out some work for Mr Ellis in relation to these appeals. His advice included analysing Mr Ellis’ bank statements and the movements on his director’s loan account balances relating to the various companies of which he was a director. The work that Mr Roseff did at Armstrong Watson was itself based on some work that Deloitte had carried out for Mr Ellis. Mr Roseff’s witness statement summarised the conclusions he reached when he revisited the work he had done at Armstrong Watson.

150. Mr Roseff had been provided with copies of Mr Ellis’ bank statements for seven bank accounts and using this information he produced an analysis of the transactions in the tax years 2008/9 to 2015/16 between Mr Ellis and the companies against which PAYE determinations had been issued. In producing this analysis Mr Roseff agreed a sample of transactions back to the underlying bank statements to satisfy himself that the transactions had been correctly recorded.

151. Mr Ellis asked him to consider payments totalling more than £655K made by him in periods after 5 January 2017 in satisfaction of company liabilities. Mr Ellis had told him that he had made significant credit card payments in respect of liabilities due from these companies for periods from 2008/9 onwards. However, he did not give Mr Roseff sufficient details of these payments and they were not included in the analysis. The payments Mr Ellis told him about after 2017 were also not included in the analysis as Mr Roseff did not have time to include them.

152. The key findings of his analysis are that, whilst there are a number of minor differences between him and HMRC, he agrees that Mr Ellis extracted significant funds from the companies in question over the period under consideration. He did however find that HMRC’s analysis disregarded transactions where Mr Ellis reintroduced funds to the companies from which cash had been extracted. Mr Roseff looked only at cash payments out of Mr Ellis’s bank accounts and took no account of business transactions settled with Mr Ellis’s credit cards (which Mr Mills calculated) or other liabilities settled directly by Mr Ellis. In summary, amounts totalling over £6.7m were transferred from Mr Ellis’ bank accounts to the companies in the period from 2008/9 to 2015/16. In detail the following amounts were transferred from Mr Ellis’s current account:

- (1) £4,834,879 to NYPL;
- (2) £826,713.44 to SLL;
- (3) £970,224.40 to SLRL;
- (4) £55,600 to SLRCL; and
- (5) £16,300 to Aspire Citygate Limited.

153. Considering the transactions reflected on Mr Ellis’ bank statements for these periods, Mr Roseff concluded that the overall balance due to him from the companies was £628,903 at the end of the 2015/16 tax year.

CHRISTOPHER MILLS (“MR MILLS”)

154. Mr Mills is a very experienced tax practitioner, having worked in his field for over 35 years. He was given a number of credit card statements in the name of Mr Ellis to review.

155. He says that he is not aware of any credit card payments having been made directly to the credit card companies by any of the companies with which Mr Ellis is involved.

156. He looked at these statements to try to identify expenditure included on the card statements which was business expenditure. Mr Ellis explained a number of entries to him which (he said) related to Skelwith properties, for example, the venues where presentations were given were usually paid for by Mr Ellis. Similarly, there were travel expenses relating to a trip to meet investors and payments were made for cars on demand for prospective investors to use on visits. Mr Mill's calculations produced something in the region of £225K of business expenditure run through Mr Ellis' credit cards.

OFFICER DAMIAN REILLY ("OFFICER REILLY")

157. Officer Reilly gave evidence about HMRC's investigation into the Skelwith companies and Mr Broadbent and Mr Ellis. In particular, he exhibited the documents Mr Ellis disclosed following the Upper Tribunal's order which, he said, undermined Mr Ellis's position. Mr Watkinson took us through the documentary evidence.

158. The accounts of SLL for the year ended 31 October 2009 contain a reminder to the directors of their duties in relation to keeping accounting records as required by CA 2006 and safeguarding the company's assets, including taking reasonable steps to prevent and detect fraud and other irregularities. The accounts were signed by Mr Ellis on behalf of the directors. The auditors only gave a qualified opinion in relation to those accounts as (inter alia) they had not received all the information needed in relation to an amount of £540k for management fees. Note 10 (related party transactions) to the accounts details the companies, owned by Mr Ellis or Mr Broadbent or another director, which invoiced SLL for services in the period.

159. Craggs & Co (an adviser to the Skelwith companies) prepared spreadsheets ("the Craggs Spreadsheets") during the COP 9 enquiry analysing SLL's VAT returns.

160. We saw invoices from two of the companies (Sweetpea and Follybrook) reflected as giving rise to input tax claims in these spreadsheets. HMRC's evidence is that all Sweetpea's VAT returns in the period were nil returns and Mr Ellis in his first witness statement said that the Follybrook invoices (Follybrook was owned by a third director, Mr Borrett) were "false invoices".

161. In the Craggs spreadsheet for the VAT period 05/09 there are 6 entries marked "management", for £50k each and 3 from each of Sweetpea and Follybrook. There are also invoices from Huntington Homes (a company owned by Mr Ellis that was not VAT registered). The figures for Sweetpea (£210k), Follybrook (£190k) and Huntington (£150k) identified as problematic in Note 10 to the accounts, add up to £550k net, as compared to the £540k of management expenses the auditors could not be satisfied with.

162. Mr Ellis says that neither he nor Mr Borrett had any part in this, but Mr Watkinson asked, if this were so, why Mr Broadbent would take the risk of involving companies that belonged to Mr Ellis and Mr Borrett in these large false VAT reclaims. It could at best have been easily discovered, but in fact, far worse, it was brought directly to Mr Ellis's attention, as we saw in the financial statements that he signed. So he was aware, from the opinion disclaimer, that the proper accounting records hadn't been maintained. He was aware that one of the problems was the management fees.

163. In February 2010 there was a VAT visit to SLL by HMRC (Officer Smith). There had been some default surcharges. The visit note records that these were discussed with Mr Broadbent and "The issue was also discussed with Paul Ellis, who has the key responsibility for the project and he acknowledged that systems must be tightened up and affirmed this after the implications of [default surcharge] and associated ... penalties explained in detail" In the visit Officer Smith identified errors from period 11/08 but these are attributed to an employee

of Mr Ellis' father's company. The note records that "Directors are now very aware of issues with bookkeeping." The note expressly records that "Paul Ellis acknowledged that mistakes had been made ... Both [Mr Ellis] and [Mr Broadbent] admitted failure to take reasonable care and had already agreed an initial change in procedures."

164. The next VAT return after this visit is for period 02/10. We were shown the Craggs spreadsheet for this and the following (05/10) period combined. The invoicing companies are Sweetpea, Follybrook and NYPL (then called Skelwith Properties Ltd). For 02/10 the VAT claimed (on invoices from Sweetpea and NYPL) was £110k. None of these sums were ever paid. In that period NYPL declared output tax of £3k as against the nearly £69k claimed by SLL. In 05/10 the input tax claimed was £230k on four invoices that were never paid from Huntington, Sweetpea and Follybrook. The figures on these three invoices matched the figures on two invoices (from Bridgepoint and Urban Experience) that were later struck out.

165. We looked at some cases where an invoice had been put through the books in the name of a supplier but deleted. So, in 05/10 on the Craggs spreadsheet there is a reference to an invoice numbered cc3233 from Urban Experience. A copy of that invoice (for £177k plus VAT in sales commissions) was in the bundle but struck through. That number (cc3233) is out of order because an Urban Experience invoice numbered CC098 appears in SLL's next VAT accounting period. Mr Watkinson noted that Mr Ellis oversaw sales and almost all the original invoices that were struck through related to sales commissions.

166. We also saw an invoice dated 28 October 2009 and addressed to Mr Ellis at SLL from "Bridgepoint Capital Ltd" for £466,444.86 (plus VAT). The narrative was "The Flaxby Country Club and Resort – Commissions due in respect of sales during Aug/Sept/Oct 2009". A copy of this invoice was sent to Mr Ellis on 14 April 2011 by Travers Smith (solicitors to the "real" Bridgepoint Capital Ltd). Their covering letter contains the following comments:

"Your auditors have sent to our client a copy of an undated document that they advise us was sent to them by you. For convenience we attach a copy of the document to this letter.

As you will see Bridgepoint logos appear at the top right and bottom right. The company number at the bottom of the page is that of a genuine Bridgepoint company, but the VAT number is not. We understand that the VAT number is that of a company called Capital Accumulation Services Limited.

Our client was asked whether this is a genuine Bridgepoint document. They have confirmed to your auditors that it is not.

Our client has never heard of Skelwith Leisure, Flaxby or Capital Accumulation.

Our client is extremely concerned that, on the face of it, it appears that you have used our client's logo and company number to give legitimacy to an invoice, and is at a loss to understand why you should have done so.

Please provide to us, by return, a full explanation of why you have wrongfully have forwarded the invoice to you which you have sent to us. The invoice is not on our accounts system at all ... I find it very disturbing that a fictitious invoice has been produced in the name of our company."

167. Mr Ellis replied to this letter on 14 April 2011. He said that he was "... at a loss on how our accountants have forwarded the invoice to you which you have sent us. This invoice is not on our accounts system at all and this can be verified by our accountants. ... I will also be making enquiries as I find it very disturbing that a fictitious invoice has been produced in the name of our company."

168. Mr Ellis wrote to Creers (SLL's auditors) saying, "I have just looked at this invoice, its a company i have never dealt with or heard of! I have spoken to DB [Mr Broadbent] who is away, he doesnt deal with Bridgepoint its me, so he just put this in as part of our pack." He concludes by saying "You need to scrap this invoice and work of the ones we have. Can you also please contact this lawyer and confirm it's a mistake. I am getting our legal boys involved too."

169. Mr Broadbent also wrote to the auditors saying "Sorry, I sent it too soon ... We will also employ a private investigator to find out who is behind this. We cannot afford for any of the confidential information to be leaked further." He also said that he believed "Bev is sending the correct invoices over for Bridgepoint". There is no record of any steps being taken to investigate this incident.

170. Mr Ellis says that he dealt with Bridgepoint Ventures LLC but not Bridgepoint Capital. He says he agreed with Mr Broadbent's suggestion to employ a private detective because he thought that fraudulent activities had taken place. Thinking back, he thinks this was Mr Broadbent trying to divert attention away from himself. He does not see why Mr Broadbent would have suggested this to him if Mr Ellis was complicit.

171. There are other invoices (struck through) in the bundle addressed to Mr Ellis at SLL and purportedly from Bridgepoint Capital Ltd for commissions. These invoices are dated 18 January 2010, 2 February 2010, 27 February 2010 and 29 May 2010

172. On 19 April 2011 Mr Ellis emailed Mr Broadbent with a copy of an invoice purporting to be from BridgePoint Ventures LLC in Fort Lauderdale, USA in relation to commission of nearly £500k charging VAT of £75k. The supplier had no UK VAT number. Mr Ellis asked "shall I tell creers to disregard the vat on this one and we will have to repay?" Mr Broadbent replied "Yes mate. We should be able to balance it up later. As long as they don't make us inform HMRC its ok."

173. Mr Watkinson's observation on this is that the only way of balancing up input tax that you have wrongly claimed on a fake invoice is by doing it on another one. The problem with informing HMRC would be that HMRC would then know that SLL had claimed a large amount of input tax on a fake invoice. We know from Mr Ellis's response that he then did as instructed. He replied "Ok ill email him."

174. In 05/10 the spreadsheet shows "Experience" (invoice reference 6155f) crossed out. The liquidator found this invoice. It related to sales commission for Flaxby. Although the invoice was for £175k plus VAT, a box lower down the invoice stated that "The amount eleven thousand and seven hundred and forty seven pounds and six pence should be paid by bank transfer to: ..." Mr Watkinson said this was the case across all the fake Experience invoices: they were for sales commission (Mr Ellis' area) and later someone went back and crossed them out.

175. In a document prepared for a potential investor at a late stage Mr Ellis estimated Experience's total costs at £197k. Despite that, there are fake (crossed out) invoices from Experience for £234k, £187k, £175k and more. Mr Watkinson says that it would be clear to Mr Ellis that invoices totalling £800k from Experience would be false.

176. In the period 08/10 there was an invoice for over £676k (plus VAT) from NYPL. In that period NYPL declared output tax of £8,530. When Deloitte were acting for NYPL they wrote to HMRC (on 14 July 2016) to say that the transaction reflected in this invoice did not take place and the invoice held by SLL was incorrect.

177. In the same period there were three entries described as "InterCo" There were also three matching entries (each for £250k plus VAT) naming KD Site Services ("KDSS") as the

supplier. KDSS is a company owned by Mr Broadbent. Mr Watkinson's observation is that, of the false VAT reclaim, about half was done by NYPL and half by KDSS.

178. The liquidator found another version of the 08/10 VAT return spreadsheet in SLL's records. Here there are crossed out entries for suppliers called Urban Exp, Ice Cube, Bland Swift, Experience and DLA. Ice Cube invoice ref 22 was in the bundle. Again, it was for sales commissions for 11 rooms at Flaxby and charged over £372k, which equates to over £34k a room. We were shown a document recording fees to Ice Cube at £1,175 per room, not £34k. Mr Watkinson says that, if Mr Ellis had seen the Ice Cube invoice, he would have been surprised, but Mr Broadbent was happy to include it as he knew that Mr Ellis was aware of what was going on and would not question anything.

179. Moving on to SLL's statutory accounts for the year to 31 October 2010, we see the same statement of the directors' responsibilities regarding the accounts. The auditors were unable to form an audit opinion because they had been unable to obtain sufficient information about the accuracy of some very large numbers in the accounts, including £2.235m trade creditors and over £1m other creditors. Mr Watkinson said that the false invoices on the Craggs spreadsheets totalled £3.372m net, broadly matching these discrepancies. As Mr Watkinson put it, no one was trying to hide anything from Mr Ellis.

180. Moving on to the period 11/10, we see the same pattern. Urban Experience and Ice Cube are used as the initial fake invoice providers, but this is changed to DKNP Developments in the Craggs Spreadsheets.

181. Mr Watkinson says that all this shows systematic forgery of invoices at SLL. The input tax reclaims are systematically inflated to achieve a preordained figure. They were designed to generate regular and significant inflows of cash that one can infer could otherwise not be generated. They use a variety of different company details, but where there is an addressee name, save for one, it is Mr Ellis. Three of his own companies have been used as false invoice references: the two Huntington companies and NYPL. The vast majority of the invoices are for room sales commission, the part of the business Mr Ellis oversaw and had intimate knowledge of.

182. Officer Smith made a VAT visit on 28 February 2011. In her letter recording the visit she noted that the three directors present indicated that they were aware of their collective responsibility to ensure that all direct and indirect tax returns and other legally required documents with submitted and paid by the due date. They accepted that mistakes in VAT returns had been made and that agreed actions to rectify them had not been fully implemented. A number of other remedial measures were agreed. Sage would continue to be operated to supply management and other accounting information.

183. The next VAT period is 03/11. The VAT repayment was £367k. Mr Ellis said that he was not surprised about this as SLL was building a roundabout, access roads and so on. However, all the invoices used to claim VAT were false. For example, there was a Bridgepoint invoice, one from Bland Swift (who only accounted for £21k output tax in the period), and one from Urban Experience which had only £6k output tax.

184. In SLL's VAT period 04/11 claims for input tax on supplies by DEPA (a Dubai-based interior contractor) start to be made. The hotel at Flaxby was never built so the interior works were never carried out. In his [first] witness statement, Mr Ellis estimated the maximum cost of the DEPA contract to be £750k. We saw a letter dated 28 February 2011 from DEPA to Mr Ellis quoting £1.25m to supply and install furniture at Raithwaite Hall. A schedule of invoices attached to a loan agreement between DEPA and SLL/SLRCL gave total net invoices of £1.69m, of which only £43k related to SLL's development at Flaxby. Mr Ellis was given as the contact for both borrowers in the loan agreement. Yet in periods 04/11-

04/12 SLL and SLRL claimed input tax of more than £7m on supplies from DEPA with a net value of £27.7m. Again, Mr Watkinson says that it would be risky for Mr Broadbent to invent DEPA invoices if Mr Ellis was not involved as he would wonder how £28m could be spent fitting out a hotel that had not been built.

185. From 01/13 Mr Watkinson told us, invoices were not generated to justify VAT reclaims. Amounts were just added to the reclaims with no attempt to justify them. HMRC have seen no invoices to justify these claims and there are none on the Craggs Spreadsheets.

186. Mr Watkinson took us to SLL's bank statements. HMRC do not have complete copies, but those they do hold show what happened to VAT repayments.

187. On 28 January 2011 HMRC paid in just over £64k. On the same day £20k was paid out to a company of Mr Broadbent's and £10k to NYPL.

188. On 2 February 2011 £148k was repaid by HMRC of which £32k was false. On 2 February Mr Broadbent instructed Skelwith's accountant to pay £15k to Mr Borrett, £40k to Mr Ellis and £80k to a company of Mr Broadbent's.

189. On 22 March 2011 HMRC repaid just under £153k of which £100k was a false claim. By 1 April it had all been paid away.

190. On 12 April 2011 HMRC repaid just under £368k of which £377k was false. A lot of this money is used to pay SLL's suppliers, but £50k is transferred to NYPL.

191. On 25 May 2011 HMRC repaid £421k (of which just over £420k was a false claim). £207k was paid out by cheque to an unknown recipient.

192. Documents show Mr Ellis being involved with SLL's banking arrangements. The Lloyds TSB statements were addressed to him. He signed an international money mover application on 28 June 2010. We saw a cheque signed by him. The bank wrote to him about a standing order on 24 June 2010, about a standing order they had been unable to pay on 7 June 2011 and about a cheque they had been unable to pay on 3 March 2011. Mr Ellis signed a letter to the bank on 4 March 2011 asking them to stop two cheques written in February of that year. On 14 February 2010 Mr Ellis and Mr Borrett instructed the bank to transfer £100k from SLL and SLRL to KDSS. On 18 October 2011 Lloyds TSB wrote to Mr Ellis to express concern about the business of SLRCL.

193. On 10 May 2011 Mr Broadbent wrote to Mr Ellis to say "I can not believe how much we have blown this year! Frightening mate". Mr Ellis replied "We need to try and hit the spreadsheet we went through in dubai me and you. Lets do it!"

194. On 9 June 2011 Mr Ellis emailed Mr Broadbent saying "You wanna go through cashflow for this month? See who is urgent and who not?" Mr Broadbent offered to walk down and do that and in his reply listed outgoings of £952,484 against income of £1.238m.

195. On 17 June 2011 Mr Ellis emailed a cashflow spreadsheet to Jason Brown at Pilgrim PR, one of Mr Ellis's companies. That spreadsheet forecasts VAT repayments of £5.6m over seven months (June-December 2011). Mr Watkinson observed that this would require inputs of £28m, vastly more than Mr Ellis would have understood the companies to be incurring in such a short period. The outgoings on the spreadsheet total £15.2m, but a lot of these outgoings are related to financing (payments to the bank, investors and the former owner of Flaxby), which would not attract VAT. The spreadsheet forecasts that Mr Broadbent and Mr Ellis will each take out £2.075m. HMRC's estimate of the maximum potential payments attracting VAT is £6m.

196. On 9 August 2011 Mr Broadbent sent Mr Ellis a Leisure Group August 2011 cashflow. The income figures for Hall and Leisure are almost identical to the VAT repayments due that month on the previous VAT returns. Forecast expenditure was £811k including finance costs. Income was £1.497m of which £1.19m was the VAT reclaims. These would have been generated by expenditure, which did not equal this figure. Mr Watkinson says that this shows that Mr Ellis knew the figures were hugely inflated. Mr Ellis and Mr Broadbent are shown as receiving £350k each. Mr Ellis replied with an email with "Spondoolies" in the subject line. His message was quite short. It read "Mint, can sort some to pepper, clarence gardens and put a bit towards new gaff! Lets kick on!"

197. In January 2012 there was an exchange of emails between Ms Coverdale (in Skelwith accounts department) and Mr Broadbent, with Mr Ellis copied in, relating to payments to suppliers, two of whom were "chasing and threatening with court action".

198. Again in February that year Ms Coverdale emailed Mr Ellis and Mr Broadbent about various amounts due. SLRL was a month behind with PAYE. A cheque for £4,200 had bounced. She raised questions about other amounts due.

199. In March 2012 Santander emailed Ms Coverdale about payments that would lead to the account being overdrawn by £27k and asking whether the Directors would cover this. The exchange was copied to Mr Ellis.

200. In October 2012 there was an email exchange between Tom Frank (of Skelwith) and a supplier who was not being paid. The supplier wrote:

"Darren and Paul also need to realise that unless we are paid the fund raising suffers which is has done from the start (again not your fault) but I cannot keep having my business suffer".

Mr Frank replied:

"Hi Andrew. I have spoken with Paul and Darren, there[sic] response was with regret and understanding of your position but there simply isn't any more funds left over from the draw down as the position was to[sic] critically behind in terms of funds owed".

201. On 16 January 2014 Mr Broadbent wrote to Simon Welsh at HYPA Management (copying in Mr Ellis):

"Our cash-flow is at breaking point. We set off developing the site, with promises of funding, which just haven't materialised. We have been unable to stop the development costs, which have a massive knock on effect, for everyone".

202. Officer Reilly exhibited emails showing that Mr Ellis was regularly informed about Skelwith company bank balances. He also exhibited hundreds of emails (running from page 11230 to 11908 of the hearing bundle) showing that Mr Ellis was routinely informed of their inability to pay their dues, the need to make intercompany transfers, to cover payments and overdrafts, payment of HMRC VAT repayment cheques. He directed, on occasion, who should be paid out.

203. Mr Ellis appears to have had online access to the bank accounts from at least 30 June 2011. An email from Mr Ellis to Mr Broadbent from that time read, "Hi mate just looked on accounts online, its pretty mental! One account shows £145k credit and one shows £90k [overdraft]. Can you have a look ...?"

204. Mr Reilly exhibited emails from Mr Ellis asking staff for copies of bank accounts from time to time. He used one set of accounts to help organise finance from Portman Asset

Finance. Mr Ellis confirmed to Mr Broadbent that an invoice for £635k should be enough to enable them to draw down and pay various investors “and get 100k back each this month”.

205. In December 2012 Mr Ellis emailed Santander to ask for the account balances. Some companies’ accounts were in debit and Mr Ellis replied “the cheque we paid in (on the 6th!) is from HMRC. Will you cover the o/d balances on the back of this please? I doubt a HMRC check (sic) will bounce?!”

206. In May 2013 Mr Ellis asked the Skelwith accounts staff for the last four weeks Santander statements. The SLL statements supplied show some very large (one is £2,061,494) VAT repayments. Mr Watkinson said that, in his first witness statement, Mr Ellis estimated SLL’s total expenditure at £19m. To generate a £2m repayment, SLL would have needed to incur more than half of its total expected expenditure in a single month. The VAT return that generated this payment showed outputs of £1.757m and inputs of £10.685m, whereas the figures on the spreadsheets were £46,796 and £40,632 respectively. The Santander statement shows £200k being paid to SGL and £300k to NYPL. Mr Ellis was the sole director of both companies. Mr Watkinson says that this shows that Mr Ellis knew that false VAT reclaiming was being made.

207. We saw a bank statement for SGL. In the period covered by that single statement SGL received just over £483k from HMRC (SLRCL’s VAT repayment directed to its account). The money is used to pay lawyers dealing with Mr Broadbent’s divorce, £335k to Ward Hadaway for a property Mr Broadbent was buying in London, £40k to Mr Broadbent and £13k to Manchester United. Mr Watkinson says that Mr Ellis, as sole director of this company, must have known that Mr Broadbent was using these false repayments to fund massive personal expenditure.

208. The Santander statement shows that on 17 October 2013 HMRC repaid nearly £500k. On the same day £75k was transferred to Mr Ellis. To justify this repayment, we were told, inputs were inflated by just under £2m.

209. On 13 November 2013 the SLL bank statement shows a VAT repayment of over £900k. On the same day £300k was transferred to Mr Ellis and £150k to Mr Broadbent. The inputs to generate this repayment were stated to be £4,546,447 on the VAT return, whereas the spreadsheets show £287,171.

210. On 10 April 2011 Mr Broadbent emailed Mr Ellis and others. The subject of the email was “Audits” and it listed “Remaining items to sort by end of Monday”. This included (under the heading “Leisure [ie SLL] Audit”) four “Follybrook invoices” with dates in March-May 2009. Three of these invoices included VAT amounts on which SLL claimed input tax in period 05/09. Mr Ellis replied to this email observing “Chaps, we are nearly there” and pointing out to Mr Borrett that his Follybrook invoices had the wrong VAT number on and asking him to resend them.

211. Mr Watkinson pointed out that, in his first witness statement, Mr Ellis denied any involvement with false invoices. After he was forced to disclose this email he suggested (in his second witness statement) that he was simply supplying information he had received, and he believed that the invoices were genuine at the time. It was only later he realised that they were false. There is no disclosed email from Creers, passing any information to Mr Ellis about this, and his earlier evidence was that he knew that Follybrook had not made tens of thousands of pounds worth of supplies, in the same way that he knew his own company Huntington had not. This is, HMRC submit, an example of Mr Ellis committing himself to saying one thing, being ordered to disclose documents, their showing the opposite, and having to change his evidence.

212. On 16 May 2011 Creers emailed Mr Ellis to remind him of directors' duties in preparing accounts and asking "how you have satisfied yourselves that the going concern basis of preparation is appropriate, please could you also supply me with all documentation and audit evidence that you have available surrounding the current DEPA funding process, any business plans, cashflow forecasts etc."

213. Mr Ellis emailed Mr Broadbent the next day asking, "shall i just send depa heads of terms ?" Mr Broadbent replies "We haven't actually agreed a deal with DEPA, we are just creating more work by getting into this." In turn, Mr Ellis rep[lies "Yes, shall we just email them a cashflow? If you ping me the one you did for DEPA, I will put on some blurb on operators etc with a timeline plan!!" Mr Broadbent's comment on this is "Not sure we can, they will pick up on the HMRC rebates and start asking a million more questions." Mr Ellis then asks "Shall i just cobble something together pal?" and Mr Broadbent's final comment is "No, they are such a bunch of tossers, we need to think about it. There concern is that they don't think all 4 Directors communicate. We need to start sending copies of board minute meetings and back this up with a cashflow/business plan. Let's discuss at the next board meeting and agree a way forward mate." Mr Ellis simply replies "Okie dokie!"

214. Mr Watkinson pointed out that this exchange of emails took place after the 04/11 period which included a VAT reclaim based on a false DEPA invoice for £1.5m, yet Mr Broadbent comments that no deal had been struck with DEPA and so this needs to be approached carefully lest Creers start asking about the VAT reclaims.

215. On 8 June 2011 Mr Ellis emailed Mr Broadbent to ask "shall we get bev to lay off payments until next rebate lands? Ive covered today and yesterday and with wates payments, im out sir alan! Maybe we should draw £125k a piece and leave an extra £50 in this month" Mr Broadbent replied "Yes mate. Pam [Officer Smith] has asked me to go see her this morning, with the last few months returns. I've got a few hours work to do on them first." Mr Watkinson observed that quite what work Mr Broadbent could be doing on returns that had already been submitted is not explained. Mr Ellis replied "Ok mate, all ok though?" and Mr Broadbent responds "Yes mate, I want to make sure she stays in control and it doesn't get passed to the central team."

216. On 10 July 2011 Mr Broadbent emailed Mr Ellis saying

"Morning pal I've virtually finished the accounts for Creers. Just need to get another file from the office, for November 2009. For the period December 2009 to November 2010, we have £4,156,260 to raise board minute meetings/contracts/invoices for. We need to discuss who we award the contracts to, it needs to be a Company who won't have accounts done by Creers, for this period. This will impact on the accounts significantly, so the increase in site valuation needs to be substantial. We could do with the valuation being dated October 2010."

217. Mr Watkinson described this as a discussion of raising documents for £4.2m of supplies made in a previous period that did not exist. Mr Ellis tried to explain this by saying ""The figure of [£4.1m] was for works that had not already been done and would be for the purposes of providing a figure to the investors." Mr Watkinson says this makes no sense at all. If it was for work that had not already been done, there would be no need to include it in the accounts. This was not providing a figure for investors; it is about providing the accounts documents to Creers. Mr Ellis is integral to the discussion of fabricating documents to support the figures.

218. Mr Watkinson says that we know that in the period December 2009 to November 2010, SLL falsely claimed at least £654,000 of input tax; that required false inputs of £3.3m. The

figure being discussed here would have made that even higher. So not only is Mr Ellis aware that input VAT had been falsely claimed on a massive scale, he assists Mr Broadbent in covering it up. He is aware that the companies to be chosen could not be clients of Creers because if they were, then the auditors would have no difficulty in checking the invoices. Mr Ellis tries to explain this, saying, "I did not understand the phrase in Darren's email which states that 'it needs to be a Company who don't have accounts done by Creers'. ... I was very busy ... happy to let Darren get on with things." Mr Watkinson says that Mr Ellis full well understood what was being said here. This is just the kind of thing that had happened three months before with Bridgepoint; fake invoices ending up in the hands of the auditors led to huge problems.

219. Mr Ellis replies "That's no problem, I'll get Bielby [the person doing the valuation] to date it from then. Company wise we need to have a think...." Mr Ellis tried to explain this saying he did not understand and adding "I understand Creers finalised and signed off on the accounts and therefore I would have thought that they did so properly." As Mr Watkinson pointed out, these accounts were heavily qualified by Creers, who expressed no audit opinion on them.

220. On 27 July 2011 Mr Broadbent emailed Mr Ellis asking, "Mate Could you find the email with the invoice figures please" and Mr Ellis replies "yes, has PB thrown hi dummy oiut?" Mr Watkinson commented that Mr Ellis and Mr Broadbent have an email with the invoice figures on. This has not being disclosed, because (he says) it shows Mr Broadbent and Mr Ellis making up the invoice figures. PB is Mr Borrett. His company, Follybrook, had been named on some of the false invoices. HMRC infer that that is why he "threw his dummy out", because he was unwilling to allow his company to be used in the same way again.

221. On 2 August 2011 Mr Ellis emailed Mr Broadbent (Subject: invoices) asking "Hi, what do we need the invoices to say? Comms or management fees?" Mr Broadbent replied "Room sales commission" and Mr Ellis says "okay dokey".

222. On 4 August 2011 Mr Ellis emailed Mr Chambers with a text attachment and "invoices" spreadsheet. The invoices spreadsheet is not disclosed, but we saw an invoice (with no date, invoice number, or VAT number) from "Skelwith Properties Ltd" (NYPL) to SLL for £145k plus VAT in Flaxby room sales commissions in March 2010. Mr Ellis tried to explain this saying "'I had been asked to chase the room invoices, which I did. There were some room sale invoices that had not yet been raised." Mr Watkinson says that, if that was true, there would be no reason to ask Mr Broadbent, "What do we need the invoices to say?" He would simply have provided an invoice reflecting what the company actually did. Secondly, he did not chase anyone for this; he just wrote it himself. Thirdly, we do not have the spreadsheet, HMRC infer, because it torpedoes Mr Ellis's case if he is found in possession of a spreadsheet of false invoices. Mr Watkinson says that, despite being ordered to do so by the Upper Tribunal, Mr Ellis has not made proper disclosure.

223. On 12 September 2011 Mr Farmer of Creers wrote to Mr Ellis to say that the potential for an audit requirement "is a real concern". He went on to say that "The other main issue is agreeing the inter company accounts between all the Skelwith companies which is causing really tine (sic) consuming problems as the postings are a complete mess". Mr Ellis replied asking what level of property valuation was needed to avoid an audit. He also said that, once the accounts were done, he would need to sit down with Mr Farmer "as we cant have these delays again". Mr Farmer replied observing:

"The problem here is not delays at our end but the quality and timing of the information and records we are getting. The standard of this seems to be getting worse and for each job we are now having to completely re-create

your bookkeeping virtually from scratch as the past things that presented are a total shambles. ... The problems are being exacerbated on Properties and Group as there have been even more posting errors than normal

In terms i going forward I am convinced that you need a good full-time financial controller to oversee the bookkeeping function and ensure that it is prepared on a timely basis. I did suggest a candidate to you and Darren and propose that we pursue this matter as soon as possible – I am happy to sit in on interviews for you to ensure we get the right result.”

224. In May 2012 Mr Broadbent and Mr Ellis were emailed a draft letter by Martin Woodford of Ward Hadaway. The draft letter is addressed to Irwin Mitchell in relation to their client Mrs Nichaila Broadbent. The letter asks Irwin Mitchell to advise Mrs Broadbent to desist certain behaviours of which Mr Broadbent complains. These are described as follows in the draft letter:

“We understand that your client on a number of occasions has made slanderous comments in respect to Mr Broadbent, Mr Ellis and Skelwith.

In particular, we understand that on 5 May 2012 your client was in Linton with some of her friends and made slanderous comments to various third parties relating to Skelwith, Mr Broadbent and also in respect of Mr Ellis.

We understand that Mrs Broadbent went to Linton and made several accusations in various public houses in the village. These accusations were made to various people including business associates of Mr Broadbent and Mr Ellis. Allegations of financial impropriety were made against our clients including allegations of corporate and VAT fraud

...

Further, we understand that your client has slandered Mr Broadbent by alleging to an officer of HMRC that he is defaulting HMRC. Mrs Broadbent has also made allegations of financial impropriety to Mr Broadbent’s bank manager at Coutts.”

225. Mr Broadbent suggests an amendment to refer to “a threat to call an HMRC officer, who is well known to ourselves and the business” and Mr Ellis confirms his agreement with the draft. He then emailed Mr Broadbent to ask “Bloody hell mate, what’s she said to Brian and Pam?!!X” Mr Broadbent replied “She slagged me off to Brian and threatened to call Pam, but she knows nothing and wouldn’t do it”, leading Mr Ellis to observe “Haha mad goat!”

226. Mr Ellis’s evidence on this is that he did not understand Mr Broadbent’s comment. He said “[They’re his] words, not mine. From my perspective, there was nothing for Nicky to know ...” Mr Watkinson says, surely if Mr Ellis he didn’t understand, he would have asked, but he didn’t because, as he knew, there was plenty for Mrs Broadbent to know.

227. On 6 December 2013 Mr Broadbent asked Mr Magnuszewski (a bookkeeper at Skelwith) for the P&L for SGL from 1 June 2012 to 31 May 2013 and asked Mr Ellis “Paul – Is there anything Ewan [the external auditor] needs to be aware of?” Mr Ellis replied that there was nothing he needed to be aware of. Group and Properties were the same as the previous year. Mr Broadbent emailed Mr Ellis to say “Group showed a loss of £14 last year in the P&L. This year it shows £299k profit. The assets stay the same. Shall I reduce the profit to £50k?”

228. On 20 February 2014 Ms Coverdale emailed Mr Ellis attaching the SGL P&L and balance sheet and commenting “Can you please ring me on my mobile so I can discuss some of the figures. Ewan wants me to send the sage to Stewart also. Is this okay? I am not happy

with the figures. The previous is no where near the accounts sent for the last 2 years. Props [Skelwith Properties/NYPL] are even worse.”

229. The attached balance sheet shows £3.766m owed to SLRCL (because its VAT reclaims are paid into the SGL account). Monies are owed by SLRL, SLTKL and £2.8m by Mr Broadbent. Mr Watkinson observed that there was no attempt to hide any of this from Mr Ellis at all.

230. On 24 February 2014 Mr Broadbent sent “Ewan” at Eura Audit UK some different figures. The new draft accounts show a loss of £919 and all the creditor and debtor figures reflecting balances with other associated companies have gone. Mr Watkinson’s comment is that, to Mr Ellis’s knowledge, these accounts have simply been made up. Mr Broadbent provided the amended figures, no questions are asked, and the accounts are amended.

231. On 24 February 2014 Mr Broadbent emailed Mr Ellis to ask “Do you need Props to make money? For cars, asset finance etc?” Mr Ellis replies “Yes mate a little please!” Mr Broadbent (copying Mr Ellis) emails Ewan at Eura Audit 20 minutes later with some new figures for Skelwith Properties Ltd (now NYPL). Eura Audit’s original figures showed a loss of £159k but Mr Broadbent’s new numbers create a profit.

232. Mr Ellis’s comment on this was “[He] meant that [Mr Broadbent] should show profit within the range of what was possible and reasonable to do ... He was ... not asking him to fabricate figures which had no basis in reality. [They] would have been based on and supported by information supplied ... by either Bev or [him]. [He] would have gone through the accounts ... in detail before signing them off ...” Mr Watkinson says that there’s nothing possible or reasonable about simply adding round sums of money to turnover and cost of sales, and removing expenses and interest, as he knew it had taken Mr Broadbent simply 20 minutes to do this. The figures were not supported by anything from Mr Coverdale or Mr Ellis, or real records. He is the sole director of the company. He had connived in its accounts being fabricated and lied about it in his evidence. It shows that he was involved in the preparation of accounts, despite denying it. It shows he was well aware that Mr Broadbent was content to fabricate accounting documents at the drop of a hat. Far from taking care to keep that from him, Mr Broadbent invited him to connive in it and that, in HMRC’s submission, illustrates their wider relationship: perfectly comfortable sharing with each other this kind of conduct. The casual way he and Mr Broadbent did this suggests this to be water off a duck’s back. It shows Mr Ellis to be a man entirely comfortable with acts of serious corporate misconduct and then willing to simply lie about it.

233. On 17 June 2014 Officer Robinson wrote to Mr Broadbent to arrange a couple of VAT visits for SLL: the first to verify the repayment claim for 05/14; and the second to go all the way back to 1 March 2011. Mr Broadbent forwards that to Mr Ellis with a one-word observation (“FUCK!!!”). Mr Ellis’s evidence in his first witness statement is that, although Mr Broadbent appeared worried, he reassured Mr Ellis that everything was under control, he was dealing with it and he had no reason to worry. Mr Watkinson says this is not Mr Broadbent saying everything was in control and he was dealing with it. They both knew that this was the beginning of the end.

234. On the same day Mr Broadbent emails Mr Magnuszewski (copying Mr Ellis) to say:

“Can you do the following now please:

A copy of May return.

Copy of invoices for May.

Then copy invoices from Rouse from previous months to get close to the total figure.

Do a spreadsheet to cover the return figures."

235. Mr Ellis would be aware from this that the May return has gone in and that documents are being created to support it using invoices from previous months. He must have known that this was wrong and he did nothing.

236. Later the same day Mr Broadbent emailed Mr Magnuszewski (copying Mr Ellis) to say "If you are asked, we do not use Sage, after we were advised not to from previous visits."

237. That evening Mr Broadbent emails Mr Ellis to start a discussion about what to do next. He also emailed Terry Moore at BDO (again copying Mr Ellis) as follows:

"A few issues have arisen recently unexpectedly! We have been hit with a VAT assessment on two of the SPV's and have issues with a couple of large creditors.

We are unable to settle these, prior to closing the companies. Can we transfer these with the 'sale' and transfer of the assets?

We also have other HMRC VAT inspections, that we really could do without. We would like to get the companies closed and de-registered ASAP.

Can you provide any advice on this?"

238. The following morning Mr Broadbent (copying Mr Ellis) asked Mr Magnuszewski for the spreadsheet for the SLL May 2014 return, which is sent to Mr Broadbent and Mr Ellis. The spreadsheet shows lots of invoices from the wrong period. 8 invoices from "K Rouse" from periods as far back as August 2013 are included to justify a £505k VAT reclaim. Martin Chambers sent the spreadsheet to HMRC on 20 June.

239. The visiting officer (Officer Bushby) messaged Mr Chambers on 23 June following the cancellation (by Skelwith) of her planned visit and asked for copies of certain invoices, including those from K Rouse as well as other records. She asked, "If these records are now available why was my Friday visit cancelled?" Mr Chambers forwarded Officer Bushby's email to Mr Broadbent, who replied (copying Mr Ellis) "On all the Rouse invoices, please mark approved on different dates in May." Mr Magnuszewski emails to say that this has been done, the Rouse invoices all say "Approved May 2014" and invoices to two other companies ("RH and Poppleton") now say "Invoiced to Leisure". He asks if he should put them together in the manner Officer Bushby asked for and scan it again. Copying Mr Ellis, Mr Broadbent replies "Yes please".

240. Copying Mr Ellis, Mr Broadbent gives Mr Chambers instructions." "Send the invoices to her ASAP. Tell her there was no qualified member of staff available Friday to go through the folders. All our folders are with a third party, who are looking at buying the business. The costs to date are for completion of the 27 hole golf course, pre development costs, Section 278 and 106 works, the highways and A1 link road cost, the main roundabout and hotel development works to foundation level." Mr Watkinson says that this is an attempt to conceal the records from HMRC. Mr Ellis knew that the explanation was not true. He knew again that an employee was being directed to lie to HMRC.

241. On 23 June Officer Bushby emailed Mr Chambers asking for missing information and noting that invoices supplied to her had been addressed to other companies not SLL. Copying Mr Ellis, Mr Broadbent told Mr Chambers to "Tell her all the records are with the 3rd party and have been requested, but could take several weeks to get. The invoices with incorrect names are being invoiced out to the correct Company, when they are up and running." Mr Chambers passed this message on to Officer Bushby. She replied asking for copies of the make-up of the past returns, which she assumed would have been retained on the system.

Copying Mr Ellis, Mr Broadbent tells Mr Chambers to reply to the effect that "The information is on a back up disc, with all of our Company folders. All of these will be returned at the same time." He also tells Mr Chambers how to answer other queries. In his witness statement Mr Ellis described Mr Broadbent's instruction as "somewhat true" as some files from 2012/13 had been supplied to a potential buyer of the business. He said that files were being "continuously exchanged" with this potential buyer's lawyers. His conclusion was that Mr Broadbent "just chose the easiest explanation he could give and said that the files were with a third party which was partially true".

242. On 1 July 2014 Mr Broadbent (copying Mr Ellis) wrote to Terry Moore at BDO asking for further assistance. He told Mr Moore that "[HMRC] are wanting to inspect files from years ago, which we don't have. They were badly damaged, after our storage area was broken into." In his witness statement Mr Ellis confirmed this to be untrue.

243. On 10 July 2014 Mr Broadbent emailed Mr Ellis from a plane with some thoughts on dealing with HMRC. Under "Leisure" he says "I've said it so often, but this is my biggest concern. I'm not convinced they will just accept the folders are not available. The sooner it's closed the better. We will have to see what happens. Advice from BDO will help us decide what we do." Despite these difficulties, he proposes that Mr Ellis should extract £430k and he will take £600k. Mr Ellis replies, Agreed mate to all. Leisure the first closure and get the best advice from BDO."

244. On 14 July 2014, Mr Broadbent (copying Mr Ellis) tells Mr Chambers, to tell HMRC "... all the original records and computer backups have been provided to a third party, who we are negotiating to sell the business assets to." Mr Watkinson commented that within 24 hours, Mr Broadbent has changed the story from records being damaged during a break in to them being with some third party who is trying to buy the companies. Mr Ellis knows that is not true. In his witness statement he said that he did not know why Mr Broadbent was making these excuses.

245. On 15 July 2014 Mr Broadbent (copying Mr Ellis) emailed Mr Moore at BDO to say that [The Keep] files "have been destroyed with the [SLL] files". His story about the SLL files has changed and he is telling HMRC one thing and BDO another.

246. On 17 July 2014 Mr Broadbent emails Mr Magnuszewski, (copying Mr Ellis) asking Mr Magnuszewski to prepare a spreadsheet that matches the SLL VAT returns from 01/11/12 to 31/10/13. Mr Magnuszewski replies that he does not know what content this should have or how to do it. He could do the same as he'd done for The Keep, but "as on Sage there is some invoices missing to the returns and I don't know how to match those two". Mr Watkinson says this is because fake invoices were not recorded on Sage. It shows clearly that Sage was still being used, despite the plan being to tell HMRC it was not.

247. On 17 July David McDonnell at BDO queried the account of the missing files. He says, "In the latest email exchange, HMRC were advised that the business records were currently with a prospective purchaser, but in your summary to me it said these had actually been lost." Mr Broadbent tried to explain that, saying "The records were originally with a potential buyer when we started the communication with them over the visit. At the moment, the office is preparing the records we have to show her."

248. On 22 July 2014 Mr Ellis ends a message to Mr Broadbent by asking "Realize you have plenty on with Hmrc for leisure, what's plan on this mate?" Mr Broadbent replied:

"Honestly - I'm struggling mate. Without Ewan and the office providing the info, there is little we can do, other than stall them. I thought if we could provide the last 2 months folders and the accounts, they might be OK and actually release the money we are owed. She's back in the office today, so

will wait for her response, after she has read my updates and spoken with David. We also have the Keep inspection planned for Thursday, which we can't do, the info is not good enough. I will speak to the local guy today about it and see where we end up.

I haven't slept for weeks now, I am so worried about everything and feel like I'm going to have another breakdown. I wouldn't say this lightly mate or to just get attention. I can't tell you everything that is going on, but it's horrible.

I've been diagnosed with something else recently (not life threatening) which is difficult, I have so many health issues it's getting me down. I have the house which is just a disaster waiting to happen, then I have the biggest problem of money.

I could only take £25k last week, as Artur had paid loads of people I had no idea about.

Rebecca will leave me w/c 11th August for sure, if I don't get the £600k back. The house completes that week and I have taken £600k from Coutts and forged her signature. She is expecting us to be able to finish the house and actually have some money in the bank, but that isn't going to happen. I just wish I had discussed it with her now, but I believed it would be back in time.

I'm not being a drama queen, just trying to be honest.xx"

249. Mr Watkinson observed that Mr Broadbent casually admits to Mr Ellis forging his wife's signature to take £600k from Coutts. Not being shy about sharing obvious wrongdoing with Mr Ellis, yet Mr Ellis claims that he and Mr Broadbent were not close on a personal level.

250. Mr Ellis's comment on this email exchange is that, by this time, his concern was growing, and he was actively chasing Mr Broadbent for an update on the situation and the plan going forward.

251. To further illustrate the closeness between Mr Ellis and Mr Broadbent, Mr Watkinson took us to an email exchange on 2 December 2011 between Mr Ellis and Mr Broadbent, which runs as follows:

Ellis "Put April 21st in diary :))"

Broadbent "April 21st?? When and what?"

Ellis "Wedding maybe !!!!!"

Broadbent "Fuckadoodledo! Jesus, where you thinking?"

Ellis "Maybe 4 seasons met some queer wedding planner mate so funny lol! X"

Broadbent, "Nice. Excited already! X"

Ellis "Yea! You Martin and Marsden ushers :) x"

Broadbent "Jesus, really? Made up x"

Ellis "Of course x"

252. On 22 July 2014 preparations were being made for the HMRC visit. Mr Broadbent emailed Mr Magnuszewski and Mr Ellis asking them to "make sure the last two months files are in the board room please". Mr Magnuszewski asked for instructions: "... some of the invoices ... have Nominal codes on, shall I copy all of this folder now and mark off the [nominal codes] of it also as done with May? Or ... I could copy only those few invoices

(around 20) and leave rest as originals?" Mr Broadbent instructs "Thanks "No originals or nominal codes please". Mr Watkinson says this was done because the nominal codes would reveal that the Sage records still exist and are still being used on the very day of the visit. Again, Mr Ellis is plainly aware that Skelwith employees are being instructed to alter primary records to conceal highly material matters from HMRC. Again, he does nothing. HMRC infer this was because he knew why these extraordinary deceptions had to be carried out. If HMRC found the Sage records they would show a lacuna in the cumulative sum of millions of pounds of missing invoices.

253. On the same day Mr Broadbent asks Mr Magnuszewski (copying in Mr Ellis) if he can "send me a nominal breakdown of everything [SLL] has ever paid" Mr Magnuszewski replies (copying Mr Ellis), "'Please see attached ... some of the big invoices are still missing from previous periods in here [and] in some of the nominal codes its showing payments if they were made directly to nominal code without an invoice. Can you also clarify if you want me to copy the June folder as we did with May one ... [and] also to remove [nominal codes] from it?" The attached printout from the Sage records showed expenditure with a historic cumulative total of £2.1m. HMRC do not know how accurate the Sage printout is, but they consider (given the number of false invoices) that it must be more accurate than the VAT returns or those invoices.

254. On that date there is a further discussion of the year end accounts. Ewan from Eura Audit sent the final accounts for approval as they needed to be filed by the end of July. Copying Mr Ellis, Mr Broadbent replied "They need to match the VAT returns that Artur sent you."

255. In the evening of 22 July Mr Broadbent emails Mr Ellis to say:

"Here are my concerns for tomorrow:

Where are the files?

Why can we not get them back?

Why don't we have any records?

Can we prove where the money has been spent?

Bank statement copies

Contracts for work?"

256. Mr Ellis replied:

"David [from BDO] says he has dealt with lost files before. We say they went to roman house and have been skipped by the demolition contractors which is what we told BDO.

We were moving there office wise but now have an offer on it and are moving elsewhere. Demolition contractors are total idiots!

Any other discrepancies we blame Artur and say BDO are instructed to sort us out?!?! Xx"

257. Mr Broadbent replies:

"Ok, great.

Just nervous mate.

So....

I've been away for past 3 months, due to illness.

Before I went off sick, all the folders were sent to third party potential buyers/investors.

These were then returned to RH [Roman House] and then skipped, etc, etc".

258. So, Mr Watkinson says, the account as to the files being destroyed by a demolition contractor is a fiction created by Mr Ellis and Mr Broadbent, primarily at the instigation of Mr Ellis. In his witness statement, Mr Ellis explains it as follows: "... it is correct that the Skelwith accounting records in paper form were removed by a contractor. However the electronic records were clearly not destroyed ... I do not know if Darren Broadbent was behind this and if he was I do not know how. When I found out about this I was furious. I obtained a letter from the contractors." HMRC were sent an unsigned and undated letter from Geoff Strickland of Trakwork 2013 Ltd addressed to Mr Ellis in which he apologised "for my men disposing of your files" Mr Strickland observed that the room the files were kept in was marked "Do not enter" and kept locked. He observed that "I can only surmise that my men thought they were doing the right thing in not only removing all the files but stripping the room out completely" (He does not explain how his men accessed a locked room)

259. Later that evening Mr Broadbent emailed Mr Chambers to say "I take it the folders have been removed from the offices? I believe she will want to inspect our accounts office!" and Mr Chambers replies, "Will be there early mate to ensure what shouldn't be there isn't." Mr Ellis is copied in on this exchange. In his witness statement Mr Ellis says of this "My understanding of this comment was that Martin would ensure the office was cleared to the extent needed ahead of the inspection to facilitate the inspection. I would not have thought anything more of it."

260. At lunchtime on the day of the inspection (23 July) Mr Broadbent emails Mr Ellis

"Leisure:

If we can agree a figure with one of these 3 potential buyers, then we need a way of closing Leisure very quickly.

My idea as follows:

"One of the creditors, secured or non secured, submits a winding up order. We can blame the non vat refund on this.

We agree a deal with new co, that they pay all secured creditors and pay the balance to an offshore Company.

Our 33% shares in the new co, are held in trust off shore.

If this can work, it closes the HMRC door and deals with any tax implications.

2. We close Keep instantly.

3. Cottages and Raithwaite – Discussed with David and he agrees with me, so we work on that. Although, all the officers are talking to each other, so this could be an issue. We can provide a few years of RWH accounts, as they are okay. We can say these [were] stored at the hotel.

The urgent one is Leisure at the moment."

261. The next day Mr Broadbent messaged Ewan to ask if there was "Any chance of the Leisure accounts today please? They need to match the figures Artur sent you, so we can tidy everything up." Ewan replies: "'The draft accounts I prepared were taken from your Sage trial balance ... which I presume is a summary of all the transactions ...If this is the case, and the VAT returns have been prepared using the same records, then surely the two should be the same ?'" Mr Broadbent replies "We haven't used Sage for the VAT returns for over 6 years, on any Company. We need to show the correct accounts, to show our potential buyers

the true position of our input.” This prompts Ewan to ask “So what use are the Sage trial balances then ??!! This is what I have always used for all the companies!!!” And Mr Broadbent replies, "None at all." Mr Ellis is copied in on this, showing (Mr Watkinson alleges) his knowledge that SLL’s accounts are to be engineered at Mr Broadbent’s instigation to match its VAT returns.

262. The next day Mr Broadbent sends Mr Ellis his thoughts on where they are. He begins by explaining how they can close the Skelwith companies, in particular SLL, before HMRC raise assessments and become a creditor. He says there is "Some real urgent work to do on this." Later, on the topic of accounts, he says, “"Year end accounts -- we can’t file any, as HMRC will want to know where the info came from." And, dealing with emails, he says, “Emails – all Lesure need dumping”. Mr Ellis replies to say “I agree on it all”. Dealing with financial matters, he considers that they should be able to take £900k each (although he does not explain how). He concludes “On Flaxby we can sort a right lump this is the retirement deal xxx” In his witness statement Mr Ellis addresses the "all Leisure emails need dumping" point. he claims his understanding is that they needed to change to a new email address. In the context of what was being discussed, HMRC say that this is simply incredible.

263. On 25 July 2014 Mr Ellis and Mr Broadbent discuss the companies’ accounts. Mr Ellis starts by asking whether Ewan can get filing extensions. Mr Broadbent replies to say he thinks this has been done but he will check. Mr Ellis then asks “"Will Ewan not do what we need mate?" and Mr Broadbent replies "I doubt it mate" Mr Watkinson infers that infer they are prevailing upon the accountant to fabricate more accounting documents that they can use, but they do not think Ewan will comply.

264. On 28 October 2014 Officer Bushby visited SLL. On 23 October Ms Coverdale emails Mr Broadbent (copying Mr Ellis) to say that she had spoken to HMRC, who said that they should contact HMRC to arrange a visit when they have certain information. HMRC had asked whether Ms Coverdale would be at the meeting. She continued “I said I was not sure as I had been called in for 1 day a week on a temporary basis. I can meet with her and play dumb apart from showing her the information unless Martin maybe better. (I was not sure which way to jump)" Mr Broadbent replied, “Arrange to meet her asap, she’s a proper jobs worth!"

265. The day before the meeting, Ms Coverdale messages Mr Ellis, Mr Broadbent and Mr Chambers to say “"... can I please have Martin and yourselves on hand. As I am not supposed to know much any questions out of the ordinary or if she requires more information, I can ring Martin from the boardroom and he can e-mail you both for the answer. I have already explained that neither directors can [attend] but required the submission to be resolved as soon as possible" Mr Ellis replies “"I will be available on email. "We need to get [through this], thank you for this Bev. Hopefully should be straightforward."

SLRL

266. Moving on to SLRL, Mr Watkinson showed us statutory accounts for the company signed by Mr Ellis. He showed us an email exchange in May 2011, where Mr Ellis asks about a list of payments and Mr Broadbent replied “VAT reclaimed on hotel”.

267. On 10 May 2011 Mr Broadbent asked Mr Ellis “Does JM [Mr Moore of Dickinson Dees, a firm of solicitors] have any way of finding out what we have reclaimed?” Mr Ellis replied “I really don’t know, unless he wants to see returns. I think he will be happy with the wates invoices and a spreadsheet from us?" In his second witness statement Mr Ellis says he thought nothing of this question. Mr Watkinson says that the only reason, in his submission, why Mr Broadbent would ask that is if the information to be given to Mr Moore did not match the VAT. Mr Ellis had sent Mr Broadbent a draft letter to Mr Moore summarising the

VAT rebates claimed since their last meeting in December 2010. He told Mr Moore that SLRL had claimed just over £300k VAT, whereas the reclaims were significantly higher. In his witness statement Mr Ellis said "I recall that I was simply providing information to the lawyers based on my understanding of what was correct. I cannot speak to how this relates to the VAT returns ..." Mr Watkinson says that Mr Ellis's understanding must have come from somewhere, but he does not explain where or how. Figures have effectively been made up, in this instance, by him.

268. Mr Watkinson showed us the spreadsheet for SLRL's original VAT return for 04/11. It had false entries for wates (£700k plus VAT) and DEPA (£1.65m plus VAT). As we have seen, the DEPA quotation for supplying furniture at Raithwaite Hall was only £1.25m plus VAT. This VAT return generated a repayment of £498k, which was transferred out to SLL and SLRCL.

269. The same happened in 05/11. The original VAT return spreadsheet shows another £1.65m (plus VAT) invoice from DEPA and two false invoices from Wates adding up to nearly £1m (plus VAT). Of the £503k VAT repayment, £100k is transferred to Mr Ellis's Coutts account and then nearly all of that is transferred on to another account.

270. In period 10/11 there is a similar story. The original SLRL VAT return spreadsheet has four false invoices at the bottom (from PI News, Evolve, Wates and Yoozoom). PI News sold hotel rooms as investment opportunities, so (Mr Watkinson say) if Mr Broadbent is "flying solo", it makes little sense for him to bring to Mr Ellis's attention a £1 million false invoice for matters within his purview. The commission purportedly charged by PI News was way in excess of what would be charged by an ordinary broker. The fees purportedly charged by Evolve, a quantity surveyor exceeded £13m.

271. Mr Watkinson says that the company records for SLRL do not contain any "fake" invoices to back up these claims. It looks as if SLRL just made the numbers up, although it may be that they had fake invoices that were destroyed.

272. On 15 August 2011 Mr Ellis emailed Mr Broadbent asking about cash flow. He says "'Looks good id[sic] run it from October 1. Are HMRC levels ok, not questionable on Hall?" In his witness statement, Mr Ellis says that he recalls the amount appeared high, so he was just double checking that. But his evidence is also that he didn't pay attention to the detail of the work Mr Broadbent did.

273. Turning to his involvement in the SLRL accounts, on 8 September 2011 Mr Ellis emailed Mr Broadbent to ask "Hi mate. do you have any sexy p and l for rwh?" Mr Broadbent replied "No mate, everything I've got shows a huge loss. Green [who, according to Mr Ellis, was preparing the projected income from the hotel] is trying to do a good one". In his witness statement, Mr Ellis said that this related to the profit and loss accounts to show to investors. This was a projection of how the project could perform, not about the past. It outperformed the projections. I wanted to show the investors something positive. Mr Watkinson says that this is all about preparation of false accounts. If Mr Ellis were here, he would ask him how a profit and loss account is a projection.

274. In January 2012 Mr Ellis emailed Ms Coverdale (subject: Management accounts rwh) to say "We need to prepare some management accounts for rwh leisure for 2010, ie: during construction. Can you put something together please? Doesn't need to be accurate." In his witness statement Mr Ellis said that he was chasing the accounts so he could demonstrate what the construction costs would have been. He was trying to demonstrate to the funders what they had spent to try to get more debt which is why he referred to the 2010 accounts even though we were in 2012. They did not need to be accurate; it was just a starting point and then the funders would want more detail which would have been provided later. He also

says that he thinks a person suggesting deliberately false numbers would not have made it clear that the figures are to be rough by saying "doesn't need to be accurate". HMRC say this is flawed. If Mr Ellis wanted to show the construction costs, he could have gone to the filed accounts and then asked for summaries of what was spent on construction.

275. On 30 October 2012 Mr Broadbent emailed Mr Ellis and Ms Coverdale to say "I have now gone through the 12 months accounts for RWH and am now adding the missing invoices, which were in the development folder. How do you propose to deal with the missing invoices and payments to DEPA/Wates etc on Sage?" We were not shown Ms Coverdale's reply. Mr Watkinson's explanation is that Mr Ellis is referring to the false DEPA and Wates invoices. Mr Ellis is therefore aware that SLRL VAT reclaims were not supported by the relevant invoices, and the Sage records didn't support the reclaim.

276. On 5 February 2014 Mr Broadbent messaged Mr Ellis (Subject: exits) to say "Can we get the spreadsheets that show VAT and the dates they were repaid? Sorry mate, under pressure, worrying and once I get the info, have some huge work to do." We were not told what record Mr Broadbent was seemingly preparing, but Mr Watkinson says Mr Ellis must have known of the VAT reclaims or Mr Broadbent would not have made this request.

277. On 24 June 2014 Mr Broadbent emailed Ewan (copying Mr Ellis) to say, "'We are meeting our guys at 1pm, is there any chance of some 'draft' accounts to show them, that show a good profit? We can then review them and file the accurate accounts.'" Ewan replied, "I must be going mad !!! I have already done these and sent you a draft with a series of questions ..." He attached a further copy (of the draft P&L for the year to 30 September 2013), showing a loss of £612k. Mr Broadbent replied (copying Mr Ellis) asking "'Ewan. Can you adjust the costs, to show a profit please.'" On 25 June Mr Ellis emailed Ewan asking, "Can you send me these with the profit please?" The next set of draft accounts we saw showed a profit of £47k. Again, says Mr Watkinson, far from not having any involvement in the company accounts, Mr Ellis has connived in their fabrication. In his witness statement Mr Ellis said he cannot recall whether he read the email from Mr Broadbent, but Mr Watkinson says he clearly did as he asked for the accounts to show a profit. He also said that these accounts were draft accounts, mainly projections to show to investors, which have a very different nature and purpose to actual accounts to be filed with Companies House. We find the reference to "projections" to be odd given that the accounts are for a period to 30 September 2013 and this discussion was taking place in June 2014.

278. We saw an email exchange in April 2013 between Mr Broadbent and Frances Bailey of Lake Legal. He told her, "'Due to the amount I have drawn out of the business, I am liable to a very hefty tax penalty and if things go wrong the HMRC can come for me personally. Therefore, I have agreed with Paul Ellis that he will allocate all my DLA payments, to his DLA account, which will still be in credit. This will mean I have no personal liability to the businesses ... there will [be] no tax for me to pay, which ultimately would have to be paid from the business which cannot afford it at this time. I have agreed with Paul, that all monies he has loaned to me and have been allocated to his DLA, will be repaid with minimal interest ...'" Mr Broadbent forwarded this to Mr Ellis commenting that this would result in both DLAs being in credit and Mr Ellis replies "Great. Then right off my dla account. Surely this makes sense." Mr Watkinson says that Mr Ellis was helping Mr Broadbent to avoid his liabilities to HMRC by writing off his DLA.

279. The directors' loan account balances were used to justify further borrowings from Coutts. We saw a letter from Eura Audit dated 17 May 2013 to Coutts listing Mr Broadbent's and Mr Ellis's directors loan account credit balances. In Mr Ellis's case the suggested credit balances (as at 31 August 2012) are SLRCL £1.255m, SLRL £550k, SLL

£980k, Ingenta Aspire Ltd £525k and NYPL £150k. Mr Roseff's analysis for 2011/12 is very different; in particular, he has Mr Ellis introducing only £30.5k through SLRL's bank account. Mr Watkinson says that either these figures or Mr Roseff's evidence have been made up.

SLRCL

280. Turning to SLRCL, we again saw the statutory accounts signed by Mr Ellis. We also looked at some additional correspondence. On 3 March 2014 Mr Broadbent emailed Mr Ellis (Subject: Cashflow) and said,

"Looking at the cash flow and I think, the HMRC are going to claw back £485k over the next few months, on Cottages and Hall. Hopefully they will accept that Bev is useless and has fucked up and just charge us a penalty. Although when they see the state of the figures, they might look further into other Companies, who knows."

Mr Watkinson says that this refers to the common knowledge between Mr Broadbent and Mr Ellis that the VAT reclaims are false. Mr Broadbent referred to creditors who needed to be paid and asked for Mr Ellis's thoughts. He replied without referring to the VAT problem but commenting on the attitude of the creditors.

281. We looked at an exchange of emails between Mr Ellis, Mr Broadbent, Mr Magnuszewski and someone called Russ. This took place in the context of HMRC launching a VAT investigation of Arete, Russ's company and one of Skelwith's suppliers.

282. On 27 May 2014 Mr Ellis asked Russ if he could look at his early invoices to one of the Skelwith companies "... and mark them as unpaid in March 2014, yet to be approved by us, due to confusion over which Company you were supposed to invoice. That you were expecting an update from us this month.... As long as we say the same thing, then there should be no confusion."

283. On 11 June Mr Broadbent emailed Mr Magnuszewski, Mr Ellis and Russ to say that he could not make an anticipated meeting and continued "... Mega important that the HMRC info that WE submitted for Cottages in April, matches the invoices that Arête provide to HMRC." In reply Mr Magnuszewski pointed to an invoice from Arte for £714.31 whereas SLRCL had claimed £112,939.20 and asked, "what action do we need to take here???"

284. Mr Ellis explained in his witness statement that, as well as working for Skelwith, Russ was building Mr Broadbent's new house and the two were very close. He also said that he saw nothing out of the ordinary in Mr Broadbent and Russ speaking about the works completed and apparently corresponding invoices. Mr Watkinson says that Mr Ellis is fully aware a supplier is being asked to falsify invoices to support SLRCL's VAT returns so that when HMRC inspect Arete, they won't discover what has happened.

285. On 18 June 2014 Officer Jones emailed Mr Broadbent to say (among other things) that, having only considered sales, he already has assessments of £351k for SLRCL and £544k for SLRL and now wants to arrange to review the purchases in July 2014. Mr Broadbent forwards Officer Jones's email to Mr Ellis and comments "This is his reply. The shit info I'm being provided is just causing far more confusion. He now wants to do an inspection on purchases!! Totally fucked off with this now. Artur is useless and fucking Ewan has let us down big time."

286. On 28 October 2014 Ewan sent Mr Broadbent (copying Mr Ellis) draft SLRCL accounts for 2013. Mr Broadbent replied (copying Mr Ellis) to ask, "are we not putting the city gate debt in?" Ewan replied "I didn't know it had one!!?? If so, where did the monies go?" Mr Broadbent explained

"There is a slim chance that the HMRC may disallow a large proportion of the vat reclaimed on the construction of the cottages. In order to protect ourselves personally, we need to create a debt owed to Cottages, when we sell the assets this year. If the HMRC come back to us, we need to be able we were solvent and any potential debt, can be repaid. In order to do this, we thought if we create a debt to Cottages, owed by Citygate, this would cover the balance sheet. We can do this after these accounts are filed."

287. Mr Watkinson says that Mr Broadbent and Mr Ellis are trying to create a fabricated accounting position for SLRCL so that it looks solvent if HMRC assess it, to show a non-existent debt is what they're trying to do here.

288. SLRCL reclaimed £5.187m of VAT in a year. Net expenditure of £26m would be needed to create those kind of repayments in less than a year. Mr Watkinson says that Mr Ellis would have understood SLRCL had not incurred anything like that expenditure.

SLLHL

289. In relation to SLLHL, Mr Ellis was copied into an email exchange on 25 July 2013, where Ms Coverdale says that for the VAT period 1/11/2012 to 31/1/2013 "I am missing invoices to the amount of £100000. Do you want me to send the Sage backup and the missing invoices later." This, Mr Watkinson says, shows Mr Ellis being made aware of the disconnect between Sage and the VAT invoices and the lack of invoices to support the VAT returns.

290. Mr Ellis was copied to internal emails attaching monthly Sage produced VAT Returns and underlying spreadsheets for SLLHL:

(1) VAT period 07/13 showing input tax of £231.27 - £75,237 was in fact claimed. Mr Ellis was also copied to internal emails confirming that there was a £75k cheque from HMRC for SLLHL banked on 22 August 2013; and

(2) VAT period 01/14 showing input tax of £3,205.64 - £83,475 was in fact claimed.

SLTKL

291. SLTKL claimed inputs of £45m and input tax reclaims of £8.9m, including for periods 08/12 to 12/12 when it was said to be dormant. We were shown an email from Tom Roberts at Portman (an asset finance company) to Mr Magnuszewski dated 10 July 2013 in which he asks "... why there are consistent, large payments from HMRC going into the Keep bank account? Are these payments going to continue going forward, if so for how long? Why is the Keep owed so much by HMRC?" This email is forwarded to Mr Ellis and Ms Coverdale. We do not have the reply, but Mr Watkinson said that there was no honest answer Mr Ellis could give.

292. On 21 September 2011 Mr Ellis sent a cost plan for The Keep to Carly Jsackson at Dickinson Dees (the financier's lawyers). It estimated expenditure at £4.5m. Mr Watkinson says that, when these large repayments were brought to Mr Ellis's attention, he must have looked at them. He must have known they were out of proportion to any true expenditure by SLTKL, and he did nothing, because he knew full well, like the other shell companies, it was making false VAT reclaims. Mr Ellis's comment here is that the draft estimate was far exceeded.

293. On 15 April 2014 Mr Broadbent emails Mr Ellis, Mr Chambers and Mr Magnuszewski (Subject: HMRC VAT inspection – The Keep). The third entry is "Missing Invoices for each month -- Can we all meet up ASAP, to discuss, I have a plan for this."

294. On 15 April 2014 Mr Broadbent copied Mr Ellis in on an email to SLTLK's accountants Eura Audit, requesting urgent assistance with a VAT inspection for SLTKL.

295. On 10 May 2014 Mr Broadbent sent Ewan an email (copying Mr Ellis) saying this about SLTKL

"Draft accounts required, matching HMRC VAT returns. What dates do the first set of accounts cover? I will get the figures ready for you. This Company needs de registering for VAT from 31 July and needs closing 1st August. There are no assets and no creditors."

296. Mr Broadbent asked Mr Magnuszewski (copying in Mr Ellis and Ewan) to provide Ewan with SLTKL "figures, as per the HMRC returns, up to end of 2013." Mr Broadbent then emailed Mr Magnuszewski and Mr Ellis, saying:

"Artur Can you please try arrange the following, with the assistance of Ewan and us: Draft accounts - as per my email to Ewan, these need to match the VAT returns. Missing Invoices for each month - Can we all meet up ASAP, to discuss, I have a plan for this. Bank Statements - This will tie in with the missing invoices. Sales Invoices/Credits - Need to match the returns. VAT registration Certificate - Copy required."

He says they will need management accounts up to date and asks if these can be provided from Sage. Mr Magnuszewski replies:

"Please see attached, is this what you require, or shall I take off monthly submission and just give him totals? Ewan had our Sage backup back in November I think, when Bev has send it to him on your request, it included big invoices from Depa, Youzoom, Evolve etc, as those are on our Sage, so not sure if it will give him correct figures, it will also show huge vat liability due to some invoices missing? Please advise, should I print off what we have on sage and show you first?"

The attachments showed input tax claimed of £8.35m on purchases of £42.32m and output tax of £8.32m. Mr Ellis has now stated SLTKL's expenditure as being approximately £7m. On Mr Ellis's figure, SLTKL's inputs were overstated by £35m with input tax of £6.9m overclaimed. Mr Ellis must have known this at the time.

297. On 21/22 May Mr Broadbent and Ewan exchanged emails about the figures for SLTKL. Mr Ellis was copied in. Mr Broadbent says, "Purchase costs of c£42m seem correct." And that "'The Keep developed a massive site on the Raithwaite Estate. We have paid out £50m in development costs ... etc". Mr Watkinson says that Mr Ellis knew this was all lies but did nothing.

298. Further emails showing that Mr Ellis and Mr Broadbent took money out of the companies funded by their VAT reclaims include one on 25 October 2011, when Mr Broadbent emailed Mr Ellis saying "Mint. As soon as the asset finance for the Phantom HMRC for Leisure hit the account, we can have the following cheques: £312,500 [for] you. £587,500 [for] me" Mr Ellis replies "That's great". On 19 August 2011 Mr Ellis emails Mr Broadbent to confirm that ACL has paid him £25k. The subject at the top of the message reads "done, lets get this vat in im skint too now haha xx" Mr Ellis addresses this in his witness statement. He says that the email confirms the £25k payment and then adds, "The previous cashflow would have shown VAT due to be reclaimed and Darren would have told me that Aspire Citygate (which I was personally putting funds into) would be repaid from the VAT and I was just referring to Darren's explanation of VAT that was coming in."

299. HMRC say that, whilst they did not, in the absence of business records, assess SLTKL for VAT, its own false claims of input tax remain relevant to this appeal as part of the picture

showing systematic false claims to input tax made by the Skelwith companies, that were attributable to Mr Ellis and Mr Broadbent.

300. Mr Ellis was also copied to contemporaneous internal emails attaching monthly Sage produced VAT Returns and underlying spreadsheets for:

- (1) SLTKL's 01/14 period showing input tax of just £4,894.66 - £85,567 was in fact claimed;
- (2) SLTKL's 02/14 period showing input tax of just £571.65 - £398,057 was in fact claimed; and
- (3) SLTKL's 03/14 period showing input tax of just £628.03 - £347,628 was in fact claimed.

301. On 9 May 2014 Mr Ellis was copied to an internal email attaching spreadsheets for SLTKL's VAT returns for VAT periods from 1 June 2012 to 31 March 2014. The total input tax on the purchase invoices from the spreadsheets is £2,445,863, which is some £5,872,287 less than the £8,318,150 claimed on the STKL VAT returns.

302. Mr Watkinson says that Mr Ellis was not only aware of the large VAT reclaims being made by SLTKL that were out all proportion to its real expenditure, he was also copied to the emails arranging plans to falsify SLTKL's statutory accounts to match its VAT returns, and for false invoice references to be created to support the reclaims.

303. Mr Ellis was therefore to be made party to the plan for the "missing" SLTKL invoices, which was presumably to do what the other Skelwith companies had done: fabricate either invoices or invoice references. Mr Ellis was then copied to similar ensuing correspondence.

304. When Eura Audit provided the draft accounts to Mr Broadbent and Mr Ellis, Mr Broadbent asked Martin Chambers: "Can you remove draft from these on that new software? X" The plain intention, Mr Watkinson says, was to pass off the draft as finalised accounts.

SLLHL

305. Similarly, Mr Watkinson says, Mr Ellis also knew that there were no invoices to support much of SLLHL's VAT reclaims. On 25 July 2013 Mr Ellis was copied in to an email from Ms. Coverdale about SLLHL which said: "I have looked at the sage to 30/11/2012. VAT underclaimed to 31/10/2012 was 928.72. For period 1/11/2012 to 31/1/2013 I am missing invoices to the amount of £100,000. Do you want me to send the Sage back up and the missing invoices later". Mr Broadbent replied "yes please".

The COP9 Investigation

306. HMRC wrote to Mr Ellis on 31 October 2014 to tell him that they had reason to suspect he had committed tax fraud and to explain how they proposed to carry out their investigation. On 18 December 2014 Mr Ellis accepted HMRC's offer of a contract disclosure facility (CDF) and set out the tax losses he admitted causing. These include "Invoices have been raised for services between associated companies, with VAT input tax being claimed but the output tax not accounted for". The companies involved are listed: SLL, SLLKL, SLRCL, SLRL, SLTKL.

307. Subsequently, in his witness statement, he said that in hindsight, he should not have signed any COP 9 disclosure, as he was not actually aware of any deliberate conduct. He said he did this to stop HMRC starting a criminal investigation, which would have been disastrous at the time, irrespective of his avowed innocence. He said that he was under the impression that a criminal investigation would automatically follow if he did not sign the questionnaire.

308. On 28 October 2015 Mr Broadbent emailed Mr Ellis (in the aftermath of his assault). In addition to asking Mr Ellis if he could give him the names of his attackers (who had seemingly bumped into a mutual acquaintance called Lee and admitted what they had done), he made these comments:

“Fee has text me, he says your doing your own thing, thanks, that’s great timing mate. Not sure I deserve that, given none of the Companies would be in business without me. But, that’s your call and I have no intention of finding out why.

Citygate – You need o repay Debs, you and I personally guaranteed she would be paid and it won’t go away. I’m not seeing her suffer because of the lies and deceit that go on. She’s on the list to be paid and will be paid.

I’m not being your scapegoat in this, it might be say for you to blame me, but you and I know the real truth.”

Discussion of the PLN Appeal

309. The first point to making relation to the PLN is that it is not disputed that a very substantial VAT fraud has been perpetrated here. HMRC has assessed the three companies concerned to over £37.6m of wrongly reclaimed VAT. Mr Ellis does not deny that the companies substantially overclaimed input tax; in his first witness statement, he estimates the companies’ real expenditure and our calculation of the wrongly claimed VAT based on his numbers is that it is not less than £39m. Mr Ellis does not suggest that these wrongful claims were anything other than quite deliberate acts, although he says they were carried out by or at the behest of Mr Broadbent and he was not involved in them.

310. In his grounds of appeal Mr Ellis asserted that the penalties were incorrect for two reasons. The first was that the penalties were based on incorrectly calculated VAT liabilities. He said that the VAT liabilities asserted by HMRC failed to take account of all the VAT costs incurred by the various businesses.

311. We have seen that, with the assistance of his mother, Mr Ellis reviewed the VAT records of the companies available to him and has a view on the amount of input tax that the companies were entitled to claim. HMRC have also explained how they calculated the companies’ VAT liabilities, primarily by relying on the Craggs Spreadsheets. Given the destruction of a lot of the relevant corporate records, the material available to HMRC to calculate the companies’ VAT liabilities is clearly incomplete. That notwithstanding, they considered that they were able to make best judgment assessments in relation to the three companies in question.

312. Mr Ellis has not suggested that the assessments did not meet the best judgement threshold. The burden of proof is, therefore, on Mr Ellis to show that these VAT liabilities were incorrectly calculated by HMRC. We are not sure whether Mr Ellis continues to maintain that HMRC’s calculation of potential lost revenue, on which the penalty calculation is based, is wrong. Even if he does still assert that HMRC did not calculate the VAT liabilities of the companies correctly, his witness statements do not contain any clear account of where he thinks that HMRC’s calculations have gone wrong, nor does he produce evidence to show why those calculations are not right. Moreover, in his first witness statement, his calculation of the three companies’ correct levels of expenditure is not far removed from HMRC’s. In our judgment, he has failed to discharge the burden of proof when it comes to showing that HMRC’s calculations are wrong and therefore we consider that the amounts of VAT assessed, on which the penalties were calculated, are correct.

313. Secondly, Mr Ellis says that the penalties were incorrect because the penalty percentages are too high. He says that the percentages do not fully reflect the cooperation

which the various companies gave, so far as they were able to once they went into insolvency proceedings. Mr Ellis says that he understands that the liquidators of SLL have cooperated with HMRC enquiries and further mitigation for cooperation and disclosure should be due. He says that, to the extent there has been any lack of cooperation, that is beyond his control, and he should not suffer on that account. He says that the penalty percentages in the calculation of the penalties should be reduced or a special reduction should be made in his case pursuant paragraph 11 of Schedule 24. In any event, he says that HMRC are wrong to apply different penalty percentages to different companies, given that HMRC describe the taxpayer behaviours in the same terms for all of the companies.

314. Each of the three penalty assessments is accompanied by a letter explaining how the penalty has been calculated. In each case, HMRC explain how they have calculated the penalty reduction. So, with SLL, the penalty range for deliberate and concealed inaccuracies of 50% to 100% potential lost revenue ("PLR") was reduced to reflect the quality of disclosure provided by SLL. Only limited access to records was given prior to liquidation (15% reduction afforded), no active help was provided beyond the provision of spreadsheets (20% reduction afforded), and no attempts were made to reconstruct prime records (15% reduction afforded). The penalty was calculated at 75% of PLR.

315. For SLRL the penalty range was 50% to 100% PLR, as the inaccuracies were deliberate and concealed and the disclosure was prompted. Reductions were afforded for telling (15%), helping (25%) and giving (20%) to reflect the level of co-operation in quantifying the PLR. Unlike for SLL, prime records were passed to administrators for the purposes of quantification, which included an analysis of bank accounts. The lower penalty assessment (70% of PLR) reflects the additional assistance given by the administrators.

316. For SLRCL the penalty was calculated as 82.5% of PLR. The penalty range was 50% to 100% PLR, as the inaccuracies were deliberate and concealed and the disclosure was prompted. Only small reductions were afforded for telling (10%), helping (15%) and giving (10%) because no disclosure has ever been made in respect of SLRCL, and only one period's records were provided prior to liquidation.

317. As with the calculation of the underlying VAT assessments, Mr Ellis has asserted that the penalty calculations are incorrect but not explained (still less evidenced) where he believes HMRC have gone wrong in their calculations, which appear to us to have been carried out in a careful, thoughtful way paying due regard to the different behaviours of the companies. HMRC have satisfied us that their penalty calculations are correct.

318. We should make it clear here that calculating a penalty and attributing a penalty which has been calculated to directors are quite separate matters. The level of reduction in a penalty for disclosure is determined by asking whether the person liable to the penalty has made a disclosure and, if so, what the quality of that disclosure is; paragraph 10, Schedule 24. The question of disclosure by the company in question is what is relevant to the calculation of the penalty (which is the company's penalty) even though a director to whom the penalty is wholly or partly attributed had nothing to do with the disclosure process and did not (or could not) influence it. Similarly, the question whether "special circumstances" justify a reduction under paragraph 11 of Schedule 24 is a factor in calculating the penalty, not in deciding whether to attribute the penalty to a company officer.

319. Once a penalty for a deliberate inaccuracy has been calculated, the next question is to ask whether the penalty should be attributed (in whole or part) to an officer of the company under paragraph 19 of Schedule 24.

320. We were not taken to any authority on the question of when an inaccuracy is attributable to an officer and, if it is, when and how a penalty should be divided between the

officers to whom it is attributable. Officer Reilly referred to two factors, the extent to which a director has benefitted (or tried to benefit) personally and whether the company is, or is likely to become, insolvent. This reflects the guidance at paragraph CH406200 of HMRC's Compliance Handbook.

321. A company officer can only be made liable for all or part of a penalty for a deliberate inaccuracy if the inaccuracy is attributable to the officer. The Oxford English Dictionary defines "attributable" as "capable of being attributed or ascribed, *esp.* as owing to, produced by" and "to attribute" as "to ascribe, impute, or refer, as an effect *to* the cause; to reckon as a consequence of". For our purposes, we consider that an inaccuracy can be attributed to an officer if that officer brought the inaccuracy about. We also consider that an inaccuracy is equally capable of being attributed or ascribed to an officer if that officer could, and should, have prevented it but failed to do so. It is in that context that the duties imposed on directors by CA 2006 and the common law are relevant. We have seen that directors are required to exercise reasonable care, skill and diligence, and to exercise independent judgment. They must also to ensure that the companies comply with their duty to keep adequate accounting records, not least so that they can file accounts which comply with the requirements of CA 2006

322. The fact that Mr Ellis did not himself physically file the VAT returns does not mean that the deliberate inaccuracies in them were not attributable to him. If Mr Ellis either knew that SLL, SLRL and SLRCL were deliberately making false VAT reclaims and allowed (or worse, encouraged) that to continue or if he should have realised that this was going on and put a stop to it, those inaccuracies would be as much attributable to Mr Ellis as they were to Mr Broadbent.

323. Mr Ellis says that the deliberate inaccuracies of the companies are not "attributable" to him. He says that he was not involved in VAT matters in any detail, nor was he involved in the financial affairs/conduct of the Skelwith businesses, so that he must have known about the VAT irregularities. Whilst he was involved in the financial affairs of the businesses, to the extent that he helped to get funding in place, he says that this did not stretch in any way to the filing or preparation of the VAT returns.

324. We do not agree with Mr Ellis's position at all. The documents we have reviewed point to a very different conclusion, that Mr Ellis was intimately involved in in all the financial (funding, banking, accounting and audit and VAT) aspects of the Skelwith companies, that he knew that false VAT reclaims were being made and that he was actively involved both in the plan to do so and then to conceal the false reclaims using false records, and that he benefitted from those false VAT reclaims. He was a positive actor in bringing about those false VAT reclaims.

325. At [93], we explained the approach we proposed to take to the evidence. The authorities make the importance of contemporary documentary evidence clear, both as a general matter and when we are dealing with events which took place such a long time ago or with the credibility of an important witness (particularly one who has declined to attend for cross examination). In circumstances where it is not possible to test Mr Ellis's evidence by cross examination, testing it by reference to contemporary documentary evidence is even more important.

326. As we have already observed, the documentary evidence is far from complete, not least because so much of it was destroyed by Mr Ellis and Mr Broadbent. We are, therefore, left to extrapolate from the documentary evidence that has been recovered and disclosed. Given our finding below that Mr Ellis and Mr Broadbent are responsible for the disappearance of so much documentary material, we consider that it is open to us to infer that, if it had been

produced, this material would also have told against Mr Ellis, in other words, that the material they destroyed would have demonstrated that the pattern of behaviour shown by the extant material we have discussed continued throughout the period we are concerned with and applied to their dealings in relation to all relevant companies throughout the period we are concerned with.

327. The documentary evidence provides more than just a prima facie “case to answer”. The documentation supports (and only supports) a narrative that the Skelwith companies were deliberately making false VAT reclaims on a gigantic scale over a prolonged period, that Mr Ellis was a key participant in these activities and, whilst he may not have prepared false invoices himself or prepared and lodged the dishonest VAT returns, he knew what was going on and was actively involved in taking steps to prevent HMRC, external investors or the advisers and the companies’ auditors discovering the fraud at the heart of the companies’ activities.

328. We consider that it is open to us to infer, from the failure of Mr Ellis to attend for cross examination, that Mr Ellis does not have a good answer to the story told by the documentation which he eventually disclosed. He attempted to comment on the documentation in his second witness statement, but his comments do nothing to counter the clear picture the documents paint. He was a director of the companies we are concerned with, and the documentary evidence shows how important his role was in the companies’ VAT reclaims. Mr Ellis has given no good reason for his failure to attend to be cross examined. The documentary evidence displays far more than a weak prima facie case. Even without Mr Ellis’s absence, the scales were already tipped in HMRC’s favour by the contemporary documentary evidence. His absence, and the inferences to be drawn from it, have further strengthened HMRC’s position. We are sure about our findings of fact.

329. Turning briefly to the Appellants’ other witnesses relevant to the PLN appeal, Mr Corr, Mr Borrett and Mr Chambers, we do not derive a great deal from their evidence, which is largely an account of their, quite negative, views of Mr Broadbent and their description of the respective roles played by Mr Broadbent and Mr Elliss. Their evidence on the latter topic is broadly along the same lines as Mr Elliss’s evidence but does not add anything to it and certainly does not engage with detail, in particular whether (and if so on what basis) their belief that Mr Broadbent was running the financial (including VAT) affairs of the companies means that Mr Ellis was unaware of and uninvolved in the VAT fraud, or with the dissonance between Mr Elliss’s narrative in his witness statements and the story the documents tell. They did not attend for cross examination, so it was impossible to test their accounts (which Mr Watkinson was very clear that he wanted to do).

330. The failure of all three witnesses to attend for cross examination is particularly acute as all three are to some extent tainted witnesses. Mr Borrett would seem (from Mr Ellis’s evidence) to have been involved in the false VAT claims at least to a modest extent in the period before he left the business. Mr Chambers obeyed Mr Broadbent’s instructions to take actions which appear less than straightforward and honest. Mr Corr was found by the Financial Conduct Authority to have acted without integrity between August 2007 and February 2009, when he was the Finance Director of Cattles Limited, and in consequence not to be a fit and proper person to perform regulated activities. He agreed in February 2013 to be excluded from the Institute of Chartered Accountants of Scotland (“ICAS”) for 8 years. He was working at the Skelwith companies in the early years of this exclusion. He did not mention any of this in his witness statement; indeed, he claimed (in his witness statement dated 24 January 2020) to be a member of ICAS and to have been a chartered accountant throughout his professional career.

331. Although we have read the witness statements of these three witnesses, we have placed no weight on their evidence.

332. We set out below our findings of fact. These are based on the documentary evidence we have reviewed. We do not consider that there would be much benefit in our repeating our summary and discussion of the relevant pieces of evidence. So, against each finding of fact we identify the paragraphs in this decision where we have outlined the documentary evidence on which we base our finding, and we make additional comments only where necessary. Our findings of fact are:

(1) Mr Ellis had a close personal relationship with Mr Broadbent. They were perfectly happy to tell each other of wrongdoing, and the familiar tone of their emails demonstrates this close personal relationship. 225, 248, 251

(2) Mr Ellis was well aware of the financial position of the Skelwith companies. He received large amounts of financial information and had access to the companies' bank accounts and used that access. He was a point of contact for the bank when it wanted to write important letters. 192-194; 197-201. The sheer volume of material referred to at [202] makes it impossible to accept Mr Ellis's statement that he was not abreast of the companies' finances.

(3) Mr Ellis knew that large amounts of money were being paid into the companies' bank accounts as a result of the unjustified VAT reclaims they had made. 206-209

(4) Mr Ellis knew that those VAT reclaims bore no relationship to the actual expenditure incurred by the companies and that the companies were deliberately making false VAT reclaims. 179, 195, 196, 206, 220, 267, 289, 290, 291, 296.

(5) Mr Ellis either produced, or was aware that Mr Broadbent was producing, false invoices to justify some of the dishonest VAT reclaims. 160-162, 164-166, 172-180, 184, 210-211, 216-218, 220-222, 270, 275, 283. We find it particularly telling that, whilst a variety of different company details are given, where there is an addressee name it is almost invariably Mr Ellis. Three of his own companies have been used as false invoice providers and a large number of the invoices are for room sales commission, the part of the business Mr Ellis oversaw and had intimate knowledge of. The Bridgepoint invoice discussed at [166] was personally addressed to Mr Ellis. We do not consider that Mr Broadbent would have generated invoices with these characteristics if Mr Ellis was not aware of what he was doing. The risk of detection would otherwise be too high.

(6) Mr Ellis and Mr Broadbent destroyed the records of the Skelwith companies to prevent HMRC being able to review them. 241-242, 244-245, 247, 256-258. The letter Mr Ellis procured purporting to explain the destruction of the records is particularly interesting. The supposed author recounts that the documents were kept in a room marked "Do not enter" and kept locked but fails to explain how his staff accessed a locked room and why they then decided to dispose of its contents despite the room being locked and marked "Do not enter". The account is wholly implausible.

(7) Mr Ellis and Mr Broadbent conspired to provide false information to the auditors of the Skelwith companies to get them to approve statutory accounts which supported the fraudulent VAT returns. 210, 213-214, 216-217, 219, 227-232, 254, 261, 263, 277, 286, 296-297.

(8) Mr Ellis and Mr Broadbent conspired to procure Skelwith employees to give false accounts to HMRC. 234-236, 239-241, 246, 252-253, 259, 264-265, 274.

(9) Mr Ellis took substantial sums of money out of the Skelwith companies knowing that those amounts had been generated by dishonest VAT reclaims. 206, 208, 209, 243, 262, 298.

(10) Mr Ellis gave incorrect information to investors to prevent them looking closely at the companies' VAT affairs. 267, 291-292.

(11) Mr Ellis and Mr Broadbent were "in it together". Mr Ellis was not Mr Broadbent's innocent dupe; he was an active and willing participant in very serious wrongdoing. 233, 243, 248, 278, 308.

333. In the light of these findings of fact, we hold that the deliberate inaccuracies in the VAT returns we are concerned with were attributable to Mr Ellis.

334. We have seen that HMRC's policy appears to be only to attribute a penalty to company officers where they have personally benefitted (where the attribution reflects the level of individual benefit) or where there is a real risk of insolvency on the part of the company concerned. It is not immediately obvious to us where the authority for this practice can be found, nor is it obvious to us why a director to whom a deliberate inaccuracy can be attributed should not as a general rule be liable to pay all or part of the company's penalty if the company does not pay it itself. However, it was not suggested to us that HMRC's precondition was not met, and given the financial state of the three companies concerned we agree that it would have been, or, if it was not, that this was a basis on which Mr Ellis could challenge the PLNs before us.

335. Mr Ellis's appeal against the PLNs is dismissed.

THE INCOME TAX/NIC APPEALS

336. By way of introduction, in the tax years 2001/2 to 2015/16 Mr Ellis's total declared income was £1.071m, averaging £71k gross and £53k net per annum. Mr Ellis's declared total income by tax year was as follows:

- | | |
|------|--|
| (1) | 2002 – gross £34,688.00 – net £29,965.54 |
| (2) | 2003 – gross £40,448.00 – net £31,727.20 |
| (3) | 2004 – gross £44,785.00 – net £34,442.20 |
| (4) | 2005 - gross £45,813.00 – net £34,825.40 |
| (5) | 2006 – gross £49,469.00 – net £37,324.60 |
| (6) | 2007 – gross £84,199.00 – net £57,355.21 |
| (7) | 2008 – gross £88,925.00 – net £61,940.60 |
| (8) | 2009 – gross £87,012.00 – net £61,570.80 |
| (9) | 2010 - gross £158,943.00 – net £115,336.37 |
| (10) | 2011 - gross £115,600.00 – net £84,444.51 |
| (11) | 2012 - gross £90,409.00 - net £70,398.18 |
| (12) | 2013 – gross £11,737.00 - net £11,359.38 |
| (13) | 2014 – gross £38,999.00 – net £33,087.01 |
| (14) | 2015 – gross £96,000.00 – net £67,973.00 |
| (15) | 2016 - gross £84,000.00 – net £60,856.60. |

337. HMRC have identified amounts of money (set out earlier in this decision) paid by the various companies to Mr Ellis. These amounts comprise only monies paid directly to Mr Ellis. They do not include amounts paid to other entities which may in due course have found their way to Mr Ellis.

338. The direct tax appeals of Mr Ellis and NYPL turn primarily on the answer to the question whether these amounts are earnings (as HMRC say they are) or loans (as Mr Ellis says they are), and it is to the parties' positions on that question that we now turn.

HMRC's position: the amounts withdrawn were earnings

339. HMRC point to the following as indicators that the amounts withdrawn are earnings:

- (1) Although, for several of the companies, in financial statements for years prior to the tax years which are the subject of Mr Ellis' direct tax appeal, the financial statements do record directors' loans made to/by Mr Ellis, there is no record in any of the financial statements of the companies for the relevant years of any director's loan account.
- (2) None of the amounts were treated as loans to participators, with corresponding section 455 Corporation Tax Act 2010 ("CTA 2010") charges.
- (3) There is no reference to any such loans or similar benefits in the corporation tax calculations.
- (4) None of the payments are referred to as loans in any other formal document.
- (5) These companies are now insolvent. So, where there were claims, one would expect them to have been made and where there were debts, one would expect them to have been paid. The companies and Mr Ellis have seemingly ignored the rights/obligations generated by these lending arrangements.
- (6) Mr Ellis's lifestyle and expenditure are inconsistent with his declared income and with the idea that the amounts withdrawn are loans that will need to be repaid.
- (7) By his own admission (at the opening meeting of the COP 9 procedure which took place on 25 February 2015) Mr Ellis said that he had no other source of income, no inheritance, and no independent source of funds from his wife – who was not in employment.

340. Dealing with Mr Ellis' lifestyle and expenditure, HMRC point to the following:

- (1) In the period 2010 to 2015 he spent £1.7m on his Coutts credit card. In that period his net declared income was £382,598.45
- (2) On Mr Roseff's analysis, Mr Ellis introduced £6.7m in total into the various companies.
- (3) Mr Reilly gave details in his second witness statement of details of holidays that Mr and Mrs Ellis have booked or enquired about, including
 - (a) an email dated 11 August 2011 from Mr Ellis concerning Business Class Emirates flights to Dubai departing 3 October 2011 booked through "Skyclub" for Mrs Ellis and Krystyna Wilson. The cost is £1,899 per person with a total of £3,798. The booking appears to have been arranged by Mr Broadbent though his personal email. In a further email Mr Broadbent asks for Mr Ellis to confirm and pay and Mr Ellis confirms "done thanks pal";
 - (b) an email dated 18 October 2011 from a Nick Anderton at Skyclub in response to a query around the tickets to Warsaw and the Maldives about what documentation Mr Ellis needed for the flights. Mr Ellis' email asks for exact details of the flights booked by Skyclub for Mr Ellis to the Maldives for

December 2011 and asks Mr Anderton to look into 2 flights to New York from London staying around 3 – 4 days stating that he wants “Business Class minimum”,

(c) an email between Mr and Mrs Ellis dated 9 January 2012 discussing First Class Emirates flights for them to Dubai departing on 22 February 2012 and returning on 27 February 2012 (the cost is £4,790);

(d) an email dated 29 March 2012 from Mr Ellis to Sylvia Wilson. The subject includes a link to the Fourseasons.com website and mentions beachfront villas on Koh Samui, which is in Thailand. Mr Ellis comments “This is the villa I have booked”. In a further email dated 4 April 2012 from Mr Ellis to Richard Jackson, Mr Ellis confirms he is staying at The Four Seasons Koh Samui with 2 nights at the Peninsula Hong Kong. In an email dated 17 April 2012 the flights are confirmed as First Class travel with BA for the Hong Kong leg.

(e) a series of emails dated 3 May 2013 from Paul Dayson of Spa Travel Bureau to Mr Ellis. The emails detail a holiday from 30 May 2013 at The One & Only, Dubai for 7 nights in a junior suite with pool and beach access on a half board basis. The cost with Emirates flights (the most expensive option quoted) is £14,218. The holiday is booked using Mrs Ellis’ credit card. Mr Ellis asks for the mobile number for the limousine. Mr Dayson later informs Mr Ellis that his Emirates chauffeur will be down to pick him up at 0540

(f) an email and attachment from Mrs Ellis to Mr Ellis which includes an invoice for travel from Paul Dayson at Spa Travel Bureau. The event is for Mr & Mrs Ellis and their son departing to Dubai on 17 April 2014 and returning on 23 April 2014 staying at One and Only The Palm, Dubai which is a 5-star hotel for 6 nights in a junior suite. The total cost is £13,614.86. In a follow up email exchange dated 13 and 14 February 2014 Mr Ellis states, “I’ll also pay to upgrade us to first class” and enquires as to the cost. Mr Dayson advises that the cost is £4,290 extra and in further emails this is arranged. There is then a further email dated 25 March 2014, arranging chauffeur travel to and from the airport.

(4) He spent at least £132k on his wedding. The wedding was arranged by one Mark Niemierko of Niemierko.com. The email signature from the company describes it as “Britain’s top luxury wedding planner”. Topics discussed in email exchanges include the use of a person who was “Kim K’s makeup artist” (Kim K being, Mr Reilly submits, one Kim Kardashian, whom he describes as “an American media celebrity”). In an email dated 30 November 2011 Mr Ellis says that Sylvia (now Mrs Ellis) wants Shane (sic) Ward for the wedding. Shayne Ward is a singer who won the second series of ‘The X Factor’. Shayne Ward was booked to perform.

(5) Turning to Mr Ellis’s homes, Officer Reilly exhibited a number of emails which give a flavour of Mr Ellis’s accommodation. These include:

(a) an email dated 28 November 2011 from Mr Ellis to Mr Broadbent about a house for sale by Winkworths Estate Agents in the St Johns Wood area of London according to the email. Mr Ellis says he is “Gonna bid £2.25m, need to raise £800k deposit later on in the new year. Fingers xxxd on salim”. According to Mr Ellis’ witness statement, he had just sold Bishop House, Raskelf for £1m in October 2011 making a gain of £200,000 before costs. It is not clear how he could raise a further £600,000 having sold his major asset. Mr Reilly had previously noted 5 transfers to Mr Ellis of £100,000 in April 2012 before the purchase of the property in May 2012.

(b) Officer Reilly exhibited an email from Ms Coverdale dated 3 April 2013 attaching copies of nominal ledger entries for Mr Broadbent and Mr Ellis in the books of SLL, showing that (as at 31 October 2012) Mr Ellis owed SLL £1.184m and Mr Broadbent owed £592k. She noted that “None of DB loan accounts reflect amounts from Group”. This included a £400k transfer to the solicitors dealing with Mr Ellis’s purchase at the time of the purchase.

(c) Mr Ellis was looking to save SDLT on the flat purchase by acquiring a company, but something went wrong and he ended up owing SDLT. That is the context for his dealings with HMRC’s Debt Management Unit where he said “I am currently employed by NYPL as a company director; I receive a salary of £7,000 PCM, and to come out of this I have the following commitments; Mortgage £3,500, Bills and c cards £1,000.”

(d) a number of emails dated between 24 April 2013 and 15 May 2013 about the interior design of the new build property that Mr and Mrs Ellis will be moving into in November 2013. The total estimate from Callister Russell for furniture, decoration and blinds/curtains was £221,137.27.

(e) an email with attachment dated 17 May 2013 with a revised estimate removing all rugs and TVs from the estimate and reducing the quality of the furniture to meet Mr and Mrs Ellis budget which is not specified. The estimate is for £158,742.94.

(f) an email dated 21 June 2013 from Mrs Ellis to a representative of their house builder copying in Mr Ellis. The email discusses plans for Plot 1, Carmel Gate (their new home). Mrs Ellis asks to bring her interior designer to the meeting.

(g) an email dated 3 July 2013 from the interior designer Claire O’Boyle in response to an enquiry by Mr Ellis for a pink baby grand piano. Ms O’Boyle informs Mrs Ellis that the pink colour would require special recolouring at an additional cost of £5,000 in addition to a basic cost of either £5,489 or £5,720.

(h) an email with attachments dated 9 August 2013 from Callister Russell to Mr & Mrs Ellis with a current and revised estimate for the interior design works. The current estimate is £153,495.74 with additional works of £65,915.09. This makes a total of £219,410.83. The email asks if Mr & Mrs Ellis are happy to proceed. A 65% deposit is required before ordering can commence. The deposit would be £142,617.

(6) In High Court litigation (against the Armstrongs) he declared in a witness statement dated 24 March 2015 that he had net assets of £3m (3 times his total income for 2002 to 2016). His liabilities (excluding the guarantee to the Armstrongs) were given as £2.511m, comprising loans from Coutts and Commercial First and three car financings. Despite this, the draft DLA prepared by Craggs & Co for a meeting on 27 April 2015 shows overdrawn balances for Mr Ellis with all relevant companies except NYPL. Officer Reilly says that it is apparent, even if one took the figures suggested by his own advisors, that sums had been paid to Mr Ellis by the relevant companies which he had not repaid. This document was produced after Mr Ellis had made at least two statements (one sworn) that he had no outstanding loans.

(7) Officer Reilly exhibited a large number of emails which, he says, illustrate Mr Ellis’s lifestyle. These are a selection:

- (a) an email dated 8 August 2011 from Mr Ellis either to get insurance cover for a watch purchased for Sylvia or improve her insurance cover. The attachment is a letter from A. Fattorini Fine Jewellers describing a Rolex Oyster Perpetual “Datejust” watch which he had just purchased with a replacement value of £8,570;
- (b) an email dated 7 September 2011 from Mr Ellis to Mr Broadbent about the launch of the (then) new BMW M5 car being launched on 19 September 2011. Mr Ellis states he has got one of these coming in January “first one in York I’m told”;
- (c) an email dated 17 November 2011 from Mr Ellis to Darren Kelly of Illingworths Insurance & Financial Services asking about adding a “very expensive diamond ring” to his insurance policy. The diamond ring is said to have a value in excess of £60,000;
- (d) in an email dated 20 September 2012 from Mr Ellis to Mrs Ellis, Mr Ellis forwards the details of the insurance arranged by Darren Kelly of Illingworths with Hiscox. In his email he states “Hiscox are as you are probably aware, THE high net worth insurer and their policy is second to none.... Hiscox are keen to work with you as far as a safe is concerned – normally a jewellery sum insured of £193k will create a requirement for a £20k cash rated safe.”
- (e) an email dated 30 August 2012 from Mr Ellis to Sylvia Ellis about an invitation received from Tiffany’s jewellers to their 175th Anniversary. Mr Ellis and his wife were invited to a private dinner on 11 October 2012 in an evening which would feature a spectacular collection of jewels. Mr Ellis accepted the invitation;
- (f) an email dated 19 September 2012 from Mr Ellis forwarded to Mrs Ellis. The forwarded email is about availability of tables at Dabbous, Le Gavroche and Pollen Street restaurants from Dining Club which states “You’re receiving this because you are a member for whom we book restaurants on a regular basis”;
- (g) emails dated 9 October 2012 from Mr Ellis to Mrs Ellis titled “classy platinumxxxxxx”. The first is a picture of silver coloured Rolex watch. The reply from Mrs Ellis is “I’m not keen babe I think u like bling and that isn’t bling enough looks like a cheap silver Rolex xxxxx”. Mr Ellis responds, “Yes but cant have (sic) too bling anymore”;
- (h) an email dated 21 January 2014 from the Connaught Hotel about a booking for a christening event planned by Mr & Mrs Ellis for 12 April 2014. The email details costs for a 50-person event as £2,500 afternoon tea, £1,500 bar tab and theme at a starting price of £1,000. The event is for 50 guests with the minimum spend of £5,000 including the above items on the attached proforma invoice;
- (i) an email dated 18 February 2014 discussing a booking made by Mr Ellis for an early evening meal at the Michelin starred Le Gavroche for a midweek meal somewhere in the 2 weeks commencing 12 May 2014. In a further email exchange the booking is confirmed for Thursday 15 May at 6pm
- (j) Mr Ellis employed a housekeeper/cleaner at £250 per week.

341. There is, Mr Watkinson says, no consistency in Mr Ellis’s accounts of his income. We saw documents from the 2012/13 tax year in which he told HMRC’s Debt Management Unit that his salary from NYPL was £7k a month whereas his self-assessment return showed total

income of £11,737. In the same year he told Lloyds TSB that his salary/dividend from NYPL was £10k a month. In November 2013 Eura Audit certified that in the previous financial year his income was not less than £150k.

342. In his witness statement Mr Ellis says that most of his money from before the time of these ventures came from capital gains on disposing of personal residential properties and a salary of £100k a year. We looked at a schedule of these transactions. In total (without taking transaction costs into account) the gross profit is only around £750k.

343. In his witness statement Mr Ellis said that the money he used to spend to fund his lifestyle was loaned to him by various other third parties, who were happy to lend to him because they could see the enormous potential in the projects. In support of this statement Mr Ellis exhibited a number of loan documents and Mr Watkinson took us to these documents:

(1) An intercreditor deed from September 2015 (the precise date is not clear) relating to lending to Mr and Mrs Ellis under a facility letter dated 5 June 2015.

(2) A signed but undated mortgage executed by Mr and Mrs Ellis to support a loan to Yorkshire House Development One Limited from 2015.

(3) An undated loan from 2018 from one Gary Broadley to Mr Ellis to fund professional fees.

(4) A loan of £225k dated 8 April 2016 secured on a property in Menorca.

(5) A loan of £100k to Mr Ellis dated 26 September 2019.

(6) There was a loan of £485k to a company called Huntington Homes (Driffeld Terrace) Limited in 2007 to enable it to purchase a property in Leeds.

Mr Watkinson pointed out that none of these arrangements explain Mr Ellis's lifestyle before 2015.

Mr Ellis/NYPL's position: the amounts withdrawn were loans

344. So far as the employment tax matters are concerned (his liability to pay income tax and NICs on various amounts withdrawn from the Skelwith companies) Mr Ellis's position (as articulated in further and better particulars of his grounds of appeal dated 24 July 2019) is:

(1) The sums of money (alleged by HMRC to be emoluments) paid to Mr Ellis by the various "Skelwith" companies were loans made on the understanding that they were to be repaid on demand. The loans did not bear interest.

(2) Mr Broadbent, as the financial director of those companies, operated the company bank accounts and notified Mr Ellis when funds were available to be loaned to him. Mr Broadbent either then transferred those amounts to Mr Ellis himself, or instructed the accounts clerk, Ms Coverdale (or company administrator, Mr Chambers) to transfer the monies.

(3) The loans were repaid upon request by the companies, which were invariably triggered when the companies required funds for cash-flow purposes. Ms Coverdale or Mr Chambers would notify Mr Ellis, and he would arrange repayment.

(a) By way of example, on 22 May 2014, Mr Ellis paid £320,813.44 to SLL. This was to satisfy an invoice rendered to the company by K Rouse Limited, which was constructing a roundabout to gain access to the Flaxby development.

(b) By way of further example, on 31 July 2012, Mr Ellis paid SLL £90,000.00 by way of repayment of miscellaneous loans that were advanced to him within the preceding 12-month period.

345. As explained by Mr Ellis, it was understood between him and Mr Broadbent that they could take money out of the businesses by way of loan. These loans were, however, repayable on demand. When the businesses needed the money, they put it back in. He says that they believed that they would be making significant profits in the long term, so he never had any reason to call for ongoing or a 'live' record of Mr Broadbent's borrowings. Mr Ellis says that he personally guaranteed a number of the companies' obligations. Some of those guarantees have been satisfied and some are still ongoing. He treated the companies' debts as his own debts. The payments he made accordingly reduced the debits in his DLA. Moreover, the money he used to spend to fund his lifestyle were loaned to me from various third parties. He says that third parties were happy to lend to him because they could see the enormous potential in the projects. He thought he could repay all his borrowings easily after the projects completed.

346. Mr Ellis says that the directors' loan accounts were not included in his witness statement in the Armstrong litigation as he did not think to do so because these were their companies, not third parties to whom they owed money. The valuations contained in his statement are the maximum value of the items that he could reasonably estimate. He also obtained independent valuations on certain items

347. At Mr Ellis's request, Armstrong Watson prepared an analysis of Mr Broadbent's position; this showed he owed the companies £7.5m. Mr Ellis says that this was the first time he realised the extent of the possible fraudulent activities that had occurred in the business. Mr Broadbent had taken significant payments without his knowledge. He had expected Mr Broadbent's loan account to be like his own, yet this was far from the case.

348. In his second witness statement Mr Ellis responded to HMRC's comments on his lifestyle. Some of the other points he made include:

(1) He maintains that many of the more expensive travels were business trips and not all of the trips he enquired about took place. Most of the expensive trips (other than those lasting only a few days) took place before his first child was born (in November 2013). Since then he has gone on holiday every year to the same family hotel with his wife and children

(2) As far as his wedding is concerned, he says that it was funded by loans taken from the business paid into his bank account and these were ultimately repaid back to the business in full.

(3) Mr Ellis addresses HMRC's question about how he raised the money for the deposit on his home. He says that the deposit was raised from the sale of his previous home plus loans from the business. Again, the loans were repaid to the business in full. HMRC referred to interior design works on the new home including the estimates for this. Mr Ellis says that these costs related to fitting out the interior of the home because it was a shell. He borrowed money to pay for the interior design work.

(4) Mr Ellis incurred a SDLT liability as a result of an error on the part of his solicitors. He accepted that SDLT was owed and settled the tax owed with HMRC. His reference to £7k per month salary reflected his understanding of his salary at that time after tax and was given quickly, in an email to HMRC, in order to provide a rough estimate. It did not include any dividends (which is however included in the figure of £11,373.80 referenced by Officer Reilly) and very briefly attempted to demonstrate his expenses as regards his mortgage, bills and credit card expenses.

(5) Mr Ellis confirmed that he purchased a Rolex watch as a gift. He registered interest in a new BMW M5 car but did not proceed with the purchase. Nor did he buy the

watch he was discussing with his wife on 9 October 2012. Similarly, although an enquiry was made about a grand piano, it was never purchased.

(6) Mr Ellis was a member of the Coutts World Concierge service. This was a free service provided by Coutts for its customers and allowing them to book theatre tickets or restaurants through them. Emails about the availability of tables at Dabbous, Le Gavroche and Pollen Street restaurants Officer Reilly exhibited came from this service. Mr Ellis and his wife did not go out to eat at expensive restaurants. Mr Ellis said he lived a quiet life and usually went to bed early at 9pm and got up at 5am to work. The booking for Le Gavroche in February 2014 was cancelled because his wife and son were ill at the time.

(7) Mr Ellis says that insurance valuations are not the same as actual valuations and, in his experience, are often higher than the actual price of items as he believes was the case with the quotation Hiscox provided.

(8) The cost of the christening event was shared between Mr Ellis and his parents.

(9) He does not recall actually attending the Tiffany's event and has not made any substantial purchases from Tiffany's, although he recalls buying a bracelet for his wife. He thinks the invitation was sent through their banking relationship with Coutts.

349. Mr Ellis says that his borrowings with Coutts are not inconsistent with his account of events, that he held valuable companies which were likely to make significant profits. Mr Ellis says that HMRC are wrong to rely on his credit card statements to say that he could not repay the funds if he had to. He knew that he would repay the money either from the profits of the company on a sale or from other funds if he needed to. Whilst he accepts that the spending on his credit cards was not small (approx. £280k p.a.), the ultimate objective was to realise enormous profits on the disposals at Raithwate and Flaxby. The profit he and Mr Broadbent expected to release was in the tens of millions

Discussion of the Direct Tax Appeal

350. One very important point to bear in mind as we approach this issue is that the amount Mr Ellis extracted from the companies, very large though it is, is only a fraction of the VAT wrongfully reclaimed by the companies. On Mr Ellis's, or his mother's, calculations of real expenditure, at least £39m of VAT was wrongfully reclaimed by the three companies in respect of which Mr Ellis was issued a PLN. We have seen that there were other companies where HMRC are sure that VAT was wrongfully reclaimed, but where no assessments have been made because the business records of those companies were insufficient to enable this to be done.

351. No one knows where all this public money has gone. In his witness evidence Mr Ellis made no effort to explain what happened to such a vast sum of money. Mr Watkinson said that, because the companies' records have been largely destroyed, it has simply not been possible to follow through to see where the money went. It is possible that some of the money was used to fund the various developments, but that expenditure seems to have been primarily (if not entirely) funded through asset finance, loans, investment from a range of sources and from the sale of reservations. Mr Ellis's own evidence, and a reason he gives for not really understanding the amount of VAT flowing through the companies' accounts, is that so much more money was coming in. That said, on the evidence, the Skelwith companies spent a lot of their time struggling to make payments.

352. One of the things Mr Roseff did was analyse the amounts extracted and introduced by Mr Ellis on a per company basis. HMRC question the sources and proof for his figures (not least because Mr Roseff's figures are very different from the directors' loan account analysis supplied to HMRC by Craggs & Co in April 2015), but if we work with Mr Roseff's figures

for now, we see that, even though he has recognised cash introductions made by Mr Ellis, there has always been a net amount owed by Mr Ellis in respect of SGL, SLL, SLRCL, SLTKL, and ACL. SLRL and NYPL became positive (i.e. they owed Mr Ellis money on Mr Roseff's calculations) in 2014/15 and stayed that way in 2015/16. NYPL was also positive in 2011/12. Whilst Mr Roseff has found (he says) an overall net amount owed to Mr Ellis, it is not the case that all amounts owed by Mr Ellis have been repaid.

353. We also note that NYPL is not one of the Skelwith companies. It is wholly owned by Mr Ellis and described by him along with SGL as companies which "operate buy-to-let properties with little turnover and limited, if any, profit". NYPL's balance sheets support that description. Despite that, Mr Ellis has (on Mr Roseff's calculations) paid £2.5m more into that company than he took out, leaving that amount due to him on his director's loan account. It is not clear to us how that company would have found the money to pay Mr Ellis £2.265m (the gross amount Mr Roseff says Mr Ellis drew out – in some years very substantial sums were withdrawn) or why it would have needed Mr Ellis to put £4.8m back in. We do not find Mr Ellis's payments to NYPL particularly supportive of the idea that monies extracted from the companies were taken out by way of loan.

354. Whilst Mr Ellis disputes some of the individual items of expenditure HMRC has identified when looking at his lifestyle, his expenditure and enquiries about possible spending (even where not followed up) leave us in no doubt that his lifestyle could not conceivably be supported by his declared income. It is hard to see how Mr Ellis could have supported his lifestyle and found an extra £628,903 to invest in the companies based on his declared income. It is even harder to see how Mr Ellis would have been in a position to repay SGL, SLL, SLCL, SLTKL, or ACL on demand (as he says he agreed to) once he had lent money to NYPL and SLRL. We should pause at this point to say that we do not accept Mr Ellis's assertion that he was lent money by third parties. None of the loan documents we have seen support the idea that he was lent money to support his lifestyle in the period we are concerned with. All of this rather suggests that Mr Ellis took more out of the companies than HMRC have assessed, and this may explain where at least some of the missing £39+m has gone.

355. That said, what we must decide is whether the amounts we are looking at were earnings or loans. Mr Ellis has been assessed to income tax and NICs on the basis that these amounts are earnings, not on the basis that there may be significantly larger amounts of money extracted by him which have not been identified.

356. A loan is, of course, an amount which the person who borrows it is obliged to repay. There is no contemporary documentary evidence (board minutes, loan agreements or even just letters recording the arrangements) of Mr Ellis being under any kind of obligation to repay these amounts. Mr Ellis says that he agreed with Mr Broadbent that the amounts were loans repayable on demand and, if necessary, they would put the money they had taken out of the companies back in, but there is very little to corroborate this. In any event, an agreement between Mr Ellis and Mr Broadbent that money taken out of the companies might be used to provide funding for one or more of the companies if needed is not the same as agreeing that the money borrowed from a particular company would be repaid to it.

357. Mr Ellis's evidence is that he has personally discharged a lot of debts owed by the Skelwith companies. As well as (he says) repaying unsecured creditors using loans from friends and family or having put payment plans in place to effect repayment, he has made payments under guarantees and "similar liabilities". Mr Broadbent, on the other hand, has (Mr Ellis says) not engaged with any unsecured creditors at all. Mr Ellis is very critical of Mr Broadbent, who has (he says) "simply disappeared without having to deal with any of the consequences" with no visible impact on his lifestyle. He was, Mr Ellis says, declared

bankrupt but has now “exited bankruptcy ... free of all historic creditors including HMRC. He was free to operate a business and become a company director.” Mr Ellis says he did not declare himself bankrupt because of the reputational damage this would do.

358. Mr Ellis has, he says, discharged liabilities of the companies directly, including where he has given a personal guarantee. Where Mr Ellis is a guarantor, he may well have acquired rights of subrogation against the relevant company when he discharged a liability pursuant to a guarantee. That said, to the extent Mr Ellis paid an amount due under a personal guarantee to a third party, he was primarily discharging his personal liability. Whether he acquired a claim against the relevant company which he could set off against any amount owed by him to that company or not, he paid under the personal guarantee because he was contractually required to do so.

359. We do accept that Mr Ellis might acquire a claim against a company if he discharged its liabilities and, along with payments made directly to a company, this might reduce any amount owed by him to that company.

360. Interesting though all these points are, they do not tell us whether the amounts Mr Ellis took out of the companies were extracted by way of loan. Mr Ellis’s payment under personal guarantees is something he was personally obliged to do. His discharge of other liabilities could be explicable (as his evidence suggests it was) by his sense of honour and personal responsibility, as well as the need to maintain his position in the real estate world. There is no suggestion in Mr Ellis’s evidence that his discharging these liabilities (whether his or those of a company) was occasioned or limited by his position as a borrower from a particular company. The fact that, according to Mr Ellis, Mr Broadbent did not discharge his supposed obligations (or have those obligations enforced against him) might also suggest that there is no debt/loan obligation here.

361. Against the assertion that amounts were withdrawn by way of loan, we have seen no loan agreement or minutes of directors’ meetings recording these transactions (despite the large amounts involved). The amounts are not shown as directors’ loans in the companies’ statutory accounts, and they have not been reflected as loans in the company’s tax returns. Where an interest-free loan is paid to a person such as Mr Ellis who is a director and shareholder in the company making the loan, two tax consequences flow. Firstly, the benefit of the interest-free loan is subject to tax under the special regime for employment-related loans. Secondly, if the loan has not been repaid within nine months of the end of the accounting period in which it was made, the company is required to deposit an amount with HMRC under section 455 CTA 2010.

362. As we have seen, the companies’ accounts do not show any of these amounts withdrawn as loans, no payments have been made under section 455 CTA 2010, and no employment income tax has been paid by reference to the interest free loans. In addition, the loan balances were ignored by Mr Ellis when he made his witness statement in the High Court litigation involving the Armstrongs and neither Mr Ellis nor any of the relevant companies have taken steps to try to recover any of the amounts supposedly owing to them. In that context we note that Mr Broadbent has withdrawn significant amounts from the companies and, on Mr Ellis’s evidence, has made no contribution to their liabilities and yet has walked away seemingly unaffected from his bankruptcy. That outcome does not appear consistent with the idea that Mr Broadbent owed a lot of money to these companies, and if he did not that rather undermines Mr Ellis’s narrative that the amounts withdrawn were borrowed money.

363. We assume that the reason why the amounts were not properly reflected for tax and accounting purposes is that, if they had been, this would have begged the question where the

relevant company got the money to make the loans from in the first place. To advance money to Mr Ellis, the relevant company would need to have made a profit or acquired funds from some other source. For the company's accounts to balance, there would need to be a corresponding entry to match the amount lent to (and the debt now owed by) Mr Ellis. The fact that there was nothing (or at least nothing that could be safely disclosed) to balance any supposed loan with is presumably the explanation for these payments not being accounted for as loans either for accounting or tax purposes.

364. If these amounts were loans, then any repayment would also need to be recorded in the company's accounts and at that point the same problem would arise. If one of the companies made a profit and distributed it to its shareholders, who then used the distribution to repay a loan not recorded on the balance sheet, the company would be left with a cash amount (the repaid loan principal) the source of which could not be explained and for which there was no matching entry in the accounts. That would inevitably prompt a question as to how the company was able to make the loan in the first place. Mr Ellis said that he would expect to repay the amounts he says he borrowed out of the enormous profits he was expecting to make, but he did not explain how he was planning on dealing with the complications of repaying a non-existent (as far as the statutory accounts and tax filings of the company) loan. Given the cash flow and other difficulties the Skelwith companies encountered, it is also not obvious to us that Mr Ellis's confidence in his ability to repay the loans was realistic or well founded. Because he did not appear for cross examination, these issues could not be explored with him.

365. Because there was no entry in any of the relevant accounts for directors' loans, we can see no evidence of the accounting impact of any repayment being made. NYPL's balance sheet does not seem to change between years when Mr Ellis's loan account is said to be overdrawn or in credit. The large injection of cash which Mr Roseff says made Mr Ellis's loan account with SLRL positive took place in 2014/15 and the insolvency of that company meant that it stopped producing statutory accounts, so we cannot see to what extent (if at all) that transaction was recognised by the company.

366. All of this suggests to us that there was no intention of the amounts withdrawn ever being repaid.

367. We are prepared to accept that Mr Ellis and Mr Broadbent agreed that, if a company needed funding for some reason and money could not be found elsewhere, amounts would be paid to the company, or its debts would be met by Mr Ellis or Mr Broadbent, and those payments might be made out of money they had taken from that or another company. It does not follow from this that an amount extracted by Mr Ellis from a particular company was an amount borrowed from that company. It could only be a loan if Mr Ellis had agreed to repay it, and we have explained why we do not think this was the case at all. It was simply an amount extracted by Mr Ellis to be used by him as he pleased, which might include honouring his agreement with Mr Broadbent.

368. The reality is that the only real evidence that the amounts we are concerned with were extracted by way of loan is Mr Ellis's uncorroborated assertion that this was the case. Mr Roseff did not produce any evidence to show that the amounts he was computing had this nature about them. His work is neutral when it comes to characterising the payments. All the other evidence (perhaps more accurately, the absence of evidence where we would have expected to see it) points away from Mr Ellis's relationship with the companies being a debtor/creditor one. In Mr Ellis's absence, we can put little weight on his evidence (which is no more than an un evidenced assertion) and indeed we infer that he did not appear before us because he knew he could not defend this position.

369. Section 62 ITEPA defines “earnings” as meaning:

“(a) any salary, wages or fee,

(b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or

(c) anything else that constitutes an emolument of the employment.”

370. There was no suggestion by Mr Ellis that these amounts might be distributions or amounts paid to him qua shareholder or in some other capacity than being a director. The reason he gave for these payments not being earnings was that they were loans, not that these amounts were not “paid to him in return for acting as or being an employee” (per Lord Radcliffe, addressing the meaning of “emolument” in *Hochstrasser v Mayes*, [1960] AC 376, at 391-2) or otherwise unconnected with his role as a director. Whilst the burden of proof is on HMRC when it comes to the formal validity of their assessments, to which we will turn in a moment, the burden of proof is on Mr Ellis to show that these payments were not earnings, and in our judgment he has not discharged that burden.

371. Mr Ellis and NYPL did not take issue with the formal validity of HMRC’s assessments, but we will briefly explain why the various closure notices, decisions and assessments are, in our view, valid.

372. In *R v IRC, ex parte Chisholm* [1981] STC 253, the Divisional Court held in the context of the statutory predecessor to regulation 72(4) (Condition B) that the term “knowing” required actual, not merely constructive, knowledge, and that “wilful” was synonymous with “intentional” or “deliberate.” Expanding on the meaning of “knowing” and “wilful”, McNeil J said this (at p258c-e):

“Indeed, so far as the words 'wilful failure to deduct' are concerned, once it is acknowledged on the applicant's behalf that there was not a deduction, from which in turn it follows that he by his solicitors and accountants acknowledged that he received his emoluments without the deduction of tax, it is at least prima facie the case that the payment was a deliberate and intentional payment, and unless there be some material to suggest that it was a careless mistake or a negligent rather than a deliberate and intentional way of dealing with the matter, I would have thought that it was really unarguable that the failure to deduct was other than wilful.

I bear in mind that this was not an isolated payment of a single week or for a short period. The sum in question of {21,000 is a sum which was payable over a period from e a date in 1972 to the end of June 1974. Did the applicant know? I must start on the basis that he was receiving his full emoluments without deduction. It is difficult to conceive of a man receiving his emoluments in that way without knowing that that was precisely what was happening.”

373. Mr Ellis cannot have failed to know that income tax and NICs had not been deducted from the payments he received, but did he know that the companies had wilfully failed to deduct income tax/NICs? As McNeil J observed, a careless or negligent mistake is not the same as a wilful failure. If the companies genuinely believed that the payments were made by way of loan, their failure would not be a wilful one. Similarly, if Mr Ellis genuinely believed that the payments were made by way of loan (or for some other reason were not emoluments), he would not have known that the companies had wilfully defaulted (assuming for these purposes that they did not believe that the payments were loans), except conceivably if he knew they had failed to deduct tax and NICs even though they (but not he) believed they should have made the deductions.

374. The burden of proof is on HMRC to show that the conditions of regulation 72(4) of the PAYE Regs. and regulation 86(1)(a)(ii) of the NIC Regs. are satisfied. Mr Ellis extracted significant amounts of money from these companies over a protracted period. He now says that these payments were loans rather than earnings, but there is no contemporary documentary evidence to reflect this and neither he nor the companies dealt with these amounts in a way which is consistent with that treatment. There is more than a prima facie case here that the companies' failure to deduct income tax and NIC was deliberate and that Mr Ellis knew that was the case. Accordingly, the evidential burden has passed to Mr Ellis and it is now for Mr Ellis to show why that is not the case; *Brady v Group Lotus plc*, [1987] STC 635, at 643f-h per Mustill LJ. All we have here is Mr Ellis's assertion that these payments were regarded by him and Mr Broadbent (and therefore the companies) as interest free loans repayable on demand. Given his failure to attend for cross-examination (as directed) that statement bears little weight in the light of the contemporary documentary evidence which evidences a failure to treat these payments as loans. We are satisfied that Mr Ellis knew that the companies had wilfully failed to deduct tax and NICs from the payments made to him.

375. For the tax years 2012/13 and 2013/14 HMRC had notified Mr Ellis of their intention to open enquiries into his self-assessment returns. HMRC were therefore entitled under section 28A TMA to issue closure notices amending Mr Ellis' self-assessment returns for those tax years, which they did.

376. For the tax years 2011/12 and 2014/14 HMRC made discovery assessments under section 29 TMA. In relation to the regulation 72 directions, Officer Reilly had concluded that the sums paid to Mr Ellis by the companies were earnings, in respect of which no deductions for income tax or NICs had been made, the employers' failures to make those deductions was wilful, and Mr Ellis was aware of those failures as he was a director of each of the companies. For the discovery assessments Officer Reilly formed the view that there was an insufficiency in tax in Mr Ellis's self-assessment returns for 2011/12 and 2014/15. Section 29(1)(b) TMA was therefore met. We agree that Officer Reilly's subjective discovery is both proven and a plainly reasonable conclusion on the facts.

377. HMRC say that the insufficiency in Mr Ellis' self-assessment returns was deliberate, so that the condition in section 29(4) TMA is met. Whether it is or not, the condition in section 29(5) TMA is also met in that, at the time at which he ceased to be entitled to give notice of an enquiry into Mr Ellis's returns, an officer could not reasonably have been expected to have been aware of the insufficiency because Mr Ellis's self-assessment returns were submitted without recording any of the sums received from the companies, there were no P11Ds in respect of any loans, insofar as the companies filed CT returns, they did not record any loans to participators, and without a detailed review of Mr Ellis's personal bank accounts, it would be impossible for any reasonable officer of HMRC to have known about the income sources from these companies.

378. In relation to the 2012/13 discovery assessment, the loss of tax was brought about at least carelessly. There is no evidence of Mr Ellis having taken advice or done anything to consider the tax consequences of receiving such large amounts of money. In his witness statement he said that he did not think about the tax consequences of receiving loans as he left such matters to Mr Broadbent. We do not consider that it is reasonable for an individual in Mr Ellis's position not to take advice or at the very least seek explicit confirmation that the tax consequences of receiving such large amounts of money have been properly analysed. There is no evidence that Mr Ellis did anything of the sort. Indeed, his own evidence is that he just assumed everything would be taken care of by Mr Broadbent. That is not a reasonable course of action and so the extended time limit provisions in section 36 TMA are met.

379. For these reasons Mr Ellis’s appeal against the directions under regulation 72(5) of the PAYE Regs., the discovery assessments for the tax years 2011/12 and 2014/15 and the closure notices for the tax years 2012/13 and 2013/14 following the directions made under regulation 72(5) of the PAYE Regs. and the decisions for the tax years 2011/12, 2012/13, 2013/14 and 2014/15 pursuant to section 8(1)(c) SSCTFA fails.

380. As far as NYPL’s appeal is concerned, we have explained why we consider that the sums paid by the relevant companies (including NYPL) to Mr Ellis and Mr Broadbent were earnings under general principles within section 62 ITEPA, taxable to income tax which should have been deducted, and attracting Class 1 NIC liability.

381. NYPL’s appeal against the regulation 80 determinations and section 8 SSCTFA decision is dismissed.

DISPOSITION

382. For the reasons set out above, all these appeals are dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

383. 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: 17th FEBRUARY 2026