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Case Number: TC08556

FIRST-TIER TRIBUNAL
TAX CHAMBER

Alexandra House
Manchester

Appeal reference: TC/2018/08239
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TC/2018/08245

INCOME TAX AND VAT – Undeclared purchases – assessments and closure notices - suppression or the actions of others – best judgment – quantum

Heard on: 15 – 18 November 2021 with closing submissions submitted in writing on 31 December 2021, 14 January 2022 and 15 January 2022
Judgment date: 01 August 2022

Before

TRIBUNAL JUDGE JENNIFER DEAN

Between

BOBBY KHAN ENTERPRISES LTD
MOHAMMED AFIF ALI
MOTIA BEGUM
MOHAMMED HARRISE KHAN
MOHAMMED PARIS KHAN

Appellants

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr T. Nawaz of T. Nawaz & Co for the Appellants

For the Respondents: Mrs C. Cowan, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Appellants have appealed against the following:

(i) Corporation Tax assessments raised on Bobby Khan Enterprises Ltd (hereafter "BKE Ltd") for Accounts Periods Ended (''APE'') 31 January 2011 and for APE 31 January 2013 to 31 January 2017 inclusive under Paragraph 32, Schedule 18 to the Finance Act (''FA'') 1998;

(ii) A Closure Notice issued to BKE Ltd for APE 31 January 2012 under Paragraph 41 Sch 18 FA 1998;

(iii) Decisions issued under Section 8 of the Social Security Contributions (Transfer of Functions) Act 1999 for Class 1A NIC on BKE Ltd for the period from 6 April 2010 to 5 April 2017 inclusive;

(iv) A VAT assessment raised under Section 73 VATA 1994 on BKE Ltd for the tax period from 1 May 2016 to 31 January 2017 inclusive;

(v) Income Tax assessments raised on Mohammed Asif Ali for the tax years 2011/2012 to 2016/2017 inclusive under Section 29 Taxes Management Act (''TMA'') 1970;

(vi) A Closure Notice issued to Mohammed Asif Ali for the tax year 2010/2011 under Section 28A TMA 1970;

(vii) Income Tax assessments raised on Motia Begum for the tax years 2011/2012 to 2016/2017 inclusive under Section 29 TMA 1970;

(viii) A Closure Notice issued to Motia Begum for the tax year 2010/2011 under Section 28A TMA 1970;

(ix) Income Tax assessments raised on Mohammed Harrise Khan for the tax years 2010/2011 to 2016/2017 inclusive under Section 29 TMA 1970;

(x) Income Tax assessments raised on Mohammed Paris Khan for the tax years 2010/2011 to 2015/2016 inclusive under Section 29 TMA 1970.

2. The revised calculations (as amended on 21 January 2021) are set out in Appendix 1 of this Decision.

BACKGROUND

3. The company, Bobby Khan Enterprises Ltd (hereafter 'BKE Ltd') operated 4 shops during the period of enquiry for the APE 31 January 2012. The Directors of BKE Ltd were Mohammed Asif Ali, Motia Begum and their two sons Mohammed Paris Khan and Mohammed Harrise Khan.

4. In the APE 31 January 2011 purchases were reported as £755,775 for the four shops. Enquiries were opened into the corporation tax return for APE 31 January 2012 and Mr Ali and Mrs Begum's self-assessment returns on 22 November 2012. During the course of the enquiries, information received by HMRC from the company's suppliers indicated that a significant volume of purchases had not been declared.

5. The assessments were raised for CT liabilities and VAT on the basis that BKE Ltd failed to declare all purchases and additional profits for its shops between 2010 and 2017. HMRC

treated the company funds they alleged were misappropriated by the directors as loans chargeable to tax and NIC. HMRC also assessed Mr Ali and Mrs Begum for undeclared rental income in the tax year ended 5 April 2011.

Income Tax Enquiry: Mohammed Asif Ali

6. Mr Ali's Self-Assessment Tax Return for the tax year ended 5 April 2011 was received on 1 December 2011. An enquiry was opened into the return under Section 9A TMA 1970 on 22 November 2012. There was no dispute that the enquiry was opened within the time limits prescribed by the relevant legislation.

Income Tax Enquiry: Motia Begum

7. The Self-Assessment Tax Return for Mrs Begum for the tax year ended 5 April 2011 was received on 13 December 2011. An enquiry was opened into the return within the statutory time limits under Section 9A TMA 1970 on 22 November 2012.

Corporation Tax Enquiry: BKE

8. The Company Return for BKE for the APE 31 January 2012 was submitted on 30 October 2012. An enquiry was opened within the statutory time limits under Para 24(1), Sch 18 to the FA 1998 on 22 November 2012.

Results of Enquiries

9. Following the enquiries, HMRC issued the decisions set out at [1] above.

10. The Appellants appealed the CT assessments and Closure Notice, VAT assessments, Section 8 Decisions and the Income Tax assessments and Closure Notices for each Director on 9 August 2018. On 23 November, following a review, HMRC upheld the decisions in relation to BKE Ltd in full, in relation to Mr Ali and Mrs Begum assessments for 2009/2010 were cancelled, the Closure Notices for 2010/2011 varied and assessments for 2011/2012 to 2016/2017 upheld in full. In relation to Mr Mohammed Harrise Khan and Mohammed Paris Khan all assessments were upheld in full.

11. Following receipt of the witness statements of Mr Ali and Mr Harrise Khan, HMRC reviewed the calculations and the figures assessed were reduced on the basis of information provided in the statements relating to purchases from Costcutters which HMRC accepted had not supplied BKE Ltd in the relevant period. Letters were sent notifying these amendments on 21 January 2021.

ISSUES

12. The Directors of BKE Ltd accepted that there may have been some omitted purchases from their accounts. However, they did not agree that this resulted in under-declared sales or additional profits, nor did they agree the amounts assessed by HMRC. The Appellants also denied any wrongdoing on their part; it was submitted by the Appellants that any purchases omitted were attributable either to the negligence or carelessness of their former accountants or the act of a former employee who must have purchased goods for his own shops using BKE Ltd's accounts without the directors' knowledge.

13. Although both Mr Ali and Mrs Begum initially accepted that there was undeclared rental income in their SATRs for tax year 2010/2011, it was subsequently argued on behalf of Mr Ali and Mrs Begum that the assessment should not stand.

14. The issues for the Tribunal to determine as set out in HMRC's Statement of Case were as follows:

> (a) Whether in the APEs 31 January 2011 to 31 January 2017 inclusive there were additional profits of the company BKE Ltd;

(b) Whether there were any missing purchases and corresponding missing sales identified by the HMRC enquiry resulting in additional CT and VAT being due on additional profits of BKE Ltd;

(c) Whether, as a result of these additional profits, a charge arises under Section 455 of the Corporation Tax Act (''CTA'') 2010 in respect of funds misappropriated by the Directors of the close company as loans or advances made to the Directors;

(d) Whether the loans or advances made to the Directors are benefits resulting in Class 1A NICs becoming due under Section 173 of the Income Tax Earnings and Pensions Act (''ITEPA'') 2003 from the Company;

(e) Whether the loans or advances made to the Directors are benefits resulting in a charge to tax on each of the Directors as a benefit in kind;

(f) Although not in dispute, HMRC accepted that they must demonstrate that the discovery assessments raised on BKE Ltd and on each of the directors were validly raised.

EVIDENCE

HMRC officer Mr McAreavey

15. Mr McAreavey explained that although HMRC officer Mrs Maguire had previously been responsible for the investigation, and other HMRC officers had been involved at various stages, he was the decision maker once the evidence had been gathered.

16. Mr McAreavey reviewed the information acquired by Mrs Maguire which included information provided to HMRC at a meeting on 7 March 2013 with Mr Kyle of Accountants Plus, the Appellants' former accountant, who explained that £100,000 sales had been omitted from the VAT returns of BKE Ltd for the period 1 February 2011 to 31 January 2012. HMRC advised in a letter dated 14 March 2013 that a VAT assessment would be raised for the VAT periods 04/11,7/11,10/11 and 01/12 totalling £16,441 in respect of the missing £100,000 sales. No appeal was made against this VAT assessment. Accountants Plus also confirmed that in completing the 2012 SATRs of Mr Ali and Mrs Begum it was noted that rental income of £10,000 per shop was omitted from their respective 2011 SATRs.

17. Following the meeting, mandates were given to Accountants Plus for the directors to sign giving HMRC permission to approach BKE Ltd's suppliers to check the level of purchases from each supplier. On 27 March 2013 Mrs Maguire was provided with the mandates which were signed by Mr Ali. The suppliers were:

- United Wholesale Ltd;
- Booker Ltd;
- JW Filshill Ltd.

18. On 5 April 2013 HMRC contacted these suppliers to request a copy of the customer accounts for BKE Ltd. The suppliers provided Mrs Maguire with copies of BKE Ltd's accounts which summarised the purchases made by each of the shops. The purchase transactions were compared to BKE Ltd's VAT returns and the missing transactions totalled £583,130 (as revised).

19. In a fax to HMRC on 14 January 2014 Mr Nawaz (who had taken over as the company's accountant) highlighted that there seemed to be inaccuracies in the company accounts prepared by Accountants Plus and that he could prepare accounts for the year to 31 January 2014 and extrapolate from there**.**

20. On 11 August 2014 Mr Nawaz requested the following additional information from HMRC before a decision was made whether to accept HMRC's Contractual Disclosure Facility offer:

- "Copies of all accounts and returns submitted whether for the companies or individuals, for the period for which you have concerns. If this means 20 years then the information I require is for the last 20 years. However, if you are content to deal with matters say for the last 6 years then I would be happy to accept these. It is your call as to the period of time that you require us to look at matters.
- Copies of all correspondence exchanged, including that relating to any previous enquiries.
- Copies of all information provided including anywhere papers have been returned. I note that Mrs McGuire had returned a file relating to property ownership to my predecessors but no doubt she will have kept copies. I shall look forward to receiving copies of such documents.
- Any further material that may be relevant."

Mr Nawaz also provided draft accounts for the year ended 31 January 2013.

21. A number of HMRC officers took responsibility for the case between Mrs Maguire and Mr McAreavey. During that time, little progress was made.

22. Following allocation of the case to Mr McAreavey in September 2017, he reviewed the missing purchases analysis and was satisfied that purchases had been omitted from the business records. A meeting was offered but not taken up and consequently Mr McAreavey notified the Appellants on 17 May 2018 that he intended to use formal means to progress the investigation and issued correspondence to close the enquiries and recover the additional liabilities, setting out his calculations in respect of IT, CT, VAT and NICs.

23. In the letter of 17 May 2018, Mr McAreavey set out the work undertaken by HMRC which included an analysis and comparison of the details obtained from the suppliers using the mandates against entries on the VAT returns for the 12-month period ending 31 January 2012 which identified missing purchases of £697,513 (which initially included the Costcutter purchases which HMRC subsequently deducted). The letter stated:

> "After considering Mrs Maguire's findings I reviewed the mark up and gross profit rates of the company accounts over a seven year period from 2011 to 2017 finding them to be quite erratic. Therefore I used the business ratios from the accounting period ending (APE) 31 January 2012 as this tied in with the period of review and applied a mark-up of 23% against the missing purchases of £697,513. This resulted in additional profits of £160,428 for the APE 31 January 2012.
>
> The additional profits required a VAT adjustment. As the company's VAT stagger dates corresponded with the end of the CT accounting period I was able to make a direct comparison and established that the average SR sales for the period was 75.3%.
>
> After applying this to the additional profits of £160,428, the profit from SR sales was taken as £120,321 (75%)…
>
> Having established that the CT return submitted for the APE 31 January 2012 is incorrect I have considered previous and subsequent years. The low GPR for the returns submitted in these years also suggest that the CT accounts cannot be relied upon…"

24. On 21 May 2018 Mr Nawaz responded by highlighting several observations which had been made during the course of the enquiry and which he believed had been ignored, namely:

- The validity of the original financial accounts; and
- That omitted purchases may be balanced by an equivalent amount of sales resulting in no profit.

25. Mr McAreavey replied on 19 June 2018, highlighting that Mr Kyle of Accountants Plus, who prepared the accounts on behalf of the Appellants during the relevant period, had

confirmed in an email dated 13 February 2013 that the only business records provided to Accountants Plus were purchase invoices for all four shops:

> "…As previously intimated, there are no prime sales records and at the time no business bank. Essentially the books are the invoices provided to us and then the client advised us of a margin to gross up the purchases to achieve sales.
>
> The client has been advised on each occasion this is not sufficient, but has still to date provided no physical sales records.
>
> We also have a box of bank and loan accounts that I still have to process. Unfortunately our office was decimated in January by the flu/sickness bug and I am only just back from parental leave with my son having chickenpox, so have not had adequate time to review these.
>
> Should you wish the invoices and VAT workings, you can visit any time from next Tuesday (only one or two boxes, so I could have this couriered to you if you prefer).
>
> The balance (ie the personal accounts and loan accounts I would anticipate being available by the end of Feb/1st week in March at the latest)…"

26. A letter from Mr Wood at Accountants Plus to HMRC dated 7 March 2013 stated:

> "Sales
>
> Despite repeated requests, no prime records have ever been provided by the company. Instead we are advised of a gross margin that the shops are working on and gross up purchase invoices to achieve sales at relevant margin. We also cannot achieve a per shop figure as the purchases are shared ie might spend £10,000 and be delivered to one store, but half then taken to another.
>
> There was not enough cash to cover expenses in the 2012 accounts and £100,000 was added to the sales (Gross). A voluntary disclosure form was prepared and forwarded to client, but we do not believe it has been sent or paid.
>
> …
>
> Rent
>
> This is £10,000 per annum per shop. The shops are owned by Mr Ali & Mrs Begum with no formal lease in place.
>
> In completing the 2012 personal tax returns it has been noted that this income was omitted from the 2011 returns of Mr Ali & Mrs Begum. We did not carry out a repair as the enquiry was already under way.
>
> Purchases
>
> VAT return records will show the purchases and how they are provided.
>
> …"

27. Mr McAreavey highlighted that Accountants Plus had advised the Appellants on a number of occasions that the information provided was insufficient and that sales records should be kept. Mr McAreavey explained that he had no reason to doubt the statements made by Accountants Plus regarding record-keeping and he noted that the Appellants had failed to provide prime sales records to HMRC despite an Information Notice requesting the documents.

28. Mr McAreavey explained Accountants Plus had prepared the financial accounts by applying a mark-up which was provided by the company to the purchase invoices which were grouped together for all four shops. He therefore made the decision to mark-up the missing purchases in the same way on the basis that they would also have been sold at a profit.

29. Mr McAreavey reviewed the mark-up and gross profit rates of the company accounts over a seven-year period from 2011 to 2017 and found them to be quite erratic:

APE	Sales	Cost of sales	Gross Profit	Mark-up	Gross Profit Rate
31/01/2011	1,078,531	884,418	194,113	21.9%	18%
31/01/2012	929,655	755,775	173,880	23%	18.7%
31/01/2013	888,742	766,884	121,858	15.9%	13.7%
31/01/2014	1,376,989	1,156,499	220,490	19.1%	16%
31/01/2015	1,228,686	1,035,034	193,652	18.7%	15.8%
31/01/2016	1,559,868	1,320,416	239,452	18.1%	15.4%
31/01/2017	1,527,991	1,311,004	216,987	16.6%	14.2%

30. In the absence of consistency, Mr McAreavey used the business ratios from APE 31 January 2012 as that was the period under review and he applied the mark-up of 23% used by Accountants Plus to the missing purchases which resulted in additional profits of £134,119 for that period.

31. The additional profits required a VAT adjustment as the company's financial accounts had been drawn up net of VAT. Mr McAreavey explained that as the company's VAT dates corresponded with the end of the CT accounting period, he could make a direct comparison and established the average standard rate sales for the period was 75.3% which he applied to to the additional profits to calculate the VAT due.

32. Mr McAreavey followed HMRC's Enquiry Manual Guidance (EM2012) and calculated additional profits for the years under appeal by applying the RPI to the additional profits calculated for the year under review which resulted in the figures below:

APE	Additional Profit	SR Profit (75%)	VAT due	Additional profit (exc VAT)
31/01/11	129,047	96,785.25	14,546.47	114,500.53
31/01/12	134,119	100,589.25	16,764	117,355
31/01/13	138,514	103,885.50	17,314.25	121,199.75
31/01/14	142,346	106,759.50	17,793.25	124,552.75
31/01/15	143,924	107,943	17,990.50	125,933.50
31/01/16	145,840	109,380	18,230	127,610
31/01/17	149,615	112,211.25	18,701.88	130,913.13
Total	**983,405**	**737,553.75**	**121,340.34**	**862,064.66**

33. Due to the time limits for assessments, Mr McAreavey could only seek to recover nine months VAT from the quarter for ending 31 July 2016. The additional VAT calculated for the APE 31 January 2017 was £18,701.88; Mr McAreavey pro-rated this for the nine-month period from 1 May 2016 to 31 January 2017 which was calculated as additional VAT of £14,025.

34. In cross-examination Mr McAreavey was referred to a letter from Mrs Maguire to Mr Nawaz dated 4 June 2013 which stated (emphasis added):

> "…According to Accountants Plus the sales were not based on prime records nor was a business bank account held at that time. The sales were based on the purchase invoices provided by your client company to Accountant Plus who were advised by your client of the profit margin to mark up the purchases to arrive at sales figures for each quarter.
>
> The sales would only be accurate if
>
> - All purchase invoices were retained and given to the accountants and
> - That the profit margin was in fact an accurate average.
>
> From the sales analysis provided **the average gross profit rate applied to the purchases was 7.53%** which is extremely low.
>
> Estimated sales of £100,000 were included to cover the debit to the directors' loan account. The GPR applied to this appears to be somewhat higher bringing the overall GPR in the accounts submitted to a more reasonable figure.
>
> You will appreciate that the cash account is only as credible as the records and evidence provided.
>
> Based on the information and documents provided by your client company, I have no confidence in the purchase figures returned and therefore no confidence in the sales figures returned.
>
> I also note per the accounts:

	APE 31/01/2012	APE 31/01/2011
Rates	£0	£1,268
Light and heat	£425	£4,833
Accountancy fees	£4,000	£4,137

> Only £1,200 accountancy fees were included in the cash account. Accruals shown as £1,000 for APE 31/01/2012, so I can only assume the balance £1,800 was paid. Why was it not accounted for in the cash account.
>
> I would have expected the heat & light costs to be at least the same as the previous year and that rates were due. How were these costs paid?..."

35. In cross-examination, with reference to the figure of 7.53%, Mr McAreavey noted that even by removing the £100,000 estimated sales the GPR would not correspond to 7.53%; he could add no further comment on the letter which was written by Mrs Maguire. He agreed that it appeared that Mrs Maguire had seen a sales analysis but stated it had not formed part of the information received and reviewed by him.

36. It was suggested that it was more likely that any additional purchases would have been sold at cost and Mr Nawaz provided a set of financial accounts from a different case to illustrate the point; the illustration showed that a lower GPR was recorded when adding back the equivalent amount of sales and purchases. Mr McAreavey rejected this proposition on the basis that it was not credible that, in the absence of any sales records, the company would apply a mark-up to the purchase invoices which they decided to include in the business records to show that a profit was made but then suggest that a similar mark-up should not be applied to the omitted purchases as they (it was claimed) were sold at cost. He noted that no evidence was provided to support the Appellants' claim and he also queried why a business would incur the time and expense of travelling to a cash and carry, paying wages and incurring premises costs only to sell purchases at cost which would result in an overall loss.

37. Mr McAreavey also noted that the illustration provided by Mr Nawaz by email dated 25 June 2018 used a low GPR of <10%. Data held by HMRC on specific trades indicated that for a business of the type and size of BKE Ltd the GPR would be 17% which is line with the GPR

of 18.7% shown in the original accounts and the same GPR which was produced when Mr McAreavey calculated the additional profits. He explained in a letter to Mr Nawaz dated 24 March 2021 that there was no evidence to support a GPR of less than 10% and he did not find it credible:

> "The set of accounts provided by Mr Nawaz also produced quite a low GPR of <10%. Data held by HMRC on specific trades indicates that an average business of this type and size would have a GPR of 17%. This is in line with the GPR of 18.7% shown in the original accounts and same GPR which was produced when I calculated the additional profits…"

38. Mr McAreavey accepted that competition within the trade can affect margins as can seasonal or periodic deals and that he had considered information supplied by the Appellant regarding factors affecting margins. However, he explained that he could not be sure that such factors had had "a major impact" on BKE Ltd's business, noting that business has to be commercially viable with goods being sold for profit. Mr McAreavey explained that he had considered issues such as wastage and breakages. However, he noted that the Appellants had been running shops from on or around 2001 and considered that they must keep wastage to a minimum after successfully trading for 10 years at the time of the enquiry.

39. He noted that the letter from Accountants Plus to HMRC dated 7 March 2013 explained that "there was not enough cash to cover expenses in the 2012 accounts and £100,000 was added to sales (Gross)." He highlighted the document "O3 Bobby Khan Enterprises Ltd Directors loan account for the period ended 31 January 2012" dated 6 March 2013 which showed a cash difference of £79,664.83. Mr McAreavey considered that there must have been a reason for the "cash difference"; he had no reason to doubt the explanation by Accountants Plus that it was added to balance the accounts. He noted that the £79,664.83 used by Accountants Plus was a very specific figure and as Mr Kyle had prepared the accounts it must follow that the figure came from somewhere.

40. Mr McAreavey noted a similar document headed "K5" which included "assumed drawings" of £50,000 but noted that this document related to the period ended 31 January 2013 which was not the year of enquiry. He noted that the "K5" document contained "additional sales" in the sum of £64,000, on top of "sales" of £977,635.07 and "assumed drawings" of £50,000. The document noted:

> "*have assumed drawings less than last due to no rent being paid for personally"

41. Mr McAreavey explained that 'K5' estimates are generally used where a business has not provided proper figures supported by documentary evidence. Mr McAreavey concluded that use of estimates was due to the accountant not receiving a complete set of records. Similarly, he surmised the use of "assumed drawings" was due to the fact that no records were maintained by the company to show actual drawings.

42. In relation to creditors, Mr McAreavey explained that this issue had been considered by Mrs Maguire who had established that JW Filshill were paid in cash, Bookers were paid by various methods including cash, debit and credit card and United Wholesalers' payment terms were 21 days from the date of invoice. Mr McAreavey was referred to a letter from J W Filshill dated 10 August 2011 to Mr Ali which stated:

> "We enclose the month end figures for May, June and July 2010.
>
> As discussed there was a significant increase from June and July, and we believe this was caused by the non payment in early July – resulting in a peak combined balance of £125k around 21.07.2011.
>
> Although we do not have paperwork we believe that the balance increase was at the customers request to maximise the cash held in the business to assist with an acquisition."

43. Although Mr McAreavey accepted that this indicated a credit balance of £125,000 in the middle of an accounting period, he noted that a letter from JW Filshill to HMRC dated 14 April 2013 confirmed that all payments were made in cash directly into the supplier's bank account and no evidence had been provided by the Appellants to demonstrate that the missing purchases figure required any adjustment for creditors**.** He clarified in cross-examination that he did not claim that there were no credit terms from JW Filshill, rather that they had confirmed that they were paid in cash. He explained that £20,000 was included in the original accounts and it is unknown whether the additional evidence produced after the assessments were issued showing £37,000 of creditors was included the original figure. Mr McAreavey also noted that the documents produced by the Appellants did not relate to the year of enquiry which was 2012 and he took the view that the amount of missing purchases of approximately £580,000 was too high to be explained in terms of credit.

44. Mr McAreavey did not accept that the work by Accountants Plus was fundamentally unreliable. He explained that there was no reason to doubt the information given by Accountants Plus or the figures they had submitted. Moreover, responsibility for maintaining records and submitting correct returns rests with a taxpayer even where they are represented.

45. As to the Appellants' claim that former employee Mr Fahid Amin had purchased goods using the BKE Ltd's accounts, Mr McAreavey explained he had not investigated the claim as he was no longer the case officer when the allegation was first made which was after the assessments were raised. Furthermore, he had been content at the time of making his decisions to accept the 3rd party information from the suppliers. He added that he did not accept the explanation regarding Mr Amin as there had been no mention of it when the enquiry began in 2012 nor was it raised when the assessments were made in 2018. The first reference to Mr Amin was made in 2020. As the Appellants had not taken up Mr McAreavey's offer of a meeting, he had no option but to make his decisions on the basis of best judgment on the information before him and he confirmed in evidence that he stands by his conclusions as there was no evidence to show that Mr Amin had taken the goods.

46. In relation to five invoices for which credit notes were issued by JW Filshill, whilst Mr Nawaz accepted that this did not necessarily explain all of the missing invoices, he contended that it showed that Mr Amin was using BKE Ltd's credit account for 10 years after he left the company's employment. Mr McAreavey accepted that the credit notes and emails from JW Filshill showed that there had been an incident for which Mr Amin was barred from the supplier but noted that the emails provided no detail as to why he had been barred nor did it confirm the Appellant's assertions that Mr Amin had used BKE Ltd's account for a number of years without their knowledge, highlighting that the credit notes were issued in 2020.

47. Mr McAreavey explained that he found the Appellants' assertion that their living costs were £300 per week very low for the family to support 6 people and considered that the amount, which was provided by the Appellants' former accountant, must have derived from a conversation with one of the Appellants. As there was little co-operation from the Appellants when Mr McAreavey took over the case, he had been unable to investigate this matter further.

48. As to the Appellants' assertion that any missing purchases from Bookers would not exceed £20,000, Mr McAreavey stated Bookers provided a list of purchases which had not been included in the Company's records and which were accepted, and treated, as missing purchases.

49. Mr McAreavey explained that no penalties were imposed upon the Appellants as he had used his discretion taking into account the delay in the enquiry as a result of reallocation of the case to different HMRC officers.

50. In response to the criticism that he had not used capital statements, Mr McAreavey explained that not only would this be an expensive method of investigation to both the Appellants and to HMRC, but also bank statements would be required for each director which had not been provided when HMRC issued Information Notices. The bank statements produced did not provide sufficient information regarding transactions and if transactions were made in cash or not included on statements then the method of capital statements would not assist.

51. Mr McAreavey explained that the discovery by HMRC was the evidence from 3rd party suppliers which highlighted missing purchases. He had applied the presumption of continuity as there had been no evidence of any major changes in the business or record keeping procedures either before or since the year of enquiry. The Appellants had been advised by Mr Kyle of Accountants Plus that their record-keeping was poor, yet they still had not maintained or provided him with sales records. Accountants Plus had submitted the company tax returns both before and after the enquiry year and T Nawaz and Co had submitted the company returns from APE 31 January 2014. The vast scale of the omitted purchases which led to additional profits in excess of £130,000 was not reflected in the returns submitted by T Nawaz & Co. Consequently, Mr McAreavey concluded that all of the company tax returns had been deliberately understated.

52. Mr McAreavey explained that he had issued discovery assessments for each director as further liabilities had arisen in view of the beneficial loan received from the company due to the overdrawn director's loan account. A closure notice and discovery assessment were also issued to both Mr Ali and Mrs Begum in view of undeclared income from property.

53. Mr McAreavey concluded that the company had deliberately suppressed its sales by omitting £583,130 of purchases from the business records. He noted that the sheer scale and magnitude of the missing purchases suggests that it could only have been done deliberately by someone systematically choosing which purchase invoices were to be omitted from the business records provided to the accountant. Other indications of deliberate behaviour considered by Mr McAreavey were:

- Accountants Plus' indication that there were no prime records other than the purchase invoices supplied to them. The directors ignored Accountant Plus' professional advice that this was unsatisfactory and failed to maintain physical sales records;
- The company failed to maintain sales records for all 4 shops;
- It had been necessary for Accountants Plus to prepare financial accounts by applying a mark-up which was provided by the company;
- The claim that in excess of £500,000 of missing purchases were sold at cost is a deliberate attempt to evade the additional tax due.

54. Mr McAreavey rewrote the DLA because HMRC treat company funds misappropriated by directors of a close company as loans or advances made to directors. This resulted in a tax charge against the company under s455 CTA 2010. Mr McAreavey treated the additional profits of BKE Ltd in each accounting period (excl VAT) as a loan to the directors, split equally. The amount of the s455 charge was raised in the CT assessments. The beneficial loans to the directors constitute, in HMRC's view, a benefit in kind and consequently NICs are due. In the absence of any evidence to the contrary, Mr McAreavey split the total benefits equally between the four directors equally. No benefit in kind was assigned to Mr Mohammed Paris Khan after 1 February 2016 when he resigned.

Evidence of Mr Ali

55. Mr Ali claimed that the missing purchases were due to a former employee, Mr Fahid Amin. By way of background, Mr Ali explained that in 2001/2002 he agreed to employ Mr Amin and his brother in his shops. As he recalled, the brothers were asylum seekers and destitute. He allowed them to stay at the family home for one night which turned into years and they became part of the family to the extent that Mr Fahid Amin referred to Mr Ali as "dad". There was an incident in 2004 when the younger brother stole but he was taken to task by Mr Fahid Amin who stopped his brother working in the Appellants' shops.

56. At that time Mr Ali's sons were at school in Pakistan. When Mr Ali made lengthy trips to see his family Mr Fahid Amin managed the shops including arranging supplies, engaging staff and taking care of wages and takings. Mr Ali believed that Mr Amin's younger brother had been reinstated in or around 2007/2008.

57. Mr Ali explained that he had been told by an employee when he returned from a trip to Pakistan that stock was going elsewhere while he was abroad and Mr Amin was in charge. He stated that when he was in the UK he would be responsible for cashing up in the shops; he would visit each shop, count the cash and take it to the safe which was in one of the shops. He said he would note on a piece of paper the amount of cash in each shop which would be placed in the expenses folder and provided to Accountants Plus every month or two. He did not check that the amount of cash matched the till rolls; he just counted the cash. He explained that one person was on the till in each shop.

58. On one occasion in 2010 Mr Ali stated that Mr Amin had gone to the shop where the cash was kept and Mr Ali's wife had let him take £40,000 - £50,000. Mr Ali became aware when his supplier called asking for payment. When confronted, Mr Amin said it had been banked but could not provide a receipt and when J W Filshill had still not been paid the following day, Mr Amin stated that his brother must have put the money in the wrong account. However, the situation was still not resolved two weeks later and when Mr Ali confronted Mr Amin, he left Mr Ali's employment taking a number of staff with him. Although the money was subsequently returned, Mr Ali no longer trusted Mr Amin. He did not see Mr Amin again until a few years later, in 2013 when he was approached by Mr Amin in relation to a tax investigation. He asked Mr Ali to "accept" that he had given Mr Amin the money in his bank accounts. Mr Ali found the situation bizarre as he did not know where the funds came from and, as a result of the falling out in December 2010, he did not wish to be involved.

59. In October 2009 Mr Ali's sons returned to the UK. Between 2009 and 2010 he heard rumours that the Amin brothers had acquired large vehicles in Pakistan and had funds in bank accounts. Mr Ali was not concerned that the brothers had been stealing but rather that they may be involved in illegitimate activities such as drugs.

60. In the latter part of 2010 Mr Ali discovered bank statements in Mr Amin's name at a house belonging to Mr Ali which he rented to Mr Amin. Between 8 January and 7 July 2010 there were deposits of £237,196.63 into that account. When asked, Mr Amin stated that these were funds sent by his relatives in Dubai.

61. Following Mr Amin's departure in 2010 Mr Ali suffered depression and his sons were still young. However, over time his sons learned how to manage the shops and gained experience which led to the acquisition of a fifth shop in 2015. Mr Ali explained that a dip in sales from 2014 to 2015 was due to substantial renovations carried out by the council in the areas surrounding 4 of the shops; the work went on from 2013 to 2017 and there were fewer customers until houses were rebuilt.

62. Competition with supermarkets such as Aldi and Lidl meant that suppliers reacted with offers which impacted on margins and the Appellant had to provide offers to its customers. Mr Ali explained that although there may be competition, convenience shops do not suffer significant fluctuations except where events such as the demolishing of council houses referred to above took place. He agreed the reduction in turnover suggested that there was an element of missing purchases and sales but stated that there was no reason why he would declare a higher turnover in 2009 prior to the engagement of Accountants Plus and then later withhold purchases; he suspected that the accountants had been negligent or carelessness.

63. A letter from JW Filshill dated 10 August 2011 indicated that BKE Ltd's balance owing was £125,000 on 21 July 2011. Mr Ali did not understand how the balances owing to JW Filshill and other suppliers were increasing however he claimed, with the benefit of hindsight, that Mr Amin was making purchases on BKE Ltd's account as he had subsequently discovered that Mr Amin had been running 3 of his own shops since approximately 2008. Furthermore, Mr Amin was known by suppliers as "Bobby" and his shops traded in the same style as BKE Ltd, as "Bobby's Bargains".

64. Mr Ali also explained that he had been sued by Mr Amin for unpaid wages and loans in the sum of approximately £80,000. Although Mr Ali had retained copies showing deposits into Mr Amin's bank account, he was advised that these could not be produced in the case. The proceedings were subsequently discontinued.

65. Mr Ali could not explain why Mr Kyle at Accountants Plus had stated there were no business bank accounts when he had provided bank statements but stated that perhaps Mr Kyle had mistakenly missed purchases by BKE Ltd in the same way he had mistakenly stated there were no business bank accounts. Mr Ali denied he had provided Mr Kyle with a mark-up figure nor had the £50,000 assumed drawings been discussed. He denied that Mr Kyle had told him to improve the company's record keeping. Mr Ali claimed that he noticed that the papers he had provided to Accountants Plus were in a mess during a visit to their office. He stated it was possible that they had lost invoices, but he had trusted them to help his business. He had also been asked to pay additional costs when HMRC began making enquires despite having provided all information to Accountants Plus and having been told that they would handle the matter. Mr Ali denied that he had been asked about drawings from the company nor had he been told about the £100,000 addition to sales.

66. Mr Ali explained that he and his son, Mr Mohammed Harrise Khan, became increasingly concerned at being charged for credit invoices which appeared not to relate to the Appellants. In 2019 JW Filshill were asked to immediately email all credit invoices issued on BKE Ltd's account. Mr Mohammed Harrise Khan noticed 5 invoices in April 2020 that did not relate to BKE Ltd. He viewed CCTV footage from JW Filshill which showed that Mr Fahid Amin had taken the supplies which were charged to BKE Ltd's account. The depot manager at JW Filshill claimed that Mr Amin had been making purchases on BKE Ltd's account for a long time although the supplier had been notified years earlier that Mr Amin no longer worked for BKE Ltd.

67. Mr Ali explained that if Mr Amin had paid for the supply then BKE Ltd would not have been notified. He believed that Mr Amin had made purchases for his own 3 shops in 2010 – 2012 but the purchases were made and recorded in BKE Ltd's accounts with suppliers.

68. Mr Ali highlighted that anyone could make a purchase on BKE Ltd's account at any of the cash and carries. This was demonstrated by Mr Ali accompanying an unknown buyer to Bookers Cash and Carry where the buyer was filmed making purchases on BKE Ltd's account without showing any identification. Similar footage was produced by Mr Mohammed Harrise Khan at United and JW Filshill, more about which I will set out in due course.

69. Mr Ali claimed that most of the additional supplies identified by HMRC were purchased by Mr Amin for his own businesses although he conceded there was a possibility that some of the additional supplies may relate to BKE Ltd as he had little confidence in Accountants Plus, but that did not mean that profits were understated.

70. Mr Ali explained in cross-examination that if Mr Amin had paid for goods in cash on BKE Ltd's account then he had no issue. However, if the goods were paid for by BKE Ltd he considered that stealing. He stated that he had intended to go to the police but after JW Filshill made their own inquiries they said they would take action which satisfied Mr Ali. As to the fact that the alleged purchases totalled approximately £500,000 in one year, Mr Ali stated that he could only explain that he was suffering from depression at the time and that when he repeatedly asked JW Filshill about the matter he was told that they would take it seriously. He agreed that he could only go so far as to state that he believed that Mr Amin used BKE Ltd's accounts but he had not personally seen this happen. He had not taken any action against the cash and carries however Mr Amin had been barred by JW Filshill.

71. Mr Ali explained that he did not accept any responsibility as he had employed agents who were meant to look after his interests and keep the business right.

72. Mr Ali was asked about payments towards deposits for properties owned and mortgages. He stated that some loans had been paid, which he had told his accountant about. Others were being paid off gradually. Mr Ali did not agree that the balancing figure and estimate of drawings in the accounts was required because he had not provided complete records.

73. Mr Ali noted that originally HMRC had included purchases from Costcutters as part of their assessment. However, the Costcutter account was discontinued, as HMRC subsequently accepted. Mr Ali stated that no issue was taken with the additional purchases from United but he disputed that there would be additional purchases from Booker in the sum of £204,000 as it had never been a major supplier for BKE Ltd. Mr Ali explained that Booker did not deliver and as the Appellants did not have a van it was only used for top up supplies. However, Mr Amin did own a van which led Mr Ali to believe that he had made the purchases. At most, Mr Ali claimed, there could only be £15,000 worth purchased by BKE Ltd which was based on purchases of £5,000 for the quarter May – July 2011.

74. Mr Ali claimed that Accountants Plus had never taken issue with the information provided by BKE Ltd, unlike the representative at T Nawaz & Co who would request invoices to match bank payments. Mr Ali maintained that Accountants Plus had not accurately reflected the company's transactions. He highlighted that rent for the shops was included in the accounts for APE 31 January 2012 at £40,000 yet the following year showed the rent as nil which was not correct. He understood that when T Nawaz & Co queried this with Accountants Plus they were told that the rent had been "left out of 2013 to reduce personal tax". Mr Ali claimed that at no stage had he requested that records be doctored or rents to be excluded.

75. In cross-examination Mr Ali agreed that he had funded his property purchases from money borrowed from Mr Amin between 2008 and 2010 which was in excess of £162,000. He stated that the money borrowed belonged to him as Mr Amin had taken money from the shops although he later clarified that although he presumed the money came from the shops he did not know this as a fact but he did not believe Mr Amin's claim that the money came from outside the UK. Mr Ali agreed that at that time he did not keep a tight rein on the money from the shops but explained that he expected his accountants to keep the situation right.

76. In relation to cashing up and paying wages, Mr Ali explained that the staff were paid per hour on a weekly basis and when they were paid, the staff would sign a book. No record was kept of the hours worked as the same staff were paid the same amounts each week. If a member of staff was on holiday they would sign the book to show this. Mr Ali stated agreed that there

were no till receipts with which to reconcile the cash; he would simply make a note of the cash and a further note if someone had spent any; there were no big expenses in the shops. He stated that deliveries were made to the shops and if something was urgently needed money was taken from the till to go to Bookers. The receipt was placed in the till and all paperwork for the delivery was placed in a file under the till. All invoices were given to Mr Kyle at Accountants Plus on a quarterly basis but not returned.

77. Mr Ali stated that when he moved to T. Nawaz & Co all the records were given to his new accountants. It was believed that they were then provided to Mrs Maguire at HMRC although there was no evidence which recorded receipt of the records by HMRC. Mr Ali was adamant that Accountants Plus had all the necessary records; he said he paid the accountants and provided the invoices and sales records. He could not explain why Mr Kyle had stated to HMRC in correspondence dated 13 February and 7 March 2013 that he had not been provided with prime sales records. Mr Ali explained that he believed that the former accountants were in the wrong and he felt cheated, although he had not reported them to a professional body, instead he had simply taken his business elsewhere. Mr Ali denied there was a deliberate act on his part not to provide records.

Mr Mohammed Harrise Khan

78. Mr Khan reiterated his father's account that he and his brother had studied in Pakistan returning to the UK in 2009. In 2010 he and his brother were called upon to run the shops due to their father's depression and Mr Amin leaving BKE Ltd's employment with a number of employees.

79. Mr Khan explained that from April 2013 when BKE Ltd engaged T Nawaz & Co, the provision of information became progressively his responsibility whereas beforehand he and his father had shared the task. After 2013, on the advice of the accountants, each store was the manager's responsibility, although the same process was used for cashing up which was carried out by either Mr Khan, the store manager or his father and was always a member of the family.

80. The information passed to the accountants comprised all purchase and expense invoices and bank records which included statements, cheque stubs and wage details. A new EPOS system was introduced for sales in August 2015, but it is still not fully functioning. Till rolls and Z readings are not needed as the figures are written down and sent to Mr Hussain at T. Nawaz & Co who provides wage slips and prepares the accounts. As the EPOS system does not always record the correct figures, receipts are kept in a day book in the office. Mr Khan does not have a cash book to record takings, cheques and cash amounts at the end of a day as that is the job of the accountant who requests all information he needs and which Mr Khan provides. Mr Khan explained that he records the total figure of expenses, invoices and sales and provides those figures to the accountant.

81. Mr Khan explained that he now understands that there were many errors in the accounts produced by Accountants Plus and that these included the omission of suppliers' balances when Mr Kyle of Accountants Plus simply added amounts to sales and made BKE Ltd pay VAT which was not actually due. Similarly, Accountants Plus were responsible for the error relating to the omission of rent in the accounts. He stated that there was no reason for the Appellants to withhold any purchase invoices and any invoices which were not processed resulted from the negligence or laziness of Accountants Plus. Mr Khan claimed that the former accountant was not telling the truth in asserting that he had made repeated requests for records and better record-keeping.

82. Mr Khan explained that additional invoices relating to Bookers in the sum of £204,130.22 cannot be correct because purchases from Bookers only amount to approximately 1 – 3% of BKE Ltd's purchases as it has no delivery service and the Appellants do not own a van. Bookers

is therefore only used for "top–up" purchases which can be transported by car. Furthermore, Bookers are not competitive. Mr Khan emphasised that the company's declared supplies from Bookers in the year to 31 January 2021 amounted to £4,891.16 in the period May to July 2011 and therefore Mr Khan concedes that additional purchases may have been omitted in the region of £5,000 for each of the remaining three quarters, making a total of £20,000 for the year ending 31 January 2012. He added that when compared to the declared purchase for that year of £755,775 the Booker purchases are 2.64% of total purchases which indicates that the figure alleged by HMRC cannot relate to BKE Ltd.

83. In relation to JW Filshill, Mr Khan explained that as recently as April 2020 Mr Amin had made purchases on credit on BKE Ltd's account and that the supplier believed that Mr Amin was employed by BKE Ltd. Mr Khan claimed that it is therefore clear that Mr Amin had made similar purchases for his own shops since 2010. Mr Khan stated that although his father had concerns regarding Mr Amin in 2010, there was no proof until 2019 and he did not raise it with Mr Nawaz until 2020 as JW Filshill were dealing with the issue.

84. Mr Khan exhibited a document entitled "Filshill Dispute 1 Fahid Amin Purchases" which set out 5 invoices purported to have been for goods for BKE Ltd but which Mr Khan claimed were taken by Mr Amin and in respect of which credit notes had been issued by the supplier. He explained that the goods were shown as for collection at 0000 which suggested to him that the invoices were generated overnight on 25 April 2020 and for collection the following day. BKE Ltd had not placed any orders nor would they have collected goods on a Sunday. Mr Khan therefore went to the depot on Sunday 26 April 2020 and took issue with the depot manager. Mr Khan stated that he tried to obtain records from suppliers for the period relevant to this appeal, but he was unable to due to the time that had elapsed. Mr Khan explained that he had initially thought JW Filshill had made a mistake and it was not until he spoke to George, the depot manager, that he found out in April 2020 that Mr Amin had been using BKE Ltd's account. He stated that an argument ensued whereby George initially accused BKE Ltd of defrauding JW Filshill Mr Khan explained that he refused to back down and was shown the CCTV footage. He claimed that the CCTV footage, which was not exhibited, showed Mr Amin collecting the invoiced goods. He stated that George claimed that the man who picked up the goods was "Bobby" who had made purchases on BKE Ltd's account for years and that he worked for BKE Ltd.

85. Mr Khan also explained that there had been another instance in which BKE Ltd received an order which was incomplete and it was only after JW Filshill reviewed the CCTV footage that they confirmed goods were missing and provided credit notes. Mr Khan took the matter up with Mr Wylie, the finance director at JW Filshill who confirmed that the Appellants had notified the supplier that Mr Amin was no longer employed at BKE Ltd. Mr Wylie also arranged for the depot manager to credit the invoices and provide credit notes to Mr Khan. Mr Khan also explained that there had been other incidents where orders from JW Filshill had not been delivered in full and that CCTV footage confirmed this.

86. Mr Khan explained that as none of the suppliers request identification from purchasing customers, anyone could use BKE Ltd's account number to obtain supplies. As long as the goods are paid for there is no reason BKE Ltd would be aware of this, nor would they be concerned unless the goods were purchased using BKE Ltd's credit but not paid for.

87. Emails adduced in support of Mr Khan's account of events refer to an 'incident' between George and Mr Amin. There was an email from Mr Khan to Alan Wylie at JW Filshill dated 7 April 2021 which stated:

> "Hi alan,
>
> How are you.

Two things buddy firstly payments will be in tomorrow first thing sorry for the delay can only apologise for that.

Also if you remember us speaking outside filshill regarding the incident between fahid amin and George and requested a letter of Fahid amin action taken and apology from George.

If you can please update me on that.

Sorry stuck in Pakistan at the moment trying to get first flight out.

Regards,

Mohammed Khan."

88. An email fom Mr Wylie to Mr Khan in response of the same date stated:

"In terms of action taken Mr Amin is no longer a customer…".

89. A further email from George at JW Filshill to Mr Khan dated 8 April 2021 stated (so far as is legible):

"Hi harris due to events in April 2020 mr fahid amin we took the decision to cancel all accounts.

And he has been told that we won't be trading with him.

And he is no longer welcome at filshill.

Thanks George"

90. Mr Khan claimed that it was logical that Mr Amin had been stealing or JW Filshill would not have credited Mr Khan for the invoices. Mr Khan had not made an earlier attempt to obtain further evidence relating to Mr Amin as neither he nor his representatives were aware of the nature of HMRC's enquiry or which supplier it related to. He added that JW Filshill said they would take action and he had no proof against Mr Amin for earlier periods. He highlighted that JW Filshill had barred Mr Amin from their business although he accepted that the email did not specify the reason for this. Mr Khan stated that BKE Ltd continue to use JW Filshill despite their lax procedures as they had barred Mr Amin and he had been told that Mr Amin's accounts had been closed. As he had been credited in respect of the invoices he could not take any further action or go to the police.

91. Mr Khan maintained he was a competent businessman and was unable to change the practices of the cash and carries used. He stated he had not noticed additional purchases of approximately £100,000 each year as if an invoice arrived with a delivery, the invoice was given to the accountants and there was little else he could do. He added that Mr Wylie at JW Filshill knew that Mr Amin no longer worked with the family as his father had informed him, however in his written evidence Mr Khan added that Mr Wylie had explained that constantly changing staff might not be aware.

92. Mr Khan was unable to explain why a sales invoice and corresponding credit note within the bundles of documents gave a delivery and invoice address for NOMI Enterprises Ltd, which was the tenant prior to BKE Ltd and unconnected to the Appellants. The company was incorporated in June 2013 and dissolved in 2018, however the date of the invoice was 25 April 2020 and the credit note was 29 April 2020. Mr Khan stated that JW Filshill had been told that BKE Ltd had taken over but that he had not noticed that the name of the previous company was used on the documents. He also could not explain why the account of Keystone Irvine Ltd, which was dissolved in 2018, was used to make purchases in 2020. Mr Khan accepted that there were two credits for businesses which no longer exist.

93. Mr Khan calculated that the purchases from JW Filshill ranged from £24,916.96 in January 2012 to £92,308.85 in August 2011. JW Filshill was the Appellants' main supplier at the time, making up approximately 90% of the company's supplies. He stated that it was unlikely therefore that there would be so much variation and, taken together with the

"ridiculous" mark-up in the 2012 accounts it is likely that Accountants Plus missed many purchases with the remaining purchases having been made by Mr Amin. Mr Khan did not take issue with the additional purchases relating to United Wholesale.

94. Mr Khan claimed that the mark-up of 23% applied by HMRC is too high for the business and he had conducted his own mark-up exercise for May to July 2020 which produced a margin of 17.01% which would equate to a mark-up of 20.5%. Mr Khan denied that he had provided mark-up figures to Accountants Plus or that he was told that the company's record keeping was poor.

95. Mr Khan maintained that it was not his responsibility if the accountants made errors. He did not accept that purchases had been omitted, even to a limited extent but accepted he had stated in his written evidence: "the fact that any purchases were missed is not an indication of omitted profits but of an adjustment to profit margins…The additional purchases relating to United are not significant and I would not take issue with these."

CCTV

96. Mr Khan, with the assistance of an interpreter, exhibited videos recorded on telephones showing unidentified males making purchases on BKE Ltd's account at all three suppliers' premises.

97. Mr Khan explained that on 20 August 2020 he took a person to United Wholesale and JW Filshill and stayed in the car while the person buying the goods on BKE Ltd's account went into the premises and simply quoted the account number. At the check-out, the employee asked if the purchase was cash or credit. At JW Filshill the person making the purchase simply gave the account number and was able to collect goods ordered on credit. Although he noted HMRC's observation that the unknown person is asked to sign for the goods and would need to know that an order had been placed plus the account number, and there was no evidence that it was not Mr Khan or an employee of BKE Ltd who telephoned to place the order.

98. Mr Khan accepted that the videos, which were filmed in 2020, did not show the cash and carry procedures in place in 2011 onwards, explaining that the checks had improved by 2020 although no identification was requested, only an account number. He accepted that the different suppliers had different levels of checks but did not agree that the videos did not show if any further checks were carried out beyond those shown in the footage.

99. A further video showed Mr Ali taking an unknown person to Bookers on the same date. He remained in the car park while the person attended the premises, paid for the goods and only provided the company's name and an account number to the supplier.

Mr Taher Nawaz

100. Mr Nawaz set out his substantial qualifications and experience as a Chartered Accountant dealing with a wide spectrum of tax matters including specialist investigations by the former Inland Revenue and HMRC, as it now is, police prosecutions emanating from the Department of Trade and Industry and wider ranging criminal prosecutions. His practice has dealt with all manner of businesses including, as this appeal does, retail food and off licence sales in convenience stores.

101. When Mr Nawaz was instructed in April 2013 the business consisted of four shops with a fifth acquired on 24 March 2015.

102. In April 2013 Mr Nawaz wrote to Mrs Maguire at HMRC indicating that he had examined the overall means position and took the view that there was no case to answer. Mr Nawaz suggested a meeting with Mrs Maguire to address HMRC's enquiries. The offer was repeated in correspondence dated 15 May 2014 but was not taken up.

103. Mr Nawaz reiterated his comments regarding his examination of the Appellants' means position to the Specialist Investigation unit when they took over in July 2014. Mr Nawaz also required further information regarding earlier accounts and returns to understand the basis of HMRC's concerns. However, no information was forthcoming and there was an "impasse" until Mr McAreavey issued assessments in 2018 on the basis of omitted purchases converted into sales by the use of a mark-up which Mr Nawaz considered did not accord with margins applicable to similar businesses or within BKE Ltd.

104. Mr Nawaz highlighted that HMRC only supplied the suppliers' statements on 19 December 2019 following a disclosure request. However, although statements included those from Bookers and United Wholesale (Scotland) Ltd, there were none from JW Filshill or United Wholesale Grocers. The statements only accounted for 18% of the total alleged purchases (including declared and undeclared). It was not until August 2020 that Mr McAreavey provided spreadsheets which assisted the Appellants in understanding the underlying figures.

105. Mr Nawaz explained that when his firm took over the Appellant's accounts, they found many errors and unexplained transactions, for instance creditors had been ignored and sales reflected when payments were outstanding, no rents for shops were charged for the year to 31 October 2013 despite the accounts having contained the rents the previous year, assumed drawings of £50,000 in the year to 31 October 2013 and a cash difference of £79,664.83 added by way of drawings to the DLA resulting in additional sales of £100,000. All of these errors indicated to Mr Nawaz that the Appellants have suffered unnecessary additional tax and VAT liabilities as a result.

106. Mr Nawaz explained that a mark-up exercise produced by him and provided to HMRC related to a company unconnected to the Appellants and was produced only by way of illustration but he noted that the document used the same prices, same supplier and the location of the business was close to BKE Ltd.

107. Mr Nawaz clarified that he did not have first-hand knowledge of the Appellants' accounts as that was dealt with by another accountant in the firm, but he had not heard any comments to suggest that the Appellants did not keep records. He explained that once he was instructed by the Appellants, he had accepted information provided by the previous accountants at face value without having seen the underlying source of information as he was given limited information.

HMRC's case

108. HMRC submitted that the initial meeting between HMRC and Accountants Plus demonstrated that BKE failed to maintain sufficient business records of known purchases and sales and VAT records to deliver complete and correct returns to HMRC for the periods assessed. HMRC highlighted that Accountants Plus had confirmed that the only business records provided by BKE Ltd were details of purchases for all four shops. No sales records were maintained but rather the directors of BKE Ltd advised the accountants of the gross margins that the shops were working to and the purchases were then grossed up by Accountants Plus to achieve a figure of sales.

109. Although not a matter disputed by the Appellants, HMRC submitted, following *Burgess and Brimheath Developments Ltd v HMRC [2015] BTC533*, that the relevant conditions of Para 41(1)(a) Sch 18 FA 1998 are satisfied as BKE Ltd generated additional trading profits in the periods concerned that ought to have been assessed to tax but had not been assessed. In those circumstances the discovery assessments for APE 31 January 2011 and for APEs 31 January 2013 up to and including APE 31 January 2017 are all both valid and legal.

110. In *Revenue and Customers Commissioners v Tooth* [2018] UKUT 38 (TCC) the meaning of a discovery is set out as follows:

> "… The word "discovers" does connote change, in the sense of a threshold being crossed. At one point an officer is not of the view that there is an insufficiency such that an assessment ought to be raised, and at another he is of that view. That is the only threshold that has to be crossed."

111. HMRC submitted that Officer McAreavey's discovery followed an analysis of the information gathered during the enquiry process by him and by his fellow officers. The discovery came from an analysis of information provided by the suppliers contacted by HMRC which demonstrated that a significant number of purchases were missing from the accounts. HMRC submitted that this discovery applies to both the CT assessments and the IT assessments that relate to beneficial loans to the Directors.

112. Mr McAreavey explained in evidence that the assessments raised were on the basis that BKE Ltd had failed to include all of the purchases for its 4 shops in the period of enquiry (2012) in its accounts and that it failed to keep adequate and sufficiently robust records to support the entries in its returns. Information obtained from the cash and carries confirmed that omitted purchases of in excess of £500,000 were identified. HMRC submitted that the behaviour that caused the inaccuracy to be deliberate, and therefore the conditions of the legislation were met by the fact that the Appellants deliberately withheld purchase invoices (amongst other records such as sales records) from Accountants Plus in the preparation of the accounts.

113. HMRC submitted that for each accounting period, the inaccuracy was a deliberate one brought about by the company officers who intentionally underdeclared purchases and sales. HMRC submitted that given that the record of purchases was the only prime business record kept by the business (albeit significantly understated) and it was used to calculate the sales figure by applying a mark-up from information provided by the Directors, an error of this magnitude could not have gone unnoticed by the Directors of BKE Ltd.

114. HMRC established that the original sales figure in the accounts submitted by BKE Ltd for 2012 was calculated by applying a 23% mark-up to the declared purchases. The additional sales have been calculated by applying the same 23% mark-up to the additional purchases. The GPR used is the same as the original GPR in the accounts which was based on information provided by the Appellants to Accountants Plus. HMRC invited the Tribunal to reject the Appellants' contention that any additional purchases would have been sold at cost.

115. The VAT assessments were raised under Section 73 VATA 1994. The method used allowed the company the benefit of the input tax they would have been allowed to claim against the output tax as VAT was charged on the net liability rather than simply on sales. HMRC submitted that on the basis that 75% of the additional sales are standard rated for VAT and 25% of sales zero rated, it has been assumed that the same proportion applies to additional profits. HMRC submitted that the VAT assessments have been made to best judgment and are in line with VAT legislation. The assessments are neither frivolous, vexatious, or capricious.

116. A comparison of the VAT records and the CT records showed that 75% of the sales of BKE Ltd were standard rated for VAT and the balance zero rated sales. With a VAT rate of 20%, the original profits have therefore been reduced by this amount giving a final addition to profits of £134,119 for the APE 31 January 2012, which gives rise to a CT charge of £23,666.59.

117. To calculate additional profits in other years HMRC applied the RPI to the additional profits of the enquiry year (APE 31 January 2012) then applied the same method to reduce the sales for VAT in each year. HMRC confirmed that the calculation to reduce sales for VAT in the APE 31 January 2011 took into account the rate change of VAT on 3 January 2011.

118. HMRC submitted that initially when presented with details of the missing purchases from the business records the Appellants did not deny that there were any missing purchases but stated that if there were any omitted purchases this did not necessarily mean that this would result in any additional sales. HMRC submitted that this is not a credible proposition as it suggests that over £500,000 omitted purchases were sold at cost and generated no additional profits for the company.

119. HMRC invited the Tribunal to reject Mr Nawaz's initial suggestion that the GPR should be below 10% as insufficient evidence has been provided to support this assertion. Against a background of incomplete records submitted by the company in the preparation of the accounts, the sales figure was calculated using the mark-up figure provided by the Director to Accountants Plus and applied to the purchase invoices that they had submitted. The same mark-up should be applied to the missing additional purchases.

120. The Appellants appear to have accepted the omission of some purchases from the business books and records within their witness statements. In an email from Mr Nawaz dated 18 September 2020 it is stated that the Appellants accepted that there were additional purchases not included in their accounts:

> "The appellants concede that they did not wish to challenge the relatively modest additional purchases from United Wholesale, and they concede that perhaps an additional £15,000 of supplies from Bookers may well relate to them. They also concede that there may well have been an element of JWF purchases understated as the level of their annual purchases had supported a turnover level of up to £320k per quarter in 2009…."

121. A submission to the Tribunal from Mr Nawaz dated 2 October 2020 stated:

> "JWF is the main supplier and, whilst the Appellants concede that some additional purchases**, of perhaps as much as £200k may relate to them**…….the overall impact is that if £225k, to include the additional purchases from United and Booker to the £200k, are added to the purchases and the same amount to sale, this would not produce additional profits to assess but would only produce a reasonable margin …."

122. Having initially denied that there were any missing purchases, the Appellants have now confirmed in correspondence that there are indeed missing purchases from their accounts. As enquiries have progressed, various explanations have been put forward by the Appellants yet very little in the way of evidence has been provided to back up any of these claims.

123. In respect of the accounts submitted for 2012 and other years, the Appellants have placed the blame for any errors on their former Accountant, Mr Billy Kyle of Accountants Plus. HMRC submitted that incomplete business records were maintained by the Appellants which were insufficient and inadequate to enable their Accountant to prepare a complete and correct set of accounts for the year as balancing figures and estimates had to be introduced by them. HMRC submitted that there is no reason to doubt that the accounts submitted by Accountants Plus were prepared on the basis of information and documentation provided to them by the Directors of BKE Ltd.

124. When served on 9 September 2020, the witness statements of Mr Ali and Mr Khan raised a completely new argument relating to wrongdoing by Mr Amin which had never been presented to HMRC during the long running enquiry from November 2012 to July / August 2018 when the various enquiries were concluded, nor had they been presented during the appeals process since the appeals were notified to HMRC in August 2018.

125. HMRC submitted that very little weight should be put on the explanations now provided as, to date, no credible or compelling evidence has been provided to back up these allegations of theft, fraud or wrongdoing by Mr Amin or by the suppliers. HMRC submitted that if Mr Amin had been 'stealing' from BKE Ltd to the extent alleged by the Appellants, it would almost

certainly have become apparent to the Directors of the company and their former Accountants (Accountants Plus) at an earlier date.

126. HMRC submitted that that no evidence has been provided to show that any official, formal action has been taken by the directors of BKE Ltd to involve the Police regarding these allegations of theft or fraudulent activity. No Police reports or crime reference number has been provided to HMRC. There are no email exchanges or formal letters raising a complaint against the suppliers (management or staff) or evidence of any internal communications relating to alleged misconduct have been provided to HMRC. There has been no evidence from cash and carry staff or letters asking how this was allegedly 'allowed' to happen. No evidence has been provided regarding any internal investigation by the suppliers and no evidence has been provided to show that BKE Ltd has taken any action to ask the suppliers to investigate this alleged wrongdoing by their employees.

127. HMRC submitted that having waited approximately 8 years to put forward an alternative to explain some of the missing purchases, the Appellants have yet to provide any compelling evidence to support it.

128. The Respondents submit that there is no way to verify the authenticity of the recordings or to account for the circumstances in which they were filmed and therefore the videos should be disregarded.

129. HMRC contend that additions to sales are due in earlier and later years using the presumption of continuity as there have been no major changes in the business or their record keeping procedures either before or since the year of enquiry. Relying on *Jonas v Bamford* [1973] EWHC 51 (TC) HMRC noted that the only change in the business is the appointment of a new agent Mr Nawaz, however, he has only been dealing with the enquiries. The preparation of accounts and submission of Returns for the years assessed was dealt with by Accountants Plus.

130. HMRC submitted that company funds misappropriated by Directors of a close company should be treated as loans or advances made to those Directors. BKE Ltd is a close company. This results in a tax charge on the company under Section 455 CTA 2010. The tax due under Section 455 CTA 2010 and Class 1A NICs are due to be paid by the company. The tax due on the Benefit in Kind ('BIK') is due to be paid by the Directors of BKE Ltd. The loans made on or after 1 April 2016 are chargeable at a rate of 32.5% and loans before this date are chargeable at a rate of 25%. In line with HMRC practice, the additional profits of BKE Ltd in each accounting period have been treated as a loan to the directors, split equally, made on the last day of each accounting period.

131. As HMRC treated the additional profits of the company as loans to participators they are considered to be beneficial loans to the directors which creates a taxable Benefit In Kind on which Class 1A NICs are due. In the absence of any information or evidence to the contrary, the total benefit has been split between the four Directors equally. As Mr Mohammed Paris Khan resigned from BKE Ltd on 1 February 2016, no benefit in kind has been assigned to him after this date.

132. In relation to under declared income from property Mr Nawaz confirmed in an email dated 18 September 2020 that "the appellants concede that the rental income for 2011/12 has been understated". HMRC therefore contended that the assessment should stand.

The case for the Appellants

133. Mr Nawaz highlighted four authorities, noting that three are Court of Appeal back duty cases **(***Hurley v Taylor* [1999] STC 1**,** *T Haythornthwaite and Sons Ltd v Kelly* [1927] 11 TC 657**,** *Johnson v Scott* (*Inspector of Taxes)* [1978] STC 48) in which the starting point was the

preparation of capital statements by the inspector concerned, which showed capital accretions in excess of the known means of the taxpayers. *William Chapman v HMRC Commissioners* [2011] UKFTT 756 (TC) involved an evaluation of profits by HMRC and where such exercises had not been carried out for other years than the enquiry year the assessments were cancelled by the Tribunal.

134. Mr Nawaz submitted that in the instant case, aside from the use of an arbitrary and manifestly incorrect margin, there has been no attempt to support the assessments made and therefore there is no prima facie case of wrongdoing other than omitted purchases which are balanced by omitted sales.

135. Article 6 of the European Convention on Human Rights, encapsulated within the HRA 1998, provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law and that everyone charged with a criminal offence has the following minimum rights:

> "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him."

136. Mr McAreavey acknowledged in evidence that in hindsight HMRC's evidence should have been provided earlier. It was clear that that the Appellants were in no position to know the precise case against them. Had information been provided in 2013 when it was obtained by HMRC it may have been possible for the appellants to seek confirmation of how purchases were dealt with. As it stands, JW Filshill could not go back further than six years and as such were unable to assist with documentation going back before 2014/15.

137. The Appellants had no understanding as to why assessments were raised where there is no evidence of profit as measured by either an enhancement in assets, reduction in liabilities or additional drawings. The first meaningful disclosure was made was on 21 August 2020 and as such more than two years after the intimation of assessments (on 17 May 2018) and the actual assessments (2 July 2018) were raised.

138. Mr Nawaz summarised the issues as follows:

> (a) Whether there is sustainable evidence to suggest that all "additional" purchases related to the appellants and not others such as Fahid Amin who was making purchases on the BKE Ltd account in April 2020, some seven and a half years after he had ceased to have any connection with BKE. The same applies to the ease with which anyone could make purchases on BKE accounts without the need for any identification;
>
> (b) Whether there is any evidence to suggest that subsequent years or earlier years had missing purchases;
>
> (c) Whether the mark-ups of 23%/margins of 18.7% used could be justified in circumstances where margins suggested by HMRC's guidance are no more than 17% before competition from shops such as Lidl is considered, the sales mix including discounted goods and the accounts prepared by Accountants Plus used as the basis cannot be relied upon;
>
> (d) Whether there is any evidence of profits as opposed to additional sales and purchases to assess tax.

139. Mr Nawaz noted that HMRC relied on information given by Mr Kyle of Accountants Plus who did not attend to give evidence or produce a witness statement. In relation to Mr McAreavey's evidence, the Appellants accepted that Judge Redston had dismissed their claim

that it was inadmissible as hearsay. However, Mr Nawaz noted that Mr McAreavey was unable to explain certain issues, such as incorrect shop addresses on some of the mandates, and he maintained that the evidence was inadmissible hearsay and should be ignored as inaccurate.

140. Mr Nawaz submitted there were numerous examples of errors made by Mr Kyle including:

(1) In a letter dated 8 October 2013 to the current accountants, Mr Kyle stated that: "The breakdown of rent of £40,000 claimed in the 2012 accounts – 4 shops at £10,000 per shop. Left out of 2013 to reduce personal tax" which is denied by the Appellants;

(2) An email from Mr Kyle dated 13 February 2013 stated: "as previously intimated, there are no prime sales records and at the time no business bank account. Essentially the books are the invoices provided to us and then the client advise us of a margin to gross up the purchases to achieve sales". This is denied and the summary of accounts prepared by Mr Nawaz and Mr Ali shows bank balances at year ends and bank charges.

(3) The bundle contains reference by Mrs Maguire to the gross profit as 7.53% yet HMRC applied 23% despite stating that they applied the mark-ups provided by Accountants Plus.

(4) The summary of the accounts shows that light and heat, which would include electricity for large display refrigerators in four shops amounted to £4,833 in 2010/11 and only £425 in 2011/12 for the same four shops. This shows the accounts produced by Accountant Plus were inaccurate and could not be relied upon.

(5) A letter of 7 March 2013 from Accountants Plus indicates that "there was not enough cash to cover expenses in the 2012 accounts and £100,000 was added to sales (Gross)". The Appellants submitted that this is false as expenses were adequately covered by the family's income which included the pensions of Mr Ali's mother and aunt plus rental income of £14,000 per annum from properties owned. The cash difference only arose by the unnecessary addition of £79,664.83 by way of drawings. Any cash difference is a balancing figure and if £79,664.83 is removed there is no need for the additional £100,000 additional sales. Taking into account creditors of £64,000 there was no need for the additional figures and the accounts are therefore unreliable.

(6) For the following year 2012/13 additional drawings of £50,000 were incorporated with no basis at all and this resulted in additions to sales of £64,000 when in fact there were omitted creditors of a similar amount.

141. The evidence suggests that Accountants Plus were careless and possibly omitted some purchases; as per Mr Ali's evidence the Appellants had no need to suppress purchases.

142. In support of the Appellant's case that Mr Amin had made purchases on the Appellant's account for credit, Mr Nawaz highlighted that the goods in question were (a) picked up by Fahid Amin; (b) the amounts charged to the account of the appellants were credited as JW Filshill accepted that the charge was not valid; and (c) JW Filshill barred Mr Amin from any further dealings with them. The video footage also shows how easy it was to purchase goods on the Appellant's account without the need to produce any identity, even to the extent of acquiring goods on credit.

143. Mr Nawaz queried whether Mr Amin had been investigated by HMRC and whether they had analysed if he had made purchases on the Appellant's account during the sist which was granted. He invited the Tribunal, in the absence of any information in this regard to conclude that HMRC had no evidence to challenge the Appellants' case with regard to the purchases of Fahid Amin or the purchases of others because of lack of security at cash and carries.

144. With regard to Bookers there has been no agreement as such but, given the pattern of purchases the appellants are willing to concede that up to £15,000 worth of additional purchases could have been made from Bookers in addition to those included in the record of purchases.

145. Relying on *William Chapman v HMRC* Mr Nawaz submitted that as there is no evidence of suppression of purchases in relation to other years, the presumption of continuity should not apply, noting that increased purchases have been declared for the years 2014-2017. Mr Nawaz highlighted the similarities in the cases, such as professionally prepared accounts for the years in dispute:

> "79. Both parties focussed on the Enquiry Year. Virtually, all the evidence related to that period. It was assumed that the other years stood or fell with the Enquiry Year. That is how matters have turned out; no attempt was made to examine the Appellant's business activities and bank and cash transactions in the earlier years or in the later year. Accordingly, if these earlier and later assessments overcharge the Appellant, there is no mechanism we can adopt or evidence we can apply to identify how the assessments should be *reduced accordingly* (TMA s50(6)). If that is so, the assessments must be discharged or set aside, or to use the statutory language, be *reduced* to nil. This arises not because of the inadequacy of the Appellant's records but because of the approach and methodology adopted by the Revenue and the evidence which we heard. Allowing an assessment to fall because of the inadequacy of a taxpayer's business records would be a rogue's charter. The Appellant here has at least produced professionally prepared accounts for the years in dispute, albeit based to some extent on questionable record keeping.
>
> …
>
> 84.While we have some reservations about the logic of some aspects of the Takings Build-Up it was not challenged as an appropriate approach for the Enquiry Year. However, it is an analysis based on the particular transactions of that year and seems to us to be difficult to justify applying the results to other years. It is an examination of specific transactions which happened to occur in that year. No inference can be drawn from that examination that the same transactions or similar ones occurred in the ensuing or past years. For example, £15,000 was taken out of the equation because it related to a non-business transaction (sale of a registration plate). It cannot be assumed that a similar transaction will occur in another tax year even if the result of that particular transaction being excluded was to the taxpayer's benefit."

146. Mr Nawaz noted that there is a reference to reservations about aspects of the "Takings Build-Up" despite it not being challenged for the Enquiry year. However, in the instant case the Enquiry Year is entirely challenged in that the Appellants do not concede that there has been a concealment of profits; to the contrary additional sales of £100,000 have been added which have no apparent basis and therefore it cannot be considered safe to allow such results to be extrapolated to other years. He drew attention to the following passages:

> "86. The second point relates to the resulting *Required Sales* figure of £94,891. This represents the Revenue's assessment of the Appellant's turnover for the Enquiry Year. At the end of the day, the Takings Build-Up is only an estimate and it is necessary to stand back and consider whether the resulting figures are realistic. We consider that a turnover of 2006/2007 of almost £95,000 for the Enquiry Year is wholly unrealistic. We have described the type of work carried out, the sums charged and the hourly rates which seem to have been applied during the Enquiry Year. These were not challenged. In those circumstances, there would have to have been a constant stream of motor vehicles passing through the Appellant's premises fifty weeks a year and a production rate of six or seven vehicles every day. Given the evidence of the Appellant's health, his drinking and his gambling habits it is plain that he was not present working on the premises throughout the day. He appears to have been the only qualified mechanic on his premises although he had assistance from an apprentice and possibly one other part-time worker. An apprentice and the other part time worker are unlikely to have worked on their own or, if they did, they are unlikely to have worked as efficiently as an experienced and fully trained mechanic. There was no evidence that the other part time worker was a trained mechanic.
>
> 87. This leads us to find on the balance of probabilities that the closure notice, which is based on a turnover of £94,891 must be wrong. To put it another way we are satisfied on a balance of

probabilities that the Appellant has been overcharged by the assessment. The assessment must be reduced accordingly."

147. Mr Nawaz queried why the presumption of continuity was applied in this case given there have been considerable changes; a change of accountants, the addition of a fifth shop in March 2015, the disruptions caused by demolitions of council houses nearby and disruptions to traffic causing loss of access to one or more shops. That there was change is obvious from the higher purchases and sales figures in subsequent years which suggest that there were no missing invoices.

148. Mr Nawaz submitted that in all the circumstances of the case, in particular the unique situation caused by missing invoices and doubts arising from the fact that others have purchased on that account, with no similar evidence for any other years suggests that the assessments should be on the enquiry year alone and, given the explanations available, it is clear that no adjustment as assessed by HMRC is warranted.

149. *Pegasus Birds Ltd v Commissioners of HM Customs and Excise* [2004] EWCA Civ 1015 imposes a duty on the parties to assist the Tribunal in quantifying any potential liabilities. The appellants feel that they may have overpaid tax. However, in an effort to assist the tribunal the appellants submit that at worst the assessments should:

- be restricted to one year, being 2011/12;
- no more than £15k should be included for Bookers and half those for JW Filshill;
- have the margin applied to be the average for a prolonged period to include accounts for subsequent years prepared with a lot more care than those prepared by Accountants Plus;
- reflect an allowance for additional expenses which have clearly been missed by Accountants Plus;
- potentially reflect the overpaid VAT amounting to £16,441 and the over assessed £100k in sales; and
- Reflect £40k shop rents against company profits as the rents have been reflected in the tax returns of MAA and MB.

Discussion and findings of fact

150. The following legislation and authorities are relevant to the matters under appeal.

Provisions relating to corporation tax

151. Under paragraph 21 of Schedule 18 to the Finance Act 1998 ("Schedule 18"), a company is required to keep such records as may be needed to enable it to deliver a correct and complete return for each accounting period and to preserve those records for the period specified in the relevant provision. Under paragraph 21(5) those records include, inter alia, records of all receipts and expenses incurred in the course of the company's activities and all sales and purchases made in the course of the trade. Under paragraph 24 of Schedule 18, an officer of HMRC is entitled to enquire into a company's tax return provided that he or she gives notice to the company of his or her intention to do so within the period specified in the provision. Under paragraph 32 of Schedule 18, an enquiry is completed when an officer of HMRC issues a notice to the company (a "company closure notice") to the effect that the enquiries have been completed.

152. Under paragraph 41 of Schedule 18, if an officer of HMRC discovers as regards an accounting period of a company that an amount which ought to have been assessed to tax has

not been assessed, an assessment to tax has become insufficient or a relief which has been given is or has become excessive, then the officer may make an assessment in the amount or further amount which ought in his or her opinion to be charged in order to make good to the Crown the loss of tax. Paragraphs 42 to 45 of Schedule 18 provide that the power to make a company discovery assessment in relation to an accounting period for which the company has delivered a tax return is exercisable only:

(1) if the circumstances described above were brought about carelessly or deliberately by, inter alia, the company or a person acting on behalf of the company; or

(2) if, at the time when an officer of HMRC ceased to be entitled to give a notice of an enquiry into the relevant return or issued a closure notice in relation to any such enquiry, "the officer could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware of [the relevant circumstances]"

153. Paragraph 46 and 46(2A) of Schedule 18 provide for a longer period beyond the four year time limit for making an assessment. Where a case involves a loss of tax brought about carelessly by the company or related person an assessment may be made at any time not more than 6 years after the end of the accounting period to which it relates and an assessment to corporation tax in a case involving a loss of tax brought about deliberately by, inter alia, the company or a person acting on behalf of the company may be made at any time not more than 20 years after the end of the accounting period to which it relates.

154. In relation to the meaning of "deliberate", the FTT gave the following guidance in *Auxilium Project Management v HMRC* [2016] UKFTT 249 (TC):

> '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."

Provisions relating to VAT

155. Under paragraph 6, Schedule 11 of VATA 1994 every taxable person shall keep such records as the Commissioners may by regulations require. Under section 73 VATA 1994 where a person has failed to keep any documents and afford the facilities necessary to verify such returns or where it appears to HMRC that such returns are incomplete or incorrect, they may assess the amount of VAT due to the best of their judgment.

156. The time limits for raising VAT assessments are given in Section 73(6) VATA 1994 as not later than:

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

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

157. The case of *Van Boeckel* [1981] STC 290 sets out the following principles to apply in considering whether an assessment has been made to best judgment:

(1) HMRC should not be required to do the work of the taxpayer;

(2) HMRC must perform their function honestly and above board; and

(3) HMRC should fairly consider the material before them and on that material come to a decision which is reasonable and not arbitrary, and there must be some material before the commissioners on which they can base their judgement

158. In *Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015, Carnwath LJ set out the following relevant guidance in relation to 'best judgment' (at [38]):

> "i) The Tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the Tribunal should not allow it to be diverted into an attack on the Commissioners exercise of judgment at the time of the assessment.
>
> ii) Where the taxpayer seeks to challenge the assessment as a whole on "best of their judgment" grounds, it is essential that the grounds are clearly and fully stated before the hearing begins.
>
> iii) In particular the Tribunal should insist at the outset that any allegation of dishonesty or other wrongdoing against those acting for the Commissioners should be stated unequivocally; that the allegation and the basis for it should be fully particularised; and that it is responded to in writing by the Commissioners. The Tribunal should not in any circumstances allow cross-examination of the Customs officers concerned, until that is done."

Provisions relating to income tax

159. Under Section 12B of the Taxes Management Act 1970 ("TMA"), a person who may be required to make and deliver a return for a tax year is required to keep such records as may be needed to enable it to deliver a correct and complete return for that tax year and to preserve those records for the period specified in the relevant provision.

160. Under Section 9A of the TMA, an officer of the HMRC is entitled to enquire into an individual's tax return provided that he or she gives notice to the individual of his or her intention to do so within the period specified in the provision. Under Section 28A of the TMA, an enquiry is completed when an officer of the HMRC issues a notice to the individual (an "individual closure notice") to the effect that he or she has completed his or her enquiries.

161. Under Section 29 of the TMA, if an officer of HMRC discovers, as regards an individual and a tax year, that an amount which ought to have been assessed to income tax or capital gains tax has not been assessed, an assessment to income tax or capital gains tax has become insufficient or a relief which has been given is or has become excessive, then the officer may make an assessment in the amount or further amount which ought in his or her opinion to be charged in order to make good to the Crown the loss of tax. The the power to make a discovery assessment in relation to a tax year in respect of which the individual has delivered a tax return is exercisable only:

> (1) if the circumstances described above were brought about carelessly or deliberately by the individual or a person acting on the individual's behalf; or
>
> (2) if, at the time when an officer of the Respondents ceased to be entitled to give a notice of an enquiry into the relevant return or issued an individual closure notice in relation to any such enquiry, "the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of [the relevant circumstances]".

Sections 34, 36 and 36(1A) of the TMA provide that no assessment to income tax or capital gains tax may be made more than 4 years after the end of the tax year to which it relates unless that assessment concerns a loss of tax brought about carelessly by the individual in question which may be made at any time not more than 6 years after the end of the tax year to which it relates or, where the loss of tax was brought about deliberately, 20 years.

Provisions relating to both corporation tax and income tax: appeals

162. Under Section 50 TMA, on any appeal against an assessment to corporation tax or income tax, if the tribunal decides that the appellant has been over-charged or under-charged, the relevant assessment shall be reduced or increased but, otherwise, the assessment will stand good. In *Haythornthwaite & Sons Ltd v Kelly* (1927) 11 TC 657, Lord Hanworth explained it in the following terms (at page 667)—

> "Now it is to be remembered that under the law as it stands the duty of the Commissioners who hear the appeal is this: Parties are entitled to produce any lawful evidence, and if on appeal it appears to the majority of the Commissioners by examination of the Appellant on oath or affirmation, or by other lawful evidence, that the Appellant is over-charged by any assessment, the Commissioners shall abate or reduce the assessment accordingly; but otherwise every such assessment or surcharge shall stand good. Hence it is quite plain that the Commissioners are to hold the assessment standing good unless the subject - the Appellant - establishes before the Commissioners, by evidence satisfactory to them, that the assessment ought to be reduced or set aside."

163. In the case of *Johnson v Scott* (1977) 52 TC 383 at 393 in the High Court, Walton J observed with regard to assessments:

> "The true facts are known, presumably, if known at all, to one person only - the Appellant himself. If once it is clear that he has not put before the tax authorities the full amount of his income, as on the quite clear inferences of fact to be made in the present case he has not, what can then be done? Of course all estimates are unsatisfactory; of course they will always be open to challenge in points of detail; and of course they may well be under-estimates rather than over-estimates as well. But what the Crown has to do in such a situation is, on the known facts, to make reasonable inferences. When, in para 7(b) of the Case Stated, the Commissioners state that (with certain exceptions) the Inspector's figures were 'fair", that is, in my judgment, precisely and exactly what they ought to be - fair. The fact that the onus is on the taxpayer to displace the assessment is not intended to give the Crown *carte blanche* to make wild or extravagant claims. Where an inference, of whatever nature, falls to be made, one invariably speaks of a "fair" inference. Where, as is the case in this matter, figures have to be inferred, what has to be made is a "fair" inference as to what such figures may have been. The figures themselves must be fair."

164. Where assessments are made within normal time limits the burden is on the appellant to satisfy the Tribunal that those assessments are wrong or excessive. Where assessments are made by reference to extended time limits and rely on a finding of careless or deliberate conduct the burden is on HMRC to establish that conduct. Thereafter, the burden is on the appellant to establish that the amounts of the assessments are excessive.

Loans to participators

165. Section 455 of the Corporation Tax Act 2010 ("CTA 2010") provides that, where a "close company" makes a loan or advance to, inter alia, a "participator" in the company, "there is due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to such percentage of the amount of the loan or advance as corresponds to the dividend upper rate specified in section 8(2) of [the Income Tax Act 2007] for the tax year in which the loan or advance is made."

166. There was no dispute that BKE Ltd is a "close company" and that the Directors of BKE Ltd (the remaining Appellants) were each a "participator".

Finding of fact on the evidence

167. The Appellants did not raise any issues about the technical validity of the assessments and having considered the evidence I was satisfied that the enquiries were opened, assessments were made and closure notices were issued validly and within the applicable statutory time limits.

168. The onus rests with HMRC to show a discovery leading to a loss of tax brought about by the careless or deliberate acts of the Appellants. The burden then shifts to the Appellants to displace the assessments. For reasons set out below I was satisfied that HMRC made a discovery in respect of each of the Appellants and that the extended time limits for making assessments applied.

169. Mr McAreavey's evidence was compelling; his answers in cross-examination were robust and fair. He gave the impression of continuing to keep an open mind despite the limited information provided throughout the course of the enquiries and reviewing HMRC's decisions where new information was provided and accepted. I did not accept, as urged on behalf of the Appellants, that Mr McAreavey's evidence should be disregarded as hearsay. This issue was raised and dealt with at a case management hearing before Judge Redston who stated in her decision released on 5 January 2021:

> "Mr McAreavey's evidence: the Appellants have objected to this evidence on the basis that it is "hearsay". The Tribunal can take hearsay evidence into account, see Rule 15(2)(a) of the Tribunal Rules…"

170. Mr McAreavey was responsible for issuing the decisions against which the Appellants appeal. He reviewed all information gathered by officers of HMRC in reaching his decisions. I was satisfied that Mr McAreavey's evidence was relevant to the issues to be determined and was largely based on documentary evidence which supported his decision making. I accepted his evidence and I find that he made a "discovery" for the purposes of the TMA, namely that a significant number of purchases had been omitted from the accounts. I was also satisfied that the Appellants failed to make accurate returns required by legislation and failed to keep the documents necessary to verify such returns. For the reasons set out below, I am satisfied that the loss of tax was brought about by the Appellants deliberately and HMRC were entitled to make the assessments.

171. To the contrary, the Mr Ali and Mr Khan were unconvincing and inconsistent in their evidence. By way of example, at times they appeared to accept that there were undeclared sales, but subsequently appeared to resile from that acceptance and sought to blame others (see Mr Ali's evidence at [65] – [73] and Mr Khan's evidence at [81] - [83], [90] and [95]). Both maintained that any omitted purchases did not mean there were additional profits. For the reasons set out below, I did not accept this evidence as credible.

172. Mr Nawaz was a credible witness however the evidence of fact he provided was of limited assistance; it was clear that his evidence was based on information obtained from the Appellants and he had no direct involvement in reviewing the information provided by the Appellants which was carried out by Mr Hussain, an employee at his company (see [107]). To that extent, I have distinguished those parts of Mr Nawaz's evidence which are more appropriately treated as submissions from those which set out facts.

173. I did not accept the criticisms made by the Appellants against HMRC regarding the lack of investigation into the allegation of wrongdoing by Mr Amin and the suppliers. As Judge Redston noted in a decision released on 28 January 2021:

> "The January Directions gave HMRC permission to amend their Statement of Case to take into account the further evidence on the theft/wrongdoing issue…
>
> It is the Appellants who have raised this new point as to theft/wrongdoing, and so it is they who must provide evidence to support these new grounds of appeal…"

174. Judge Redston's earlier Directions dated 5 January 2021 directed as follows:

> "6. Allegations of theft and other wrongdoing
>
> (1) By 2 February 2021 the Appellants are:

(a) To provide HMRC with any further evidence which supports the allegations of theft and other wrongdoing in the Appellant's witness statements, and to inform the Tribunal that they have done so; or

(b) To inform HMRC and the Tribunal that they are not providing any further evidence on this issue.

(2) By 23 February 2021 HMRC are:

(a) To provide the Appellants with any further evidence which relates to the allegations of theft and other wrongdoing in the Appellant's witness statements, and to inform the Tribunal that they have done so; or

(b) To inform the Appellants and the Tribunal that they are not providing any further evidence on this issue.

175. It is clear from the Directions that both parties were afforded the opportunity to provide evidence on the issue and whether to do so was a matter for each party. In the event, the Appellants did not provide any further evidence beyond the recorded footage and information set out in the Appellants' witness statements. Furthermore, as explained by Mr McAreavey in evidence, I accepted that the allegation relating to Mr Amin was only raised for the first time in 2020 after the assessments had been issued and at a time when Mr McAreavey no longer had any involvement in the case.

176. For the reasons set out below, I did not accept the Appellants' evidence as to the reasons why the irregularities arose. I did not find it credible that Mr Amin had purchased goods using the Appellants' accounts at all of the cash and carries used repeatedly over a period of many years without the Appellants' knowledge nor did I accept that there was any carelessness, negligence or dishonesty on the part of Accountants Plus.

177. Turning first to the involvement of Accountants Plus, I found the evidence of the Appellants that they kept records of sales was at odds with the evidence of Mr Kyle set out in his email dated 13 February 2013 in which he clearly stated:

> "As previously intimated, there are no prime sales records…Essentially the books are the invoices provided to us and then the client advised us of a margin to gross up the purchases to achieve sales.
>
> The client has been advised on each occasion that this is not sufficient, but has still to date provided no physical sales records."

178. I accepted the evidence of Mr Kyle and I was satisfied that there was no basis upon which to conclude that a professional company would simply make up such an assertion to HMRC. Furthermore, had a complete set of prime sales records existed, it seems reasonable to conclude that these would have been provided to HMRC either by Mr Kyle or by the Appellants however I accepted Mr McAreavey's evidence that no such prime records were provided. My conclusion was reinforced by the email from Mr Wood at Accountants Plus (see [26]) where he also stated that no prime records were ever provided by the company despite repeated requests. In those circumstances, I was satisfied that the documentary evidence from Accountants Plus was reliable and I accepted that invoices were provided, and the accountants were given a margin to gross up the purchases but I found that complete and accurate prime records were not provided.

179. I did not accept the Appellants' claims that Accountants Plus had clearly made a number of errors such that the evidence could not be relied upon. In particular, it was noted that Mr Kyle had stated in the same email set out above that at the time there was "no business bank". Mr Kyle went on to state that he was in possession of "a box of bank and loan accounts that I still have to process" which he later describes as "ie the personal accounts and loan accounts".

I was satisfied that if a business account did exist at that time, details were not provided to Mr Kyle who was only in possession of personal and loan account information.

180. My conclusion was reinforced by an email from Mr Hussain at T. Nawaz & Co to Mr Kyle at Accountants Plus dated 8 October 2013 which appeared to confirm that the Appellants had not provided complete information to Accountants Plus who reiterated that they were unaware of a business bank account: (the responses from Mr Kyle within the email are indicated in bold):

"Hi Billy, we need to amend the draft account you provided. There are quite a few things which Mr Ali did not provide to you, so it will be helpful if you could let us have the following information:

1)…

2)Breakdown of cash in hand and at bank – **cash doc 3 – at the time of preparation we were not aware of a ltd bank account being operated**

3)…

4)…

5)…

6)The breakdown of rent of £40,000 claimed in the 2012 accounts **– 4 shops at £10,000 per shop. Left out of 2013 to reduce personal tax**

7)…

8)…

9)A copy statement of rental income including breakdown of rent for the year to 5 April 2012 and also for the year to 5 April 2013 if you have done it – **2012 RENTAL BREAKDOWNS ARE ATTACHED TO MR AND MRS ALI'S tax return, 2013 not done as enquiry opened**

10) A copy of listing of purchases and expenses for the quarter ended 30 April 2013. **– no breakdown, totals were supplied by client.**

181. I noted Mr Nawaz's submission that the 2011/12 accounts approved by Mr Khan on 20 October 2012 contain reference to "cash at bank and in hand" and "bank charges". However, there was no evidence to explain whose account this referred to, whether Accountants Plus had been provided with documentary evidence or whether this was information provided by the Appellants. In those circumstances I could not conclude that Accountants Plus were incorrect when they had stated that they were not aware of a business bank account at the time. Similarly, the summary of accounts which showed bank charges in 2010/11 and 2011/12 was a document produced by Mr Ali and Mr Nawaz. The source documents were not provided and again there was no compelling evidence to support the claim that this related to a business bank account at the relevant time that Accountants Plus were aware of.

182. I rejected the Appellants' submission that the balancing figure of £100,000 added by Accountants Plus was not required. The evidence from Mr Kyle (see [25]) clearly explained that there was not enough cash to cover expenses in the 2012 accounts and a figure of £100,000 had to be added to the gross sales figure to balance the accounts. Similarly, £79,664.83 was considered necessary to the DLA. It lacks credibility that this explanation was simply made up by Accountants Plus or that they had added the amounts for no reason. In my view, the only reasonable inference to draw is that if the balancing figures had not been introduced, the accounts would not have balanced. I also rejected the evidence that the additions were not known to the Appellants as I preferred the evidence in a letter from Mr Kyle at Accountants

Plus to HMRC dated 7 March 2013 regarding the £100,000 that "a voluntary disclosure form was prepared and forwarded to client, but we do not believe it has been sent or paid" which I considered was indicative of notification to the Appellant.

183. I rejected the claim that Mr Amin was responsible for purchasing goods on the Appellants' account for a number of reasons. First, I did not find it credible that someone could have been making significant purchases on the Appellants' accounts for approximately 10 years without their knowledge. Second, despite having discovered the alleged purchases by Mr Amin the Appellants did not report the matter to the police nor did they pursue any robust action against the cash and carries who, along with Mr Amin, they held responsible. There was no independent evidence to support the Appellants' claim; no representatives from the cash and carries gave evidence or provided witness statements to substantiate the claim nor was there any CCTV footage showing Mr Amin collecting goods which could be linked to an order made on the Appellants' account. I found the emails produced in support of the claim were weak and unpersuasive; there is reference to an "incident between fahid amin and George", a request for an apology from George and details of any action taken against Mr Amin. Further emails confirm that Mr Amin's accounts were cancelled and he was no longer a customer of JW Filshill. The emails provide no details as to what the "incident" involved and merely refers to events in April 2020. There is no specific reference to Mr Amin using the Appellants' accounts and without any further detail I do not find that the emails provide compelling support for the Appellants claims.

184. It was claimed by the Appellant that a theft only occurred when goods are taken on credit and not paid for which is how they discovered on 26 April 2020 that Mr Amin had been making purchases and which resulted in JW Filshill crediting the Appellants' account. I did not find this evidence convincing. First, there is no plausible explanation as to why Mr Amin would make purchases on the Appellants' account for which he generally paid (as a result of which the Appellants claimed they would have no knowledge) until 2020 when he suddenly used credit. Second, as stated earlier I do not accept that the email confirming that Mr Amin's account was closed by J W Filshill is sufficient evidence to demonstrate that the reason for this was because he had purchased goods on the Appellants' account without the directors' knowledge.

185. I found the distinction drawn by the Appellants between theft and use of their account by another without their knowledge misconceived. Mr Ali and Mr Khan emphasised a number of times that they did not allege that Mr Amin had stolen from them and that they had no issue with their account being used by others where goods were paid for. The difficulty with this submission, if accepted, is that the Appellants willingly and knowingly exposed themselves to the risk that any such purchases in those circumstances could be, as in this case, attributed to the company.

186. I did not find the evidence relating to credit notes issued and short deliveries assisted. The 5 invoices dated 25 April 2020 said to be purchases made by Mr Amin and which were credited totalled £454.40. As already stated, there was no independent evidence to corroborate the account given by Mr Khan and no explanation as to why if, as he claimed, he had seen Mr Amin taking the goods on CCTV he had not retained the footage or contacted the police. The second piece of evidence produced related to a delivery which was short on goods which were credited. The correspondence between Mr Khan and Mr Wylie simply states:

> "George is handling the situation because they don't know what stock they gave did not add up to the invoices but I don't know the full story…"

187. There was no mention of Mr Amin being involved and the indication from the correspondence is that there was simply an error by the cash and carry which I have no doubt happens on occasion.

188. Mr Khan explained that as none of the cash and carries request identification from purchasing customers, anyone could use BKE Ltd's account number to obtain supplies. That may well be true, however it does not demonstrate that Mr Amin had done so for approximately 10 years without the Appellants' knowledge. As stated earlier, I did not accept the Appellants' criticism that Mr McAreavey had failed to investigate the allegation; as explained by Mr McAreavey in evidence the only time Mr Amin had been mentioned by the Appellants during the enquiry was in relation to the property side of the enquiry where it was established that Mr Ali had borrowed significant sums of money, approximately £160,000, from Mr Amin to use as deposits when purchasing several properties:

- 5 Barclay Gardens - £91,157
- 49 Glenmuir Crescent, Logan - £12,604 (October 2008)
- 49 Holmburn Crescent, Logan - £8,000 bank transfer from Mr Amin and £6,000 cheque from Mr Amin (October 2008)
- Post Office, Logan Ave, Cumnock - £45,000 bank transfer from Mr Amin (23 June 2010)

189. I considered the video footage exhibited by the Appellants. The individuals shown in the footage did not attend to give evidence nor was there any evidence from the cash and carries to confirm the circumstances in which the footage was filmed or that the persons involved were not known to them. The Appellants claimed that the individuals who made the purchases were not employees of BKE Ltd nor were they known to the cash and carries. However the fact that there was no independent evidence to corroborate this, in my view, taken together with the fact that I found Mr Ali and Mr Khan to be wholly unconvincing witnesses, affected the weight to be given to the evidence.

190. In respect of the footage from J W Filshill which purported to show that anyone could make an order by telephone using the Appellant's account and collect goods on credit, there was no record of the telephone order or any evidence as to what was said during the call. In any event, the footage shows an individual picking up goods on the Appellants behalf but the circumstances surrounding the event are unknown.

191. The footage from Booker Cash and Carry appeared to show the staff member identifying the individual as connected to BKE Ltd as he states "Bobby's" before the full account number was provided. I agreed with HMRC's submission that the reasons could be that either the individual was known to the Cash and Carry as an employee or person authorised to pick up goods on their behalf or that the staff member recognised that the individual who was accompanied by and being filmed by Mr Ali whom they recognised.

192. I also agreed with HMRC's contention in relation to the footage at United Cash and Carry that it did not support Mr Khan's claim that it demonstrated that '…a bogus buyer could easily have bought on credit without in any way holding any authority from us to order such merchandise…'. As highlighted by HMRC, there is nothing on the video to show what additional checks may or may not have been undertaken by United for customers who take goods on credit. The video recording does not show that a customer who opts to take goods on credit can simply walk out of the Cash and Carry without any additional checks being undertaken by Cash and Carry staff.

193. Furthermore, in relation to all of the suppliers, the videos do not show Mr Amin ordering or collecting any of the goods, whether on credit or not, nor does it provide evidence of the procedures or security checks in place for doing during the period it is claimed that Mr Amin was responsible as the footage was taken in 2020. In those circumstances I derived limited assistance from the footage.

194. I noted that a "customer transaction report" from United Cash and Carry dated 22 March 2013 shows contact details as "Mr Asif Ali, Mr Fahad" but again this does not demonstrate that Mr Amin did, in fact, purchase goods on BKE Ltd's account.

195. The Appellants requested that the Tribunal 'potentially reflect the overpaid VAT amounting to £16,441' which, they claimed, was paid on the £100,000 additions to sales which Accountants Plus added in error. For the reasons set out above I did not accept that this was an error on the part of Accountants Plus. Furthermore, the appeal period for challenging this assessment has expired and no appeal was made; it therefore falls outwith the scope of this appeal and the Tribunal's jurisdiction.

196. The Appellants relied on the disparity in the accounts for light and heat which were £4,833 in 2010/11 and only £425 in 2011/12 for the same four shops as evidence that the accounts produced by Accountant Plus were inaccurate and could not be relied upon. There was no evidence as to who had provided the figure. Although it had been queried by Mrs Maguire in a letter dated 4 June 2013, by that point Accountants Plus were no longer engaged on behalf of the Appellants. In the absence of any further information, I could not be satisfied that this indicated carelessness or negligence on the part of Accountants Plus.

197. I accepted HMRC's submission that Mr Khan was vague in oral evidence regarding the keeping of records and only admitted when pressed that it was a figure written on a piece of paper; when asked if this had changed over the years, he confirmed that the process for cashing up was essentially the same now as it was previously. Mr Nawaz disputed this. I accepted his submission that Mr Khan's evidence had been that the cashing up is done by whoever is in charge of the relevant shop and that Mr Khan took over the function of providing information to the accountants in 2013. However, the evidence went on:

> " It is still the same cashing up – either me or the store manager, if my father is in the UK he does it, if he's in Pakistan I'll do it. It's always a member of the family…Mr Nawaz is posted all the information, it's up to Mr Hussain but we try to do it monthly…Mr Hussain provides wage slips at the end of the month, he calls me three days before and I give him the information if anything has changed, it usually stays the same and he sends slips. There's no need to keep a record of hours they do work, only the hours they don't…
>
> [The procedures are the] same cashing up, I walk in, have sales record on till, write that number down, then have expenses and cash…
>
> Q. Did you have till rolls or x/z readings?
>
> A. There's no need to keep a record, I wrote it down…
>
> Q. Do you have a cash book to record takings, cheques, cash at the end of the day?
>
> A. It's not my job, it's the accountants. I provide the information he requires…
>
> Q. What format – a bit of paper?
>
> A. A bit of paper. Expenses, invoices, sales as I figure for each and give to the accountant."

198. I did not accept that any inaccuracies were caused by the carelessness or negligence of Accountants Plus. I noted that despite holding the accountants responsible for the errors alleged, Mr Ali had not raised any issue with them nor challenged the accuracy of the accounts. Ultimately the obligation to ensure that accurate returns are submitted rests with the taxpayer and each Appellant was responsible as a matter of law for their respective obligations and those

of the company in relation to tax and therefore responsible for the actions taken on the Appellants' behalf by the Appellants' accountant. The documentary evidence showed that for the APE 31 January 2012 the recorded purchases were £755,775. However, following an analysis of the information provided by the suppliers, the missing purchases figure was £583,130. I consider that this is far too large an amount to be explained by careless errors and I do not find it credible that the Appellants could have no knowledge of it. I concluded that the statements made and accounts submitted by Accountants Plus were a reflection of the information they received from the Appellants and that purchases were deliberately concealed by the Appellants.

199. I find that the Appellants knowingly filed incorrect returns in order to reduce their respective tax liabilities. As such, I concluded that they acted deliberately. I was satisfied that the Appellants deliberately concealed their own and BKE Ltd's true tax liabilities by concealing purchases and that they did not provided Accountants Plus with full disclosure of transactions.

200. I considered Mr Nawaz's submission that the Tribunal needs evidence that the taxpayers' profits are inadequate was misconceived. The primary issue for the Tribunal to determine is whether the company maintained full and accurate business records which support the information in the submitted returns. I was satisfied that the returns were not accurate and that the Appellants did not maintain robust or complete records.

201. It was submitted by the Appellants that they had no need to supress purchases as the drawings from the business combined with benefits received by family members sufficiently covered all family outgoings. HMRC noted that in addition to mortgages on various properties amounting to in excess of £430,000 Mr Ali also had loans although no details had been provided to HMRC regarding payments made or due. There was insufficient information before me to determine whether family income covered outgoings however I consider the question as to whether the Appellants needed to supress purchases is not the correct one; the question is whether there is sufficient evidence to be satisfied that they did.

202. Mr Nawaz contended that profits are evidenced by an increase in assets, reduction in liabilities or drawings and he was critical of HMRC for failing to use capital statements. However, I did not accept, as submitted by the Appellants, that HMRC had "most" of the information required for such an exercise; it was quite clear from the evidence of Mr McAreavey which was supported by HMRC's use of Schedule 36 notices (which were not complied with) together with the incomplete and limited information in the bundles that the detailed and accurate information necessary to produce capital statements was not provided by the Appellants. Furthermore, there is no obligation under the legislation to use a prescribed method and I do not find that their failure to use capital statements undermined their case.

203. I did not accept the Appellants' submission that any potential liabilities should 'reflect an allowance for additional expenses which have clearly been missed by Billy Kyle' as there was no compelling evidence to support the contention that expenses had not already been considered by Accountants Plus.

204. Although it was not a point pursued with any vigour at the hearing, I did not accept the Appellants' claim that if there were any missing sales, these would be equal to the amount of missing purchases and therefore no additional profit. I consider that it lacks commercial credibility that the omitted purchases, which represented almost half of the total purchases made in the year of enquiry, were sold for no additional profit or only related to goods with a low mark-up. I was therefore satisfied that the Company had additional profits in the relevant years resulting in additional liabilities to tax.

205. I did not accept that HMRC had failed to use best judgment in relation to the issue of creditors. I accepted Mr McAreavey's evidence that he had considered creditors and noted that that that there was an adjustment in the original accounts for creditors of £20,933. I was satisfied that HMRC had reached its decision fairly and on the basis of the material before them which did not include the additional evidence produced by the Appellants at the hearing. Despite the lateness of that evidence HMRC did not object and, generously in my view, indicated they were willing to consider a further adjustment albeit on the basis that the figure of creditors included in the accounts would likely already be included in the figure subsequently provided (as opposed to being in addition) as no evidence has been provided to show otherwise. I consider that this demonstrated the continuing willingness of HMRC to take account of all matters in order to reach the correct figures and in those circumstances, there was no basis upon which to conclude that the original assessment based on the material available was not to best judgment.

206. I considered the summary of purchases provided by the Appellants which showed purchases from Bookers totalling approximately £18,000. However, this covered the period May to July 2020 when, as accepted by the Appellants, supplies were restricted due to the pandemic. I therefore did not find the summary was a reliable comparison to support the Appellants' assertion that supplies from Bookers were more likely to be £5,000 than £50,000 per quarter. Furthermore, the Appellants also claimed that Bookers purchases would be far lower than the amount assessed as it was only used for top up purchases and in the relevant period appeared to make up a small proportion of the company's purchases. However, the basis of that claim is fundamentally flawed given that it is based on declared purchases which I have found were deliberately supressed.

207. In terms of mark-ups, Mr Nawaz accepted that the illustration he produced did not relate to the Appellants' shops nor did any of the information contained therein relate to purchases or sales made the Appellants business but rather to an entirely different and unconnected business. Mr Nawaz explained that it was produced for illustrative purposes only, however I did not find the exercise provided any assistance in relation to the specific facts of this appeal. In relation to the mark-up exercise produced by Mr Khan, again I did not find it assisted in determining the issues in this appeal as it cannot be considered representative of any of the periods assessed as it was based on figures from May to July 2020 which not only falls outside the relevant period but was also during the pandemic and I concluded that it could not be used as a reliable comparison during a period of significant social disruption.

208. The Appellants highlighted the reference in correspondence from Mrs Maguire to Mr Nawaz dated 4 June 2013 to the gross profit margin as 7.53%. However, the sales analysis from which the figure appeared to be taken did not form part of the evidence nor had it been seen by Mr McAreavey. Without any further information as to who prepared the sales analysis or the basis of the 7.53% I did not accept the Appellants' suggestion that this figure could have been applied by HMRC. For the reasons I have set out, I was satisfied that the mark-up figure applied by Mr McAreavey was not arbitrary but was in fact based on the figure applied in the Appellants' accounts in the enquiry year.

209. As made clear in *Pegasus Birds*, the burden of proof falls on the appellant to demonstrate that the assessments do not reflect the correct amount of tax.

210. I considered and applied the principles set out in *Van Boeckel* [1981] STC 290 that:

(1) HMRC should not be required to do the work of the taxpayer

(2) HMRC must perform their function honestly and above board

(3) HMRC should fairly consider the material before them and on that material come to a decision which is reasonable and not arbitrary, and there must be some material before the commissioners on which they can base their judgement

211. I found as a fact that the Appellants' accounts as presented to HMRC were inaccurate. In my view, Mr McAreavey made assessments using best and reasonable judgement based on the information available to him at that time. I do not consider that the decision is arbitrary; I accepted the evidence which demonstrated that the mark-ups and gross profit rates over the period 2011 to 2017 were erratic and I was satisfied that Mr McAreavey acted fairly and reasonable in applying the mark-up used in the Appellants' submitted accounts for the year under review. HMRC have revised and reduced the figures to take account of information subsequently provided by the Appellants which, in my view, demonstrates their effort to establish fair and reasonable estimates. Save as insofar as HMRC have indicated they will review the late evidence relating to creditors, I concluded that the Appellants have not provided any compelling evidence to displace the assessments and therefore have not discharged the burden of proof upon them.

212. The omitted profits were charged to tax under s455 CTA 2010. The Appellants led no evidence and made no specific submissions to challenge HMRC's treatment of the profits as chargeable to corporation tax on the basis that the suppressed profits were treated as loans by the BKE Ltd to the directors who were participators in a close company. I am satisfied that HMRC were entitled to treat the profits in this way and in the absence of any invitation to treat them in any other way I do not consider that there is any reason to interfere with the charges to tax or quantum of those charges.

Presumption of continuity

213. In *Jonas v Bamford (HMIT) 51TC1* Walton J observed that once an Inspector comes to the conclusion that the taxpayer has additional income beyond that declared, then the presumption of continuity will apply.

214. HMRC submitted that they are entitled to rely on presumption of continuity, relying on the evidence from Accountants Plus that the Appellants had been informed that their record keeping was inadequate on a number of occasions together with the lack of compelling evidence of material change or improvement in the Appellants' record-keeping.

215. Mr Nawaz contended that the presumption should not apply in the circumstances of this case where the sole basis of HMRC's decisions is "so-called 'missing' purchases" and there is no direct evidence of suppression of purchases in relation to other years. Mr Nawaz highlighted the following passages from *Chapman*:

> "93. The assessments are based on an application of RPI to the Required Sales figure in the Takings Build-Up for the Enquiry Year. For the reason already given the Takings Build-Up cannot be applied across the board.
>
> 94. It is, we understand, common for the Revenue where they have to show fraudulent or negligent or careless conduct and a loss of tax attributable to it to produce what are sometimes referred to as capital statements for the tax year in question to demonstrate under-declarations and a loss of tax. The burden under s36 TMA may be discharged depending on whether the taxpayer offers any explanation and the adequacy of that explanation. A good explanation of the composition of capital statements is to be found in Park J's judgment in *Hurley v Taylor 1998 71 TC 268 at 282-3; see also page 286-7; 289*; these passages and the passage referred to below are not affected by the Court of Appeal's decision in the same case). No capital statement or Takings Build-Up has been produced for either of the earlier years of assessment in the present appeal. All the evidence or at least the bulk of it related to the Enquiry Year. The Appellant's books and records may well have been poorly kept for the earlier years, that is to say incomplete and therefore unreliable. That is probably negligent or careless conduct, but we cannot, on the

material before us, infer what the result of that was (see *Hurley at 292*). The Revenue have failed to discharge the s36 burden of showing that there was a loss of tax attributable to that negligent conduct.

96. When asked why a Takings Build-Up was not produced for the earlier years the answer given by Mr Vallance, after consulting Mrs Hendry, was *time constraints.* That was a commendably honest answer. Having spent so much time and effort on the Enquiry Year, we do not find this surprising but we cannot endorse such an approach in this case where the Takings Build-Up relies on a number of specific transactions peculiar to the Enquiry Year.

97. Business economic models have their place in HMRC's enquiry work but they have also been the subject of criticism (see e.g. *Scott v McDonald 1996 STC (SCD) 381 at 387*). They do not give a precise result but may produce a more realistic estimate of the profits than the accounts based on unreliable and incomplete records. Where a capital statement is prepared for one year and sought to be applied to other years, they have to be adjusted to take account of exceptional items peculiar to the particular year. That was not done here.

98. These assessments therefore cannot stand….

99. The Revenue must have considered that the application of RPI to the Takings Build-Up to be wrong for the tax year 2007/2008 as they reduced their omitted sales figure considerably, as discussed above

100.The calculation seems to us to be arbitrary and cannot stand. The Takings Build-Up is peculiar to one specific tax year and cannot be applied across the board. It is based on an analysis of a number of specific banking transactions which have no particular pattern, and which have to be adjusted in the light of specific information about them (e.g. the transaction relating to the car registration plate). For that reason alone the assessment cannot stand. Moreover, for the reasons already discussed a turnover of £95,000 is simply unrealistic and must, on the evidence, be wrong.

103.In *Jonas*, the taxpayer was a company director with a controlling interest; he was also a gambler. A wide range of issues were canvassed. There was evidence of company irregularities procured by the taxpayer. The Appellants produced no accounts and led no evidence of the company's turnover. The Revenue in that case deployed a similar approach to the Takings Build-Up as their computations showed a *Cash Deficiency* for the first six of the tax years under consideration. The taxpayer sought to explain part of that deficiency by reference to successful betting on horses. The evidence was inconclusive and the Commissioners assumed he broke even for some of the years in question but not others. The onus was on the taxpayer to displace the assessments; all assessments were confirmed except one (1957/58) which was discharged because the Revenue failed to prove wilful default. On appeal, Walton J held that the taxpayer had failed to discharge the onus of showing that the assessments in question were wrong (page 24). In particular, he rejected the taxpayer's attack on the Commissioners' findings of fact that various items should be taken as credits and taken out of account in making the assessments. In relation to the last three years of assessment (1962-65) the taxpayer had declined to provide any information. Accordingly, the inspector issued assessments in the round sum of £5,000 for each year. The Commissioners dealt with these years briefly, noting that the Appellant had not discharged the onus on him (page 18). On appeal it was argued that the inspector had not sought discovery, and there was no evidence of any unexplained intake of moneys by the taxpayer. Walton J dealt with these arguments thus (at page 24):-

"But, so far as the discovery point is concerned, once the inspector comes to the conclusion that, on the facts which he has discovered, [the taxpayer] has additional income beyond that which he has so far declared to the Inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer."

104.The presumption *goes on until there is some change*. The presumption as expressed in that case looks to the future and not the past. It is difficult to see how one can apply such a presumption based on the Enquiry Year to the earlier years. Moreover, there was some change in the tax year 2007/2008. There was a dramatic rise in declared sales which is in line with what

> we have found the turnover for the Enquiry Year to be. Mrs Safadi became involved in the maintenance and collation of the taxpayer's business records and the records of his gambling activities. We consider these matters to be sufficient to negate any presumption of continuity which might otherwise have been justified. Even then, there would have to be some adjustments to take account of transactions peculiar to the Enquiry Year. That was not done.
>
> 108.It is easy to see how a pattern of concealment can be identified from this type of detailed examination of the operations of the restaurant, and applied realistically to earlier and later years. This occurs in VAT *mark up* cases, where patterns of suppression are identified from observation and examination of the trader's (often a restaurant business) records. The capital statements approach normally involves an examination of several individual years before the presumption of continuity can be contemplated, as in *Jonas.* Even in *Khawaja* the application of the base year figure was held to be erroneous, and on appeal, Lawrence Collins J made a broad axe deduction (paragraphs 27 and 28 page 680), the basis of which is again not disclosed in the report. While an estimate is permissible, and often is the only way of proceeding, even an estimate has to be based on some evidence. Here, for the earlier and later years, that evidence is lacking.

216. I do not accept the Appellants' submissions that *Chapman* (at [94]) is authority for the proposition that the principles behind *Hurley v Taylor* require the use of capital statements to indicate whether the taxpayer can be made to explain shortfalls. The legislation is not prescriptive about the method to be used and, for reasons I have already set out, I accepted the reasons given by Mr McAreavey as to why capital statements were not used in this case.

217. In my view the facts in *Chapman* are entirely distinguishable from those in the present appeal. The takings build-up used by the Revenue in *Chapman* relied upon "specific transactions peculiar to the enquiry year" (see [96]) and which the Tribunal understandably concluded could not be applied to other years (see [100]); that is not so in the appeal before me. In *Chapman* there was also a clear change in the "maintenance and collation of the taxpayer's business records". No such features were present in this appeal. The suppression was, I inferred, a deliberate pattern of concealment and whilst I noted Mr Nawaz's submission that his firm had been engaged and accounts were professionally prepared in later years, the fact remains that there was no evidence of any change in the manner in which the Appellants provided information to their accountants.

218. Having considered the evidence I find that the principle of presumption of continuity can reasonably be considered to apply as there was no evidence that there was anything unusual in the enquiry year such that the under-declarations and inaccuracies in the returns can be considered as a 'one-off' or isolated incident.

Unfairness

219. I did not accept the Appellants' complaint that there had been unfairness during the proceedings such that the Appellants' rights under the ECHR were breached. I was satisfied that HMRC sent each of the Appellants letters of explanation and were advised that assessments and closure notices would be issued. I accept, as did Mr McAreavey, that HMRC could have provided more detailed information at an earlier stage and that there appeared to have been a breakdown in communication prior to Mr McAreavey's involvement. However, I am not satisfied that there was any prejudice or unfairness to the Appellants; the enquiries were opened and, as was clear from the mandates signed by Mr Ali, HMRC were seeking information regarding purchases from suppliers and declarations made on returns. I noted the Appellants' submission that they had been unable to obtain documentation from the suppliers because J W Filshill, for example, did not retain information for years prior to 2014/15. However, it was clear from the correspondence that the Appellants' representative was aware that HMRC's enquiries concerned missing purchases at a time when the documents would still

have been available. By way of example, a fax dated 22 April 2013 from Mr Nawaz to HMRC stated:

> "…We have copies of account statements from a number of suppliers which Mr Ali had obtained as there *(sic)* it was felt that no *(sic)* all invoices may have been accounted for. We understand that you have mandates/authorities to approach the suppliers and if the statements can help please let us know."

A further fax from Mr Nawaz to HMRC on 26 April 2013 stated:

> "There are three aspects which I believe I have to respond to and perhaps offering further comments in respect of the general enquiries may be of assistance.
>
> **Matters arising**
>
> …
>
> 3. Attached herewith are statements from Bookers Cash and Carry, United Wholesale and 'Fleming (United) 2850'. You will note arrows placed against some entries on the Booker statements. These are to identify credit entries in red, which may not be apparent from faxed information.
>
> **Further comments that might be appropriate at this stage**
>
> 4. Just a note of caution here. Given that you are aware that there does not appear to be a record of sales it is apparent that sales represent the balancing figure in the accounts. In those circumstances, if some purchases have been omitted is it not the case that any omission of purchases will be balanced by an equivalent amount of sales being omitted so that there will be no impact on profits?..."

220. I did not find it material that Mr McAreavey could not explain why some of the mandates contained incorrect addresses for the Appellants' premises. I accepted his evidence that the mandates were not completed by HMRC and there was no dispute that Mr Ali had signed the mandates in 2013 which led to the suppliers providing information to HMRC.

221. Mr Nawaz submitted that there had been misleading assertions made by HMRC, referring in particular to correspondence from HMRC dated 16 September 2020 which requested signed confirmation from Mr Khan and Mr Ali that they will have been made aware that the contents of their witness statements will be in the public domain. I noted that this request was made in the context of the allegations against Mr Amin and the cash and carries which HMRC referred to as "serious allegations…of wrongdoing, fraudulent activity and theft". It appears to me that HMRC were concerned about the allegations however Mr Nawaz is a representative with many years of experience including, as outlined in his oral evidence, those involving serious allegations and it was clear from the correspondence that he was able to respond to HMRC's request by highlighting the absence of any legal basis for such a request and ensuring there was no unfairness, misrepresentation or intimidation to his clients through his robust representation of them. Furthermore, this Tribunal has no general supervisory jurisdiction over HMRC; if the Appellants are dissatisfied about the manner in which HMRC conducted their enquiries, the appropriate forum is HMRC's complaints department or the Adjudicator.

Conclusion

222. For the reasons given above I find as follows as a matter of principle:

(1) The Appellants deliberately suppressed purchases and corresponding sales resulting in additional corporation tax and VAT being due on additional profits;

(2) As a result of the additional profits, BKE Ltd and the directors are liable to further charges to tax and NIC in respect of the misappropriated funds being treated as loans made to the directors;

(3) The discovery assessments were validly raised; and

(4) The VAT assessments were made to best judgment.

223. Subject to any adjustments to the underlying assessments for creditors (see [211]) the appeals are dismissed.

224. The Appellants must provide HMRC with full particulars together with all supporting evidence upon which it seeks to rely in relation to creditors within 21 days.

225. HMRC must provide its response to the Appellants no later than 21 days thereafter.

226. If the parties are unable to agree the quantum of any adjustment, the parties shall inform the Tribunal within 90 days of the release of this decision. The Tribunal will then give directions to determine the outstanding issues.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

227. 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.

JENNIFER DEAN
TRIBUNAL JUDGE

Release date:

Appendix 1

Amounts under Appeal: Revised figures

BKE

1. Figures revised on 21 January 2021

APE	Revised Profit	Revised CT due	Revised S455	Total
31 January 2011	£114,500.53	£24,045.11	£21,568.75	£45,613.86
31 January 2012	£117,355.00	£23,666.59	£31,397.25	£55,063.84
31 January 2013	£121,199.75	£24,239.95	£34,247.75	£58,487.70
31 January 2014	£124,552.75	£24,910.55	£25,709.25	£50,619.80
31 January 2015	£125,933.50	£25,186.70	£37,941.00	£63,127.70
31 January 2016	£127,610.00	£25,522.00	£31,549.25	£57,071.25
31 January 2017	£130,913.13	£26,182.63	£42,715.08	£68,897.71
Total -	**£862,064.66**	**£173,753.53**	**£225,128.33**	**£398,881.86**

NICs

2. Figures revised on 21 January 2021

Period	Person	Revised Additional NIC Due
6 April 2010 – 5 April 2016	Mohammed Paris Khan	£2,960.08
6 April 2010 – 5 April 2017	Motia Begum	£4,148.38
6 April 2010 – 5 April 2017	Mohammed Asif Ali	£4,148.38
6 April 2010 – 5 April 2017	Mohammed Harisse Khan	£4,148.37
Total -		**£15,404.21**

VAT Assessment from 1/5/16 to 31/1/17 inclusive

3. Revised on 21 January 2021

VAT Period	Revised Additional VAT due
07/16	£4,675
10/16	£4,675
01/17	£4,676
Total -	**£14,026**

MR ALI

4. Figures revised on 21 January 2021

Tax Year	Description	Revised Additional Tax
2010/ 2011	Omitted rental income and BIK	£5,537.22
2011/ 2012	Taxable BIK	£423.60
2012/ 2013	Taxable BIK	£1,395.60
2013/2014	Taxable BIK	£1,806.80
2014/ 2015	Taxable BIK	£1,961.20
2015/ 2016	Taxable BIK	£2,222.45
2016/ 2017	Taxable BIK	£3,444.40
Total -		**£16,791.27**

MRS BEGUM

5. Figures revised on 21 January 2021

Tax Year	Description	Revised Additional Tax
2010/ 2011	Omitted rental income and BIK	£4,052.80
2011/ 2012	Taxable BIK	£423.60
2012/ 2013	Taxable BIK	£697.80
2013/2014	Taxable BIK	£903.40
2014/ 2015	Taxable BIK	£2,083.77
2015/ 2016	Taxable BIK	£2,222.45
2016/ 2017	Taxable BIK	£3,444.40
Total -		**£13,828.22**

M HARRISSE KHAN

6. Figures revised on 21 January 2021

Tax Year	Description	Revised Additional Tax Due
2010/ 2011	Taxable Benefit In Kind	£53.00
2011/ 2012	Taxable Benefit In Kind	£342.80
2012/ 2013	Taxable Benefit In Kind	£574.40
2013/2014	Taxable Benefit In Kind	£553.80
2014/ 2015	Taxable Benefit In Kind	£1,725.35
2015/ 2016	Taxable Benefit In Kind	£2,325.60
2016/ 2017	Taxable Benefit In Kind	£3,310.98
Total -		**£8,885.93**

M PARIS KHAN

7. Figures revised on 21 January 2021

Tax Year	Description	Revised Additional Tax Due
2010/ 2011	Taxable Benefit In Kind	£52.80
2011/ 2012	Taxable Benefit In Kind	£342.60
2012/ 2013	Taxable Benefit In Kind	£574.40
2013/2014	Taxable Benefit In Kind	£553.80
2014/ 2015	Taxable Benefit In Kind	£1,259.15
2015/ 2016	Taxable Benefit In Kind	£1,094.40
Total -		**£3,877.15**

RIGHT TO APPLY FOR PERMISSION TO APPEAL

228. 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.

JENNIFER DEAN
TRIBUNAL JUDGE

Release date: 01 AUGUST 2022