



**TC04303**

**Appeal number: TC/2013/01186 & TC/2013/01189**

*VAT - Repayment claims for periods 06/12 and 09/12 for Colour Blast Ltd amounting to £20,931.50 and for the periods 05/12 and 08/12 for Sunlight Optical Ltd amounting to £23,590.61 - daughter commencing new companies - equipment and frames supplied by 15 of father's companies- transactions orchestrated by father – father and daughter knew that transactions were fraudulent – failure by father to pay VAT due in 15 supplier companies giving rise to tax losses – case dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**COLOUR BLAST  
SUNLIGHT OPTICAL LTD**

**Appellants**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE DAVID S PORTER  
MR ALBAN HOLDEN**

**Sitting in public at Alexandra House, Manchester on 6, 7 & 8 May; 24 June: 14, 15 & 16 July: and 1 & 2 September 2014.**

**Miss Jessica Booth for the Appellant.**

**Richard Chapman, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.**

## DECISION

1. Miss Jessica Booth (Miss Booth) appeals on behalf of Colour Blast Limited  
5 (Colour Blast) in relation to the refusal by the Respondents (HMRC) in a letter dated  
14 January 2013 to repay input tax for the period 06/12 of £12,119.16 and in a further  
letter dated 7 January 2013 to repay input tax for the period 09/12 in the sum of  
£8,759.40 subsequently adjusted to £8,812.40. She also appeals on behalf of Sunlight  
Optical Limited (Sunlight) in relation to the refusal by the Respondents (HMRC) in a  
10 letter dated 7 January 2013 to repay input tax for the period 05/12 in the sum of  
£17,302.61 and in a further letter also dated 7 January 2013 to repay input tax for the  
period 08/12 in the sum of £6,288. Miss Booth states that the transactions were  
commercial and valid transactions with her father's companies and there was no fraud  
involved. If there was fraud involved, which she did not accept, then she neither knew  
15 nor ought to have known of the fraud. HMRC say that Miss Booth, for and on behalf  
of Colour Blast and Sunlight, knew or ought to have known that Colour Blast and  
Sunlight were participating in a transaction connected with the fraudulent evasion of  
VAT.

2. Miss Booth appeared on behalf of Colour Blast and Sunlight and called her father,  
20 Andrew Booth, who gave evidence under oath. She also produced all the paginated  
bundles for the Tribunal and HMRC. Mr Richard Chapman of counsel appeared for  
HMRC. He called Robert Ian Godley (Mr Godley), a VAT assurance officer operating  
out of Preston, who gave evidence under Oath and Ronald William Taylor, an officer  
of HMRC, who gave evidence under oath and who, since March 2009, has been  
25 dealing with small and medium size companies.

3. We were referred to the following cases:

1. *Axel Kittel v Belgium; Belgium v Recotta Recycling* Joined cases C-439/04  
and C-440/04 [2006] ECR I-6161.
2. *Halifax Plc v Customs and Excise Commissioners* [2006] Ch 387.
- 30 3. *Fini H* [2005] STC 903.
4. *Edgeskill Ltd v HMRC* [2014] UKUT 38 (TCC).
5. *Mobilx Ltd and Others v HMRC* [2010] EWCA Civ 517
6. *Abbey (Manchester) Limited v HMRC* [2011] UKFTT 90 (TC)

### Preliminary Issues

35 4. Judge Porter understood that one of the tribunal cases, involving Mr Booth's  
companies, had been chosen to be heard initially by the tribunal to establish whether  
HMRC was justified in refusing repayments to those companies on the grounds of Mr  
Booth's fraud. As fraud was being alleged against Mr Booth, Judge Porter was

concerned that in hearing this appeal there would be a danger that this appeal would be substantially concerned with Mr Booth's various businesses, in circumstances where the appeal was predominantly about Miss Booth's companies and the state of her knowledge. Both Miss Booth and Mr Booth insisted that this case should be heard because they had a potential contract with Booths' Supermarket and they needed to resolve this appeal. Miss Booth, who was 21 years of age at the time of the hearing and the Director of Colour Blast and Sunlight, appeared on behalf of the companies. Although she tried to fulfil her obligations it was clear by the third day (8 May) that insufficient evidence had been provided for the Tribunal to understand her arguments. As a result Judge Porter stopped the proceedings and, after discussion with the parties gave the following directions.

**“Directions: sitting in public at Alexandra House, Manchester on 8 May 2014**

Having heard Miss Jessica Kate Booth for the Appellant and Richard Chapman, of counsel, for the Respondents and by consent, the parties have agreed that further detailed evidence as set out below, is required for the appeal to proceed in an orderly manner. Mr Robert Godley (Mr Godley,) a witness for the Respondents, had already started to give evidence to the Tribunal under oath. It is agreed that the Respondents would not be able to comment on the evidence to be produced, as under, without the assistance of Mr Godley. In those circumstances, Judge Porter released Mr Godley from his oath so that the Respondents could speak with him.

IT IS DIRECTED that

1. Unless Miss Booth and her father Andrew Booth shall produce the undermentioned details and documents in the form hereinafter mentioned and submit the same to the Respondents by 4.00pm on the 23 May 2014 this appeal shall be struck out without further direction:

a. Details of the individual transactions, as set out on the two lists provided by Mr Chapman to the tribunal (the Lists), in relation to the deals between the Appellants and the following companies:

- i. Luxol Ltd
- ii. Lemon Ice Ltd
- iii. Snob Eyewear Ltd
- iv. Venetian Designs Ltd
- v. Urban Dog Ltd
- vi. Business4All Ltd
- vii. MCM Capital Ltd

- viii. Style Factory Ltd
- ix. K D Optical Ltd
- x. AW Opal Ltd
- xi. Savoy Eyewear Ltd
- 5 xii. J W Eyewear Ltd
- xiii. J W Imports Ltd
- xiv. Daytona Surf Limited
- xv. Andrew Booth (t/a Optic Services)

(all of which are hereinafter referred to as the Companies).

- 10 b. The invoices for all the Companies for the dates set out on the Lists.
- c. All the corresponding invoices of Colour Blast Ltd (Colour Blast) and Sunlight Optical Ltd (Sunlight) against which contra payments have been made.
- 15 d. A detail of all other invoices both of purchases and sales, which were utilised in preparing the VAT return for the each of the quarters relating to the invoices on the Lists.
- e. The contra details setting out the invoices, which have been used by way of settlement of the invoices of the Companies.
- 20 f. The appropriate VAT return in which the repayments have been claimed for the periods in question.
- g. Mr Booth shall produce evidence of
  - i. The invoices raised by all the Companies relating to the supplies to Colour Blast and Sunlight showing the VAT thereon
  - ii. Details of the VAT returns by the individual Companies for the periods as aforesaid revealing why, if such be the case,
    - 1. No VAT has been paid for the periods in question
    - 2. No return has been completed with regard thereto.
    - 3. Including all details for the appropriate VAT periods to show how the VAT liability has been dealt with.

4. Supported by such evidence as shall justify the action taken by the Companies.

- 5 2. Miss Booth shall supply the above information in two ring-binders (one for herself and one for the Respondents) with suitable dividers for each of the Companies. Where the invoices or other information is already available in the bundles provided to the Tribunal, she shall prepare copies of the same, so that they can be placed in the correct period in the bundles to facilitate the understanding of the evidence.
- 10 3. Unless the Respondents shall raise with Miss Booth such observations or queries with regard to the evidence contained in the bundle served on them by Miss Booth by 4.00pm on the 20 June 2014 this appeal shall be struck out without further direction.
- 15 4. The parties shall have permission to apply, within the timescales of this 'Unless Order', for further directions, or for a variation of these directions.
- 15 5. In addition to the above and before 4.00pm on the 23 May 20014 Miss Booth and Mr Booth shall provide the Tribunal, but not the Respondents, with a list of the questions they wish to put to the respondents' witnesses Mr Ronald Taylor and Mr Godley. In the event that such lists are sent to the Respondents in error, the Respondents shall return them to the Tribunal unread.
- 20 6. The parties have agreed that this appeal shall be set down for hearing over four days from 14 of July to 18 July before Judge Porter and the member Mr Holden. Miss Booth shall supply to the Tribunal at least 7 days before the 14 July 2014 two further copies of the bundle of the evidence required by this direction.
- 25 5. Judge Porter and Mr Holden (the member) were surprised, not only that HMRC had not asked for the details set out above, when preparing the case for the appeal, but that they also allowed Miss Booth to prepare all the bundles. As a result, the bundles were incomplete, improperly paginated and short on material. The Tribunal had been able to rectify those short comings, but not without some delay and frustration. In fact  
30 the parties re-assembled some of the bundles.
- 35 6. The appeal was re-convened on 14 July. Miss Booth had taken exception to HMRC's failure to provide the information under the "Unless Order" on time. The Tribunal decided, however, that even though that was the case the appeal would not be struck out. Miss Booth appeared to be unwell and asked if Mr Booth could take over the cross-examination of Mr Godley, HMRC's first witness. Mr Chapman took exception to that as Mr Booth was not now a member of Colour Blast or Sunlight and that he was a witness in the appeal, which involved an allegation of fraud against him. Mr Chapman was prepared to adjourn for the day and to start the following morning when it was hoped that Miss Booth would have recovered.
- 40 7. The Appeal continued on 15, 16 and 17 July. Judge Porter had expressed concern on several occasions that Miss Booth was conducting the appeal, as it appeared that

she suffered from panic attacks and on several occasions appeared unable to catch her breath. On those occasions the hearing was adjourned to allow her time to recover. Judge Porter, in the light of that, had enquired of Mr Booth why he had not instructed a solicitor or counsel to act because the matter was far from straight forward. Mr

5 Booth advised that he did not have the money to do so, this in spite of the fact that he appears to have received over the years very substantial repayments of VAT for his various companies. The evidence of his wealth was further confirmed by Miss Booth, who in her evidence, indicated that the family had an X5 Jaguar and were very privileged.

10 8. Unfortunately, Miss Booth's health deteriorated during various appeal hearing days. On 17 July Miss Booth appeared very unwell. Mr Chapman expressed concern as he understood that she had not slept the night before. Miss Booth advised that she hyperventilated and, although the Doctor had prescribed an inhaler, she had not

15 brought it with her. Judge Porter expressed considerable concern that Miss Booth was not fit to appear before the Tribunal and that the case would have to be adjourned. He also expressed considerable concern that, as Mr Booth was still on oath, he and Miss Booth were not to discuss the matter in the interim period. They both confirmed that they would not.

9. The parties agreed that the case could be relisted for the 1, 2 and 3 September. The

20 evidence was completed on that occasion, but the parties agreed to provide written submissions as Judge Porter considered that Miss Booth's health was more stable when addressing the matters in writing than when she had to deal with matters orally. Mr Chapman agreed to provide his written submission first and to allow Miss Booth time to consider the same. She would the produce her written submissions by 17

25 October 2014. Mr Chapman produced a 34 page submission and Miss Booth presented a 9 page submission.

10. Miss Booth and her father have been given every consideration as litigants in person and Mr Chapman has shown considerable restraint, patience and has at all times assisted the Tribunal in that endeavour.

### 30 **The Law**

11. We propose to set out the law as we understand it. The right to deduct is contained in sections 24 -29 of the Value Added Tax Act 1994 (the Act). Section 25 requires such a person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is

35 allowable under s 26: see s 25(2). Section 26 gives effect to what is now Article 168 of EC Council Directive 2006/112 (the VAT Directive) and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by the taxable person in the course or furtherance of his business: see s 26(2).

40 12. These provisions are in mandatory terms. If a trader has incurred input tax, which is properly allowable, he is entitled, as of right, to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. He is required to hold evidence to support his claim (see article 18 of the

Sixth Directive and regulation 29(2) of the Value Added Tax Regulations 1995 (SI 1995/2518). As a result, the right to deduct or the right to a repayment is absolute, and no element of discretion is conferred on the tax authority, save that the authority may accept less evidence than normally required; it has no right to demand more evidence than that prescribed by article 18. The right is also immediate, that is it may be exercised “when the deductible tax becomes chargeable”. The only limitation is the practical one that, although deductibility is determined on a transaction by transaction basis, the mechanical process of deduction or repayment is affected by reference to prescribed accounting periods.

## The Case law

13. In light of the Upper Tribunal’s decision in *Edgeskill Ltd v HMRC* we consider the law as set out in *Kittel* and *Mobilx Ltd (in administration)* is now settled and we do not think it is necessary to trace the development of the concept through all of the cases we have been referred to by Mr Chapman in his submissions, but rather to refer to Lord Justice Moses’ observations in the Court of Appeal. Moses LJ stated;

“...The scope of VAT, the transactions to which it applies, and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:-(see *Kittel* para 42, citing *BLP Group* [1995] ECRI/983 para 24) the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned.” [Paragraph 24]

“In *Kittel* after §55 the Court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT... It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. *Kittel* did represent a development of the law, because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct...” [Paragraph 41]

5 “A person who has no intention of undertaking an economic activity, but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person's VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see Halifax § 59 and Kittel § 53). A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and, equally, fails to meet the objective criteria which determine the scope of the right to deduct”;  
10 [paragraph 43].

14. . Both *Kittel* and *Mobilx* confirm that where a trader meets the objective criteria for compliance with the VAT regime, it is not open to the Authorities to withhold any tax repayment. If, however, a trader does not comply with the objective criteria, because there is a fraud, that trader cannot recover any tax.  
15 Moses LJ at paragraph 30 states:

20 30. “The Court (The European Court of Justice when considering *Optigen*) rejected the United Kingdom’s argument that unlawful transactions fell outside the scope of VAT. Fiscal neutrality prohibits the distinction between lawful and unlawful transactions; such a distinction must be restricted to transactions concerning products which by their very nature may not be marketed, such as narcotic drugs and counterfeit currency (see paragraphs 49 and the Advocate General’s Opinion paragraph 40). By its rejection of the United Kingdom argument, the Court made it clear  
25 that the reason why the fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria, which determine the scope of VAT and the right to deduct, have been met.”

30 And at paragraph 52:

35 52. “If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in *Kittel*. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises”;

40 15. As the Advocate General stated at paragraph 40:

40. “As becomes clear from the Commissioners own description of what they consider to constitute carousel fraud, its characteristic is that it makes use of lawful economic channels in order to facilitate the retention of money paid as VAT”

5 At paragraph 59

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

At paragraph 61

61, “A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters  
20 into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to  
25 deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct”;

16. Moses LJ at paragraph 75 stated.

“ 75 The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable  
30 explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT.....

17. In *Red 12 Trading Ltd* the Tribunal decided that it may consider compelling similarities between one transaction and another and that it is not precluded from

drawing inferences where appropriate, from a pattern of transactions of which the individual transaction in question forms part. Christopher Clarke J said at paragraph 109:-

5           “109       Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature  
10       e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.”

15       18. The burden of proof as to the state of the trader’s knowledge is upon HMRC. Moses LJ stated as follows at paragraph 81:

20           81. HMRC raised in writing the question as to where the burden of proof lies. It is plain that if HMRC wishes to assert that a trader’s state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove the assertion. No sensible argument was advanced to the contrary.

19.       These are civil proceedings and, as such, the standard of proof is the ordinary civil standard i.e. on the balance of probabilities. The case of *Reventhi Shah (Administratrix of the Estate of Naresh Shah Deceased) v Kelly Anne Gale; Kelly Anne Gale v Jason Grant, Mark Young, Paul Hilton, Samantha Easton*  
25       [2005] EWHC 1087 (QB) (concerning a civil action for unlawful killing) made it quite clear that there is a single civil standard of proof (i.e. on the balance of probabilities) applicable in all civil proceedings regardless of the allegations levied. Lewison J (as he then was) stated:

30           “In my judgment, it would be wrong to approach this case on any basis other than the balance of probability with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation and the inherent improbability that this 22 year old young lady of good character should  
35       involve herself in such conduct as that alleged. I simply do not accept that it is appropriate, as a matter of law, to require a higher standard of proof simply because of the nature of the allegation. If murder, why not allegations of rape or the most serious fraud.”

### **The Facts.**

40       20.       HMRC allege that Mr Booth has set up a number of companies and businesses with a view to obtaining VAT repayments fraudulently and without any

of those companies or businesses ever having paid any VAT to HMRC. It also alleged that he arranged for his daughter, Miss Booth, through Colour Blast and Sunlight, to trade with those companies and businesses so that she could also make repayment claims. It alleged that Miss Booth had an intimate understanding of her father's businesses and that, as a result, she must have known of his fraudulent intention and she had therefore been a participator in the fraud. As such, HMRC are not prepared to make the repayments claimed by her arising from those transactions.

21. We propose, therefore, to deal with Miss Booth's transactions first. We have had considerable difficulty throughout the hearing to obtain cogent evidence from Miss Booth and Mr Booth as to the businesses they ran and how they operated. As a result, we have checked through all the bundles carefully so that we can piece together the details as best we can from the formal evidence in the bundles against the witnesses' evidence at the hearing. We have had the benefit of a stenographer in all the hearings so we are able to cross-check the references from the bundles against the evidence, such as it was, given by Miss Booth and Mr Booth.

22. We were told that Miss Booth had worked variously in her father's shops from an early age. She told us that she was not a qualified optician, but by the time she was leaving school, at age 18, she had decided that she wished to set up her own business as she believed she had sufficient knowledge to do so. She said that she had started to build up some stock for when she would be in a position to start her own business. She had been disappointed that Barclays Bank would not allow her to open a business account. As a result, she relied on her father's assistance to finance the business, which we consider in further detail later in this decision. Mr Chapman, in cross-examining had expressed surprise that she had not opened an account with a bank in her own name, which she would have been able to do. She appeared to be unaware of that fact.

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### **Colour Blast**

23. We propose to consider Colour Blast first. Colour Blast was incorporated on 5 February 2010. Miss Booth did not have the best of health and left school, without qualifications, and planned to start an opticians business at 2 Church Street, Great Harwood in July 2012. This was a small end corner shop in a terraced row. By the end of August 2012 she had set up the business but it is unclear whether Colour Blast then traded under the name 'Jessica Booth Eyecare'.

24. Miss Booth was not pleased with the location of 2 Church Street in Great Harwood, which she said was a small town without very much money. She has told us that she was employing a qualified Optician, but we have been given no details. She was, however, looking for different accommodation. An email dated 21 September 2012 from Sheila Lamare addressed to Mr and Mrs Booth offered a property at 12 Queen Street, Great Harwood. We assume that Mrs Booth is Miss Booth. We noted the reference to both of them as all the other emails are in Miss Booth's name. It would appear that Mr Booth has been involved in setting up Miss Booth's businesses

25. Although Miss Booth had not insured the building until October it appears that there was a flood at the end of October 2012, which effectively terminated the trading at 2 Church Street. Miss Booth also told us that she had been involved in a car  
5 accident at the same time. It would appear that Colour Blast had only traded for five months from 2 Church Street. We note, however, that Miss Booth has provided copies of invoices relating to spectacle frames etc sold to Colour Blast by Luxol Ltd in March 2011 long before she said she started in business. She had indicated that she had started to purchase stock and advise companies before she acquired the shop. We  
10 note that she would have been approximately 18 years old at the time.

26. From November 2012 through to December 2012 it appears that Miss Booth had looked for new premises in Longridge, Skipton and Garstang, the last being a unit in a store owned by the supermarket E H Booth & Co (Booths). Miss Booth told us,  
15 when opening the case, that she had a contract with Booths to open up shops in several of its stores. She implied that Booths were prepared to do that as it assisted them with their planning applications when opening or extending the stores. We understood that Miss Booth is no relation to the owners of Booths supermarket. She said:-

20 “Booths are rapidly expanding. This past few years they’ve been opening shops everywhere and they’ve said that I stood out to them because I solved a problem in that when they’re seeking planning permission it’s not enough for the planners that Booths are going to provide 200/300 jobs, they want an ancillary  
25 service as well. So an optician that wants to work with them provides that service. So there was discussion that if I opened in Garstang then space could be made available for me in Kendal, Ullverston, which is in the Lake District, Poulton-le-Fylde, which is another quite wealthy market town similar to Garstang, they spoke about Hale Barns.”

30 27. Miss Booth produced no evidence of any formal contractual arrangement with Booths to the effect that she would be the sole Optician in all its stores. We had the distinct impression that a 19 year old girl had achieved a substantial and enviable contract with Booths to work with the company in developing its businesses. From  
35 her evidence in the bundles that does not appear to be the case. Miss Booth and her father had, subject to formal contract, negotiated the grant of a lease to Jessica Booth t/a “Jessica Booth Eyecare” of one of its units within Booths at Garstang. It is surprising that the Heads of Terms do not refer to Colour Blast as we understood Jessica Booth Eyecare’ had been the trading name when she set up the shop.

40 28. Miss Booth had a meeting with Booths’ Estate Agents on 12 December 2012 when she, her father and the estate agents met. Miss Booth has produced Heads of Terms dated 13 December 2012 with regard to premises at Office 2, Cherestanc Square, Garstang. The Tenant is Jessica Booth t/a ‘Jessica Booth Eyewear’  
45 (surprisingly not Colour Blast) for a term of 25 years, at an initial rent for the first year of £10,464. Booths were also insisting on the first years rent upfront. Miss Booth suggested 6 months ,but there is no evidence as to what happened. This is evidence of a proposed lease of a single unit belonging to Booths for which all the terms had not

been agreed. Crucially, the upfront payment of rent. It is also clear that Mr Booth was involved in the negotiations and that it would be he who would have to find the upfront payment as Miss Booth has confirmed that she was without funds. She told us that the negotiations had been put on hold pending the outcome of this appeal.

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29. In April 2013 there appears to have been an application to a Start Up Loan Scheme run by Lancashire Community Finance, but again there is no further evidence and we assume that the loan was not awarded. Miss Booth was required to provide evidence of her trading experience, a business plan and a cash flow. The business plan appears in the bundle, but there is no cash flow. We note that Miss Booth stated under cross-examination that she did not have a business plan and had been unable to obtain any funding, which is why her business model involved contra payments.

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30. We accept that the negotiations with Booths are not the subject of this appeal, but as Miss Booth has raised the same as evidence of her expertise, we have described the negotiations in some detail. It also appears that Jessica Booth Eyewear became Colour Blast in early 2012 although Jessica Booth Eyewear appears to have been a sole trader under Miss Booth's ownership. Mr Chapman has referred us to the accounts for Colour Blast for the year ending 29 February 2012, which indicated that Mr Booth owned, as in the previous year, half the company with 100 shares. Miss Booth appears to have a further 100 shares, which she also owned in that year. The accounts were signed by her, although she was adamant that she had read the accounts and that her father was not a shareholder and that statement on the front page of the accounts was a mistake. Mr Chapman pointed out that this was a document to be filed at Companies House and needed to be correct. He could not accept, and we agree with him, that she had read the page as she would have seen the shareholding, which is very clear and stands alone.

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31. Colour Blast returned dormant accounts to 28 February 2011. Miss Booth told us that she had incorporated Colour Blast and that she was the sole director with 100 shares in the company. As indicated at paragraph 30, Mr Booth was identified as a director and shareholder with 100 shares in the accounts to 28 February 2012. Those accounts show that the company had net worth of £708 having made an operating profit of £759. Miss Booth registered Colour Blast for VAT on 27 April 2012 and indicated that the company's business would be administration services with other activities of wholesale and internet sales

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32. There was considerable correspondence and discussions as to the date of registration for Colour Blast. By the hearing it was agreed that it should have been 1 April 2012. During the appeal Miss Booth had amended some of the evidence to accommodate that registration date.

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### **Colour Blast's transactions**

33. Colour Blast's VAT return from March 2011 to June 2012 (period 06/12) claimed a net repayment of £12,119.16 (as revised on 30 October 2012) based on an output tax of £42,533.35 and an input tax of £54,652.51. Its total purchases in the

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period were £336,870 .04 with sales of £307,766.65. Mr Taylor produced a witness statement, which he confirmed was correct but did not go through. Miss Booth cross-examined him on his statement. Mr Taylor referred to the report produced by Miss Booth on behalf of Colour Blast entitled VAT 100-Liability Basis March 2011 through June 2012, which stated, using 1 April 2012 as the agreed date of registration:

	06/12 Net VAT	
	VAT due on sales (Box1)	42,533.55
	<u>Total VAT due from EC acquisitions (Box 2)</u>	<u>0.00</u>
10	Total VAT due (box 3)	42,533.35
	VAT reclaimed on purchases (Box 4)	<u>54,652.51</u>
	Net VAT to pay (or reclaim if negative) (Box 5)	<b><u>-12,119.16</u></b>
	Total net value of sales (box 6)	307,766.65
	Total net value of purchases (Box 7)	336,870.04
15	.....	

34. Colour Blasts VAT return from 25 April through September 2012 (period 09/12) claimed a net repayment of £8,812.45 based on an output tax of £259.50 and an input tax of £9,071.95. Its total purchases for the period were £48,469.76 with sales of £1,341.50. Miss Booth's report revealed:

	09/12 Net VAT	
	VAT due on sales (Box1)	259.50
	<u>Total VAT due from EC acquisitions (Box 2)</u>	<u>0.00</u>
25	Total VAT due (box 3)	259.50
	VAT reclaimed on purchases (Box 4)	<u>9,071.95</u>
	Net VAT to pay (or reclaim if negative) (Box 5)	<b><u>-8,812.45</u></b>
	Total net value of sales (box 6)	1,341.50
	Total net value of purchases (Box 7)	48,469.76
30	.....	

35. Colour Blast purchased frames from several of Mr Booth's companies and appears to have sold many of them back to the same companies at an increased price. Colour Blast has also charged all of those the companies £2080 for assisting with the accounts of each of them and also charged for legal and clerical work that Miss Booth has carried out for them on behalf of Colour Blast totalling £100,873.34.

36. Judge Porter had asked Miss Booth to provide him with a list of questions she wished to ask Mr Taylor which she had provided. The questions with regard to the various invoices and companies took the following form:

- “Do you accept that the goods listed on ‘name of company’ Limited invoices were, indeed, supplied?”
- 45 “Do you accept that the goods and services listed in the ‘name of company’ Limited invoices to ‘name of company’ Limited were, indeed, supplied?”

"Do you accept that the receipt/contra invoices from 'name of company' Limited to 'name of company' Limited is a valid method of payment?"

Mr Taylor's response in all cases had been:

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"Based on the listings and invoices Yes"

He made it clear in his conclusions that he did not accept that they were valid transactions, because they formed part of a fraud.

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37. In his witness statement, Mr Taylor has stated that in spite of its substantial turnover Colour Blast had not demonstrated the operation of a bank account during the periods March 2011 to June 2011. On 12 July 2012 Miss Booth wrote to the VAT Variation Unit advising that Colour Blast had opened an account numbered \*\*\*\*0405 with Barclays Bank. She has also produced a statement for the period 26 June 2012 to 29 September 2012. There are no substantial receipts in that period the majority of which appear to be from Savoy Eyewear Ltd with the £1000 being immediately paid out. It can be seen from the transactions relating to Savoy Eyewear Ltd in that period at paragraph 46 (f) that there were no sales or purchases at £1000. We have been told that the sales and purchase have been paid by contras. We were not advised that Savoy Eyewear paid any further amounts. We can only conclude that the transactions up to mid-June were not handled through this account.

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38. Miss Booth confirmed at the appeal that her 19<sup>th</sup> birthday was on 28 February 2012. She appears to have been unwell during 2012 and had an accident in October 2012. She told us that she had been really ill for some time. She was undoubtedly unwell at the hearing suffering from anxiety and hyperventilating. We consider that although she appeared to be bright she was certainly not robust and we believe she would have found running her own business to be stressful.

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39. Mr Chapman provided a list of the transactions in which both Colour Blast and Sunlight were involved. We set out below the list in relation to Colour Blast. We do not intend to describe all 27 transactions in detail, but to select a random sample. We have, however, looked at all the transactions, when counting the number of frames bought and sold, and they each follow a similar pattern. Miss Booth confirmed that Mr Booth had set the prices for all the transactions. In cross-examination Miss Booth said:

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"A. So I'd looked more to my dad for direction as to what the costings were going to be because he knew the stock more. I don't understand why it's strange. He is my dad, he has not going to screw me over. He is not going to sell me something that's actually only worth 2 pence but charge me £100. 55. Then I think for that then my dad would tell me what he felt was reasonable for him to be paying.

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Q. This is the point. This is why it is all uncommercial and why it appears bizarre. It is your dad choreographing all of this, is it not?

45

A. He's not. I don't feel that he was choreographing me. I thought that he was advising me. He is advising me and my dad in his office ---

Q. And you are taking that advice uncritically though, are you not?

5 A. Because he's my dad and I don't think he's going to put me in the position where I would do anything wrong. He's looking out for me. I don't have any reason to doubt him”.

We are satisfied, given Miss Booth's age, health, and lack of funds that the transactions were not at arm's length and were orchestrated by Mr Booth.

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#### 40. Evidence of Colour Blast's deals provided by Mr Chapman

Suppliers	Invoices date	Amount <sup>1</sup>	VAT	Supplier default
Luxol Ltd	1/3/11	£59,780	£8068	Not declared or paid.
Lucol Ltd	1/1/12	£30,000	£6000	Not declared or paid. (Company wound up 26 March 2012).
Lemon Ice Ltd	21/4/12	£24,227.70	£4,845.54	Not declared or paid
Lemon Ice Ltd	20/6/12	£28,650	£5,730	Not declared or paid
Business 4 All Ltd	22/6/12	£4,807.20	£801.20	Declared but not paid
Snob Eyewear Ltd	22/6/12	£868	£173.60	Declared but not paid
Snob Eyewear Ltd	26/6/12	£26,397	£5,279.40	Not declared or paid
MCM Capital Ltd	26/6/12	£3,913	£782.60	Not declared or paid
Style Factory Ltd	26/6/12	£4,303	£860.60	Declared but not paid
K D Optical Ltd	22/6/12	£3,810	£762	Not declared or paid because of a Burglary in April 2011.(Note: must be 2012)
A W Opal ltd	26/6/12	£3,332	£666.40	Transaction after de-registration (25/3/11).
Venetian designs	1/3/12	£12,005.44	£2,401.09	Transaction after de-registration (1/9/11).

<sup>1</sup> Mr Chapman indicated that these figure were gross in fact they are net of VAT

<b>Date</b>	<b>Invoice date</b>	<b>Amount</b>	<b>VAT</b>	<b>Supplier default</b>
Urban Dog Ltd	5/3/11	£6,176	£1,235.20	Not declared or paid
Urban Dog Ltd	7/3/11	£15,142.60	£3,028.52	Not declared or paid
Urban Dog Ltd	1/4/11	£34,064.80	£6812.96	Not declared or paid
Savoy Eyewear Ltd	1/6/12	£21,432	£4,286.40	Declared but not paid
Savoy Eyewear Ltd	1/7/12	£4,000	£800	Not declared or paid
Savoy Eyewear Ltd	31/8/12	£3,750	£750	Not declared or paid
Savoy Eyewear Ltd	24/9/12	£5,890	£1,180	Not declared or paid
Savoy Eyewear Ltd	30/9/12	£3,750	£750	Not declared or paid
J W Eyewear Ltd	22/6/12	£3,947	£789.40	Declared but not paid.
J W Imports Ltd	22/6/12	£845	£169	Declared but not paid
Daytona Surf Ltd	22/6/12	£2,349	£469.80	Not declared or paid
Andrew Booth (t/a Optic Services)	22/6/12	£7,961	£1,592.20	To be agreed.
Ditto	29/6/12	£25,890	£5,178	To be agreed
<b>Total</b>		<b>£337,260</b>	<b>£63,393.91</b>	

41. We were never told why it was necessary for Miss Booth, starting up a small shop and subsequently agreeing to take a lease of a property owned by Booths, traded with so many companies. She admitted that she was learning at the time and it makes  
5 no sense to make her book-keeping so complicated. It will be seen from the individual deals that she was unable to pay for all the goods and that a 'contra' system was agreed to set off monies due from Colour Blast against monies owing from or to the various companies. Even when that exercise had been carried out there were still  
10 substantial sums owing. We have been given no evidence as to how those outstanding balances were to be paid. Nor did it make any sense for such large quantities of

frames to be purchased for her shop at 2 Church Street and the potential unit with Booths. Miss Booth has produced an email dated 4 December 2012 addressed to Mr Taylor in which she advised him of the deal with Booths and added:

5           “Most of the stock to support the new opening will be supplied by Sunlight”.

Clearly all the purchases during the appeal transactions were for Colour Blast and the new shop, as the stock for the Booths’ unit had not been acquired even at December 2012.

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42. Mr Taylor provided three witness statements the last arising from the various deals provided by Miss Booth relating to the “Unless Order”. Mr Taylor did not give his evidence in chief and Miss Booth had provided Judge Porter and Mr Holden (as requested by Judge Porter at an earlier hearing) with a list of questions she wished to raise. Mr Taylor provided details of the transactions as listed by Mr Chapman (see paragraph 40) above. He confirmed that at the time all the companies involved in the transactions operated from The Old School House, Church Brow, Walton- le-Dale.

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43. Mr Taylor concluded that between commencing business in March 2011 and the end of its first VAT quarter in June 2012, Colour Blast had not demonstrated the operation of a bank account yet still managed to make net sales of £307,766 and purchases of £336,870. The transactions during the period were either barter transactions or on credit terms.

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44. Miss Booth, as the sole employee of Colour Blast other than the qualified optician, had charged to all of Mr Booth’s companies for services valued at £100,873.34 for legal or accountancy, staffing duties and retainer services with no formal legal qualifications. 15 different sets of company accounts were billed to Mr Booth’s companies. Of these, 12 sets of accounts were signed off and approved by their boards prior to Colour Blast commencing trading on 6 March 2011. In the period 09/12 Colour Blast ceased providing legal and accountancy services and then operated as a retail optician. During that period, the only retail sales amounted to £1,341 at a direct cost of £8,310. Despite having a stock of frames valued at in excess of £250,000 at the end of the 06/12 period Colour Blast spent a further £32,297 on spectacle frames in the period 09/12.

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45. Miss Booth had confirmed to HMRC during the meetings of 2 August 2012 that neither Colour Blast nor Sunlight had ever taken insurance out to cover the value of the stock or optical testing equipment. Of the £336,000 purchases by Colour Blast in its first period of VAT over £255,000 were from Mr Booth’s companies. Every single purchase of stock from Mr Booth’s companies has resulted in a tax loss. (Details of Mr Booth’s transactions and returns appear from paragraph 61 below). Mr Taylor concluded that all the transactions were fraudulent and that it was inconceivable that Miss Booth did not know.

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46. We propose considering 7 of the transactions the details of which have been provided by Miss Booth arising from the “Unless Order”:

a. **Luxol Limited deal 1/3/11.** It is accepted by Miss Booth that this was a transaction carried out by her father before she started trading:

5 Purchases from Luxol Ltd

Date	Invoice	No of frames	VAT	Amount	Total	Contra
1/3/11	3201	216	£1,164	£5,820	£6,984	
1/3/11	3202	210	£1,540	£7,700	£9,240	
1/3/11	3203	208	£1,684	£8,420	£10,104	
1/3/11	3204	169	£1,244	£6,220	£7,464	£31,770
1/3/11	3213	143		£19,440	£19,440	
				£2,436	£12,180	
1/1/12	LX0112-14	Staffing fees	£6,000	£30,000	£36,000	o/s £33,642
<b>Totals</b>		946	£11,632	£80,036	£101,412	

**Note.**

- Invoice 3213 appears to be in two parts but there is only one invoice for the entire account of £34,056 being VAT of £5,676 and an amount of £28,380. The table provided by Miss Booth shows £19,440 +£12180 +£2435 = £34,055. We assume there is no VAT in relation to invoice £19,440 as it dealt with exempt frames as the VAT details are different.
- Invoice LX0112-14 appears in this listing on 1 January 2012 although it refers to fees paid to Luxol Ltd for staff and service charges, accountancy and travel expenses provided by Luxol Ltd. We note that Miss Booth started her first shop in June 2012, some 6 months later, and that a mail shot to customers was made in October 2012.
- We cannot understand why she would be asked to pay £36,000 in advance, with no finance, for a service she did not appear to need until July 2012. This in addition to the setting up costs of £76,990 provided by Savoy Eyewear.

Sales in same period to Luxol Ltd

Date	Invoice	Frames	VAT	Amount	Total
20/3/11	CB-03-2011-01	49		£4,800	
20/3/11	CB-03-2011-02	51		£4,300	
20/3/11	CB-03-2011-03	106		£6,840	
20/3/11	CB-03-2-11-04	65		£4,900	
20/3/11	CB-03-2011-05	121		£5,580	
20/3/11	CB-03-2011-06	99		£3,300	
20/3/11	CB-03-2011-07	48		£1,950	
	Total frames	539			
1/5/11	CB-05-2011-01	VAT Tribunal work		£ 100	£31,770
1/3/12	CB-03-2012-02	Retainer 1/3/11 TO/1/3/12		£2,080	

**Note:**

- Colour Blast charged £1,500, plus VAT of £250 for preparing Luxol Ltd's accounts for the periods 2006/2007 and 2008 on 1 April 2012. This in spite of the fact that Luxol had charged Colour Blast in January that year £36,000 for general administrative activities and accountancy.
- Miss Booth told us that as she had been unable to finance the business she had had to rely on a contra arrangement with her father's companies to cover the cost of the supplies and services. We note that having bought 946 frames Colour Blast sold back 539. We wonder, in view of the financial constraints, why Colour Blast did not just buy 407 frames. Further, why was there need to buy the frames in March 2011 for sales over 12 months later?
- HMRC accepted that contra arrangements can be used. For this period with Luxor, she has set off £31,770 of the fees for invoices 3201/2/3 and 4 against a similar amount for invoices CB-03-2011-01 to 07 and CB-05-2011-01. This has left £33,642 outstanding. Mr Chapman in cross-examination asked Miss Booth why the figures were round figures. She explained that in setting off £31,770 there was still £2,022 owing on account 3204 as she had only set off £5,442 of the total invoice of £7,464. She confirmed that her father and she had dealt with all the other contras on the same basis so that there was still a sum outstanding.
- We have not been shown any evidence of the running totals still outstanding. We assume that the sales to Luxol Ltd were VAT inclusive
- As these transactions occurred before Miss Booth became a shareholder and director of Colour Blast we do not understand why the transaction took place at all as Mr Booth has indicated that he had wanted to help his daughter set up in business. There was no need for that to have occurred in this period.
- Miss Booth has conceded that no repayment is due in relation to the invoice in January 2012 (LX0112-14) as Miss Booth was at school in this period.
- Luxol Ltd went into liquidation on 22 March 2012.
- Miss Booth advised that she helped prepare all the accounts for the various companies. A retainer of £2080 had been raised for each company for annual accounts. It is surprising that she was prepared to raise an account against Luxol given that she must have known of Luxol's pending liquidation.

**b. Business 4 All Ltd 22/6/12**

Purchases from Business 4 All Ltd.

Date	Invoice	Frames	VAT	Amount	Total	Contra
22/6/12	B4/12/6/001	48	£577.60	£2,888	£3,465.60	
22/6/12	B4/12/06/0002	13	£223.60	£1,118	£1,341.60	
	Totals	61	£801.20	£4006	£4,807.20	£4,807.20

Sales to Business 4 All Ltd from Colour Blast.

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/12	CB-03-2012-05	Retainer March 2011 to 2012		£2,080	£2,080	
1/3/12	CB-03-2012-16	Retainer March 2012 to 2013		£2,080	£2,080	Credit note given
1/4/12	CB-04-2012-106	Preparing Company accounts. 2010 and corporation tax return 2009 and 2010	£416.67	£2,083.33	£2,500	
25/4/12	CB-04-2012-06	Vat review 1 week	£50	£250	£300	
25/4/12	CB-04-2012-35	Preparing company account and tax return 2009 and 2010			£4000	Credit note given
1/6/12	CB-06-2012-04	Preparing company accounts April 2011	£300	£1,500	£1,800	Contra invoices 05,16,06.and part 35
		Totals	£766,67	£5,913.33	£6,680	£4,807.20

**Note.**

- 5 • We do not believe that Miss Booth, without any professional qualifications, could usefully contribute, save in a secretarial role, to the preparation of accounts and corporation tax returns. We consider these invoices to be excessive and contrived.
- 10 • We also fail to understand why Miss Booth would require further frames when she already has 407 for what she accepts is a small shop, which did not start trading until July/August 2012.
- 15 • The accountancy work had been required because there had been a Burglary (the Burglary) on 3 April 2012 at Walton –Le-Dale and the records had been mixed up or destroyed. The only evidence of the Burglary is a copy of the confirmation from Lancashire Constabulary dated 10 April 2012 acknowledging Mr Booth’s notice of the break-in. No detail has been provided as to what actually took place save to imply that the books and records of several of the companies had been destroyed. We do not believe that a burglar would have destroyed the companies’ books or accounts other

than by throwing the documents around when looking for cash. We assume that all the documents only needed to be reassembled.

**c. MCM Capital Limited 26/6/12.**

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Purchase from MCM Capital Ltd

Date	Invoice	No of frames	VAT	Amount	Total	Contra
22/6/12	MCM-06-12-01	25	£255	£,1275	£1,530	
22/6/12	MCM-06-12-02	28	£527.60	£2,638	£3,165.60	
	Total	53	£782.60	£3,913	£4,695.60	

Sales from Colour Blast to MCM Capital Ltd

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Date	Invoice	No of frames	VAT	Amount	Total	Contra
1/3/12	CB-03-2012-06	Retainer 11/12		£2,080	£2,080	
1/3/12	CB-03-2012-17	Retainer 12/13		£2,080	£2,080	Credit note given
1/4/2012	CB-04-2012-111	Preparing accounts 2009/10	£416.67	£2,083.33	£2,500	
1/6/2012	CB-06-2012-05	Preparation accounts April 2011	£300	£1,500	£1,800	
25/4/2012	CB-04-2012-05	VAT internal review	£50	£250	£300	
25/4/2012-	CB-04-2012-40	Preparing accounts and corporation tax return 09/10		£4,000	£4000	Credit note given
	Totals		£766.67	£5,913.33	£6,680	

15 **Note:**

- Extraordinarily, the figures in relation to the sales to Business 4 All are identical, save as to their order and description, to those for MCM Capital. As Mr Booth states that the companies are independent this could not happen. In those circumstances one or other set must be contrived. As indicated in relation to Business 4 All's accounts we do not believe that Miss Booth could usefully contribute, save in a secretarial role, to the preparation of accounts and corporation tax returns. We consider these invoices to be excessive and contrived.

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- Miss Booth said that there was a commercial reason for Colour Blast to enter into these deals because she intended to open her first retail Opticians Shop, which eventually opened in July/August 2012.
- Colour Blast had supplied MCM Capital Ltd with retainers and invoices detailing work on the preparation of company returns and accounts. Colour Blast had also successfully provided work for an independent review. The work involved collating historical and recent figures for the attention of the bookkeeper to aid the preparation of the accounts.
- The work had been required because there had been the Burglary at Walton – Le-Dale and the records had been mixed up or destroyed. As to this, see our comments above.
- We note that Miss Booth was just 19 years old at the time that this work was done. We have had considerable difficulty in obtaining information from Miss Booth with regard to this appeal. We do not believe that she could supply any substantial assistance in relation to corporate accounts and business finance. Such skills as she could supply were, at best, of a secretarial nature. In the circumstances we consider the invoices raised for this work to be excessive, unjustified and contrived.
- It should be noted that invoice CB041205 was made VAT inclusive after Mr Taylor suggested that the effective date of registration was to be back dated to 1 April 2012.

#### d. K D Optical Ltd

##### 25 Purchases from KD Optical Ltd.

Date	Invoice	description	VAT	Amount	Total	Contra
22/6/12	KDO12/01	Frames 37	£621.20	£3,106	£3,727.20	
22/6/12	KDO612/02	Frames 13	£140.80	£704	£844.80	
		Totals	£762	£3,810	£4572.	£4,572

##### 30 Sales to KD Optical Ltd.

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/12	CB-03-2012-09	Retainer 2011/12	£346.67	£1,733.33	£2,080	
1/3/12	CB-03-2012-20	Retainer 2012/13			£2,080	Credit note given
1/4/12	CB-04-2012-112	Preparing accounts and corporation tax returns 2008/9/10 and 11	£583.33	£2,916.67	£3,500	
25/4/12	CB-04-2012-08	VAT internal review	£50	£250	£300	

Date	Invoice	Description	VAT	Amount	Total	Contra
25/4/2012	CB-04-2012-41	Preparing company accounts and corporation tax returns 2008/9/10 and 11	VAT inclusive £1,333.34	£6,666.66	£8000	Credit note given
		Totals	£980.00	£4,900	£5,880	£4,572.

**Note:**

- 5 • We understand that some of the transactions are VAT inclusive because, Mr Taylor had indicated that the VAT registration date was 1 April 2012.
- We do not believe that Miss Booth was able to supply the level of expertise implicit in the invoices for the preparation of accounts and the corporation tax return. These invoices have been prepared to enable the contras to be used and are contrived.
- 10 • The contras have not taken in all the money due to KD Optical Ltd since £1,308 is still owed by K D Optical to Colour Blast.
- The invoice CB041208 for £300 was made VAT inclusive after Mr Taylor suggested the effective date of registration was to be back dated to 1 April 2012.
- 15 • Miss Booth has indicated that she has had to re-work the figures because Mr Taylor stated that Colour Blast could not raise an invoice for work which had not been completed. Hence the credit notes.
- Colour Blast is looking for £762 as its input tax for 22 June 2012.
- 20 • It appears that the accounts had to be reconstituted because of the Burglary at Walton –le –Dale.

**e. Venetian Designs Ltd**

25 Purchases from Venetian designs Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/12	Mar 12-08	Frames 39	£376.73	£1,883.64	£2,260.37	
1/3/12	Mar12-09	Frames 120	£1,311.36	£6,556.80	£7,868.16	
1/3/12	Mar12-10	Frames 110	£713.00	£3,565.00	£4,278.00	
1/3/12	Mar12-06	Frames 11	£242.00	£1,210	£1,452.00	
1/3/12	Mar12-07	Frames 12	£336.00	£1,680.00	£2,016.00	
	Totals	292	£2,979.09	£14,895.44	£17,874.53	

Sales to Venetian Designs Ltd.

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/12	Mar12-08	Frames 39	£376.73	£1,883.64	£2,260.37	
1/3/12	Mar12-09	Necklaces and rings	£1,311.36	£6,556.80	£7,868.16	
1/3/12	Mar12-10	Necklaces and watches	£713	£3,565	£4,278	£13,980
1/3/12	Mar12-06	Necklaces? 11	£242	£1,210	£1,452	
1/5/12	Mar12-07	Necklaces? 12	£336	£1,680	£2,016	
		Totals 39	£2,979.09	£14,895.44	£17,874.53	

Sales to Venetian designs Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
1/4/11	CB-04-2011-01	Leaflet delivery	£66.67	£333.33	£400	
5/4/11	CB-04-2011-02	? 125	£1,150	£5,750	£6,900	
5/4/11	CB-04-2011-03	Frames 54	£450	£2,250	£2,700	
1/7/11	CB-07-2011-01	Leaflet delivery	£66.67	£333.33	£400	
1/3/12	CB-03-2012-17	Retainer 11/12	£346.67	£1,733.33	£2,080	
1/3/2012	CB-0302012-28	Retainer12/13	£346.67	£1,733.33	£2,080	Credit note
1/4/12	CB-04-2012-114	Corp Tax returns 2007/8/9	£250	£1,250	£1,500	£13,980
25/4/12	CB-04-2012-43	Accounts and tax 207/8/9	£1,000	£5,000	£6,000	Credit note
		Totals	£2,330.01	£11,649.99	£13,980	

**Note:**

- 5
- We repeat our comment with regard to Miss Booth's ability to complete corporation tax returns and accounts.
  - Credit notes have been given because the company cannot claim VAT on work it has not yet done nor been paid for.
- 10
- As far as the contra is concerned, Colour Blast has set off £13,980 and used part of the account £4,278 leaving a balance of that account and the remaining two invoices totalling £3,894.57. It is unusual that Miss Booth allowed Venetian Designs Ltd to owe her money when she was so short of cash.
  - Miss Booth was 19 and starting her own business. The first time she appears to have dealt with leaflets was for her own business in August 2012.

- Colour Blast appears to have charged a retainer of £2,080 to all the 14 Companies with whom she has traded. £29,120 is a large sum of money paid upfront by Mr Booth's companies for work which had not been done. If such an account had not been raised then Miss Booth would have had to fund that amount from another source. Given her age, education and her health we can see no justification for such a large payment.

**f. Savoy Eyewear Ltd 1/6/12**

10 Purchases from Savoy Eyewear Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
1/6/12	1136	Frames 42	£427.20	£2,136	£2,536	
1/6/12	1137	Frames 43	£146.40	£2,182	£2,618	
1/6/12	1138	Frames 31	£314	£1,570	£1,884	
1/6/12	1139	Frames 36	£425	£2,128	£2,553	
1/6/12	1140	Frames 42	£470.40	£2,352	£2,822.40	
1/6/12	1141	Frames 15	£150	£750	£900	
1/6/12	1142	Frames 29	£493	£2,465	£2,958	
1/6/12	1143	Frames 25	£225	£1,125	£1,350	
1/6/12	1144	Frames 25	£224	£1,120	<b>£1,344</b>	<b>£993.60</b>
1/6/12	1145	Frames 56	£468	£2,340	<b>£2,808</b>	
1/6/12	1146	Frames 42	£436.80	£2,184	<b>£2,620.80</b>	<b>Contra 4/7/12</b>
1/6/12	1147	Frames 30	£216	£1,080	<b>£1,296</b>	<b>£7718.40</b>
20/6/12	P1601	Equipment	Exempt?		<b>£4,960</b>	*
20/6/12	P1602	Testing equipment	Exempt?		<b>£1,900</b>	
20/6/12	P1603	Test kit/lamp/kertometer	Exempt?		<b>£4,000</b>	**
20/6/12	P1604	Test kit/ intellipuff	Exempt		<b>£4,800</b>	<b>£4,693.60</b>
20/6/12	P1605	Occulus field screener	Exempt		£9,800	<b>Contra 5/7/12 £15,553.60</b>
20/6/12	P1606	Epson printer/coat stand	Exempt?		£3050	
20/6/12	P1607	Reichart lens checker	Exempt		£5,000	
20/6/12	1148	Fitting out fees	£800	£4,000	£4,800	***
31/7/12	1149	Dispensing fees 7/12 26 days	£780	£3,900	£4,680	
31/8/12	1150	Dispensing fees August 26 days	£750	£,3750	£4,500	****
24/9/12	1151	Sunglasses and half eyes 52	£428	£2,140	£2,568	
24/9/12	1152	Frames 102	£752	£3,760	£4,512	
	Totals	Frames 460	£6,932.20	£34,664	£41,596.20	

**Note:**

- Savoy Eyewear Ltd's invoice states
  - 'goods cannot be accepted for credit after 14 days from the date of this invoice. The legal and beneficial ownership of all the goods shall remain with the seller until full payment has been received. Terms: payment due amended from 28 days to 150 days from statement'. Colour Blast was operating on credit the 28 days had been amended in manuscript to 150 days but not the credit terms.
- \* These invoices are hand written. Several of the invoices are said to be exempt but they do have equipment on them which is subject to VAT.
- \*\* The figure at the bottom has been amended from £2,000 to £4,000. This could be an error, but it is clear from the content that there were two payments of £2,000
- \*\*\* Miss Booth has said that she thought that she started trading in July/ August 2012. The charges for fitting out and decorating the shop were raised on June 2012. Which would be consistent with her observations.
- \*\*\*\*. Dispensing fees were charged by Savoy Eyewear Ltd throughout July and August. Surprisingly the fees were not the same although they both represent 26 days. We have been told that Miss Booth employed a qualified Optician. It would appear that Savoy Eyewear provided further staff, although we have not been advised what other staff there might have been. It is unclear what the dispensing fees would be but we consider that £9,100 would have been excessive for a business that only effectively started in August with presumably no patients/customers. Further, Miss Booth has stated that she had no funding and she was only 19 years old at the time.
  - Surprisingly, Colour Blast has obtained principally optician's equipment from Savoy Eyewear at a costs of £33,510 and further equipment from Lemon Ice at a cost of £34,380 making a total costs of setting up the shop of £67,890.
  - The equipment includes:
    - An ash dispensing table
    - Ash desk
    - Opticians table
    - Large motorised table
    - 10 Bookcases
    - 6 steel carousels
    - 6 four drawer filing cabinets
    - 4 ash four drawer filing cabinets
    - 2 further ash desks
    - 2 five drawer metal drawers
    - Photocopier /fax machine
    - Epson printer.
    - Mahogany desk
    - Mahogany three drawer filing cabinet.
- In her opening address Miss Booth told us:-

“I came across a shop available to let in Great Harwood. This is a shop that some years previously before had been an opticians and I’d done work for it, I’d seen it running, I’d seen its success, and when I went to look round we found that the optician had left the test kit behind and she said if I took the shop I could have the test chair.”

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- As there appears to have been some equipment in the shop when she moved in she ought not to have needed the quantity of items provided by Savoy Eyewear. There are an unusually large number of drawers, filing cabinets, desks etc for a small quiet shop in Great Harwood. The items could not relate to the proposed expansion in to Booths as they were acquired long before those negotiations took place. Capital costs of £76,990 (£67,890 + £9,100) would have been unachievable. In addition there was the £36,000 also charged by Luxol Ltd for helping to set up the business. (See above). The upfront contra retainers for all the companies of £29,120 would not have covered the costs.
- A start-up cost of in excess of £77,596.20 makes no sense at all for an impecunious 19 year old. We are satisfied that Mr Booth has manipulated the invoices and figures so that it appears that Miss Booth was the trader.
- The contra for Colour Blast is £7,718.40 utilising the invoice figures emboldened in the total column. Miss Booth has used £993.60 of invoice 1144 leaving a balance of £350.40 on that invoice. A further contra of £15,553.60 with part of invoice 1604 utilised leaving £106.40 outstanding and a total of £17,700 still owed to Savoy Eyewear Ltd. We have not been advised as to that balance and as to how or when it was paid.

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Sales from Colour Blast to Savoy Eyewear Ltd.

Date	Invoice	description	VAT	Amount	Total	Contra
25/4/12	CB-04-2012-04	Vat internal review	£50	£250	£300	
1/6/12	CB-04-2012-03	Company accounts 7/11	£300	£1,500	<b>£1,800</b>	
25/4/12	CB-04-2012-46	Accounts and tax returns 08/9/10	£1,000	£5,000	£6000	Credit note
25/4/2012	CB-04-2012-10	Frames 120	£1,200	£6,000	£7,200	
25/4/12	CB-04-2012-11	Frames 90	£950	£4750	£5,700	
25/4/12	CB-04-2012-12	Frames 110	£1,550	£7,750	<b>£9,300</b>	<b>£7,718.40</b>

Date	Invoice	Description	VAT	Amount	Total	Contra
25/4/12	CB-04-2012-13	Frames 58	£580	£2,900	<b>£3,480</b>	
25/4/12	CB-04-2012-14	Frames 40	£433.34	£2,166.66	£2,600	
25/4/12	CB-04-2012-15	Frames 21	£578.67	£2,893.33	<b>£3,472</b>	<b>£3,480?</b>
25/4/12	CB-04-2012-16	Frames 20	£166.67	£833.33	<b>£1,000</b>	
25/4/12	CB-04-2012-17	Frames 24	£270	31,350	<b>£1,620</b>	
25/4/12	CB-04-2012-117	Corporation tax returns 2008/9/10 and company accounts 2009/10	£750	£3,750	£4,500	*
	Totals	Frames 483	£6,828.68	£34,143.32	£40,972	

**Note:**

- 5 • Miss Booth has confirmed that she started trading in July /August 2012. She had no business premises fitted out before that time. Colour Blast has, however, sold frames back to Savoy Eyewear Ltd in the period April 2012 before she had any premises. We have been told by Mr Booth that the frames were stored at his warehouse, details of which are set out at paragraph 73 below.
- 10 • Colour Blast has purchased 460 frames from Savoy Eyewear (See the table above) but has sold back 483, which is 23 more than it purchased. She has confirmed that she started to trade from her shop in July 2012. It is, therefore, unclear where the frames were stored prior to that date.
- 15 • It is unclear why a business starting up would buy 420 frames and sell them back again, particularly where the sale was not at arm's length, being between father and daughter. We would have expected Mr Booth to merely supply enough frames from one of his companies to enable Miss Booth to start in business.
- 20 • The contra for the £7,718.40 set off against purchase from Savoy Eyewear Ltd is part of the Colour Blast invoice of £ 9,300 leaving £1,781.6 outstanding on that account. The contra of £15,553.60 can be identified in the Savoy Eyewear Ltd invoices but we cannot reconcile the figures in Colour Blast sales. Invoice no CB-042012-15 is £3,372 not £3,480. We cannot trace invoice CB-04-2010-04 for £1,500; invoice CB-01-2011-03 for £1,500; and invoice CB-04-2012-

46 which is the credit note in the table above. We have not been advised as to the balances owing and as to how or when they were to be paid.

**g. Daytona Surf Ltd**

5 Purchases by Colour Blast

Date	Invoice	Description	VAT	Amount	Total	Contra
22/6/12	DS-06-12-01	Frames 39	£469.80	£2,349	£2,818.80	

Sales to Daytona Surf Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/12	CB-03-2012-07	Retainer 11/12	£346.67	£1,733.33	<b>£2,080</b>	
1/3/12	CB-03-2012-18	Retainer 12/13	£346.67	£1,733.33	£2,080	Credit note
25/4/2012	CB-04-2012-37	Preparing Company accounts/ tax return 2008	£333.33	£1,666.67	£2000	Credit note
1/4/12	CB-04-2012-108	Preparation corporation tax return 2008	£83.33	£416,67	<b>£500</b>	<b>£2,580</b>
		Totals	£430	£2,150	£2,580	

**Note:**

- 10
- The contra is against the purchases of £2,818.80 which left a balance of £238.83. We have not been told what happened to the balance.
  - Miss Booth said, as she has with the other invoices, that Mr Taylor said she was to change the effective date of registration for Colour Blast. As a result, he ordered that some supplies were to carry VAT and that that could be done
- 15
- in two ways; to simply issue a VAT only invoice or to amend the existing invoices to carry VAT. He also said that Colour Blast could not, in the April 2012 period, invoice for work not completed. She has stated that Mr Taylor denied that he had told her to alter the invoices. She submitted that she would not have taken the trouble if she had not been asked to alter the invoices.
- 20
- Miss Booth is seeking £469.80 in put tax in relation to the supplies received from Daytona.
  - We note that the only invoices charged to Daytona are in relation to the retainer, accounts and tax. Miss Booth said that these accounts had also been
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- destroyed as a result of the Burglary at Walton –Le –Dale. This meant that Colour Blast spent many hours copying to make historical accounts and returns up to date and presentable. The documents had been mixed up and allegedly destroyed. We have been given no evidence as to the Burglary other than the acknowledgment by the police and that HMRC accept that there was
- 30
- one. We would expect the accounts to have been kept, at least, in a filing cabinet and are surprised that a burglar would have done more than mix up the papers in pursuit of valuable items.
  - Miss Booth was 19 years old in 2012 and, whilst she might have been able to assemble documentation in date order, we do not believe she was competent

to collate the accounting and tax detail. In evidence, she indicated that the actual computations were carried out by Mr Pearson. It is also significant that the retainer charge is the same for all the companies irrespective of their size and relative turnovers. We believe the invoices to be contrived.

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47. As a result of the directions given by Judge Porter on the third day of the hearing, Miss Booth provided the Tribunal with copies of the invoices in each of the transactions set out in Mr Chapman's list at paragraph 42 above. In so doing she commented on the changes she had made and reasons for the same. She has conceded that where only a proportion of the supplies have been paid for, the VAT appertaining to the amount not paid would be subject to claw back. Some of the amendments she has made to the original invoices she submits amount to voluntary declarations. Mr Taylor and Mr Godley have provided definitive lists totalling all the deals with all of the companies and Colour Blast and Sunlight. We have not been able to correlate Miss Booth's amendments with those lists other than to identify that the invoices set out in the seven examples above do fall within the lists provided by Mr Taylor and Mr Godley.

48. Miss Booth has told us that Mr Taylor advised her to amend the invoices to accommodate the repayment claims. As a result of the 'Unless Order' and Mr Chapman's comments she appears to have amended the invoices yet again. As a result we set out below the amounts that we believe Miss Booth now seeks as input VAT in relation to the following suppliers:-

25	• Luxol Ltd period 1 March 2011	£6,354
	• Lemon Ice Ltd periods 21 April 2012 and 20 June 2012	£10,575.54
	• Business4All Ltd period 22 June 2012	£ 801.20
	• Snob Eyewear Ltd period 22 June 2012	£ 173.60
	• MCM Capital Ltd period 22 June 2012	£ 782.60
30	• Style Factory Ltd period 22 June 2012	£ 860.60
	• KD Optical Ltd period 22 June 2012	£ 762.00
	• AW Opal Ltd period	conceded
	• Venetian Designs Ltd	conceded
	• Urban Dog Ltd	conceded
35	• Savoy Eyewear Ltd	conceded
	• JW Eyewear Ltd period 22 June 2012	£ 789.40
	• JW Imports Ltd period 22 June 2012	£ 169.00
	• Daytona Surf Ltd period 22 June 2012	£ 469.80
	• <u>Andrew Booth t/a Optic Services</u>	conceded
40	Total	£27,517.74
	and for Sunlight	£5,748.00

49. In his third witness statement Mr Taylor submits that a recurring theme in Miss Booth's cases is the claim that he instructed her to amend the invoices. He stated that he never instructed Miss Booth when to issue invoices or what could or could not be invoiced. Miss Booth was advised that both Colour Blast and Sunlight should have been registered from 1 April 2012. If Miss Booth had used the correct method to

account for a back-dated registration, both companies would have been liable to pay VAT on their first period VAT returns. By issuing credit notes and lower value invoices (where payment had not been made in full) both companies remained in a repayment position.

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### **Sunlight Optical Ltd**

50. Mr Taylor gave further evidence with regard to Sunlight, which was incorporated on 17 July 2007. Its registered address was amended on 18 October 2011 to Old School House, Church Brow, Walton le Dale, Mr Booth's address. The current director was Miss Booth, who was appointed on 17 March 2012. The previous directors had been Julie Ann Booth from 17 July 2007 to 12 December 2008 and Mr Booth appointed originally on 17 July 2007 until 1 November 2007. He was reappointed on 20 October 2008 until 17 March 2012. Miss Booth held 100 shares in 2012 when she would have been 19 years old. The Directors report for the year ending 31 July 2008 show Mr Booth as the shareholder and that the company had not traded. The accounts to 31 July 2009 show S C Robinson to be the sole director and shareholder with 100 shares. Again the company had not traded. The accounts to 31 July 2010 are also dormant accounts, but this time the director signing the report was Mr Booth.

51. The accounts for the year ended 31 July 2011 are signed by Miss Booth on behalf of the board, but Mr Booth is the sole director and shareholder. The accounts identify the company's business as wholesaling of optical frames, lenses and equipment, which does not correspond with its VAT application below. There are no details in the profit and loss account but the balance sheet reveals £255,754 stocks with trade creditors of a like amount.

52. Sunlight was incorporated on 17 July 2007 indicating that its business would be wholesale and internet sales, but was first registered for VAT with effect from 25 April 2012. It was agreed at the hearing that Sunlight's registration was effective from 1 April 2012. The VAT registration form indicated that the company's bank would be Santander, but no account number or sort code was provided. Sunlight's first period VAT return was 05/12 seeking a repayment of £26,224.25.

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53. Mr Chapman produced a further detail of the transactions with which Sunlight was involved as follows:

#### **Sunlight's transactions.**

<b>Supplier</b>	<b>Date</b>	<b>VAT</b>	<b>Amount</b>	<b>Supplier default.</b>
Luxol Ltd	1/3/11	£10,718	£53,590	Not declared or paid
Luxol Ltd	1/1/12	£ 6,000	£30,000	Not declared or paid
Lemon Ice Ltd	1/3/12	£ 180	£ 900	Not declared or paid
Lemon Ice Ltd	21/4/12	£ 2,897	£14,485	Not declared or paid
Snob Eyewear Ltd	25/8/12	£6,288	<b>£31,440</b> (see paragraph 56)	Not declared or paid

Supplier	Date	VAT	Amount	Supplier default
Venetian Designs Ltd	1/3/12	£ 578	£2,890	De-registered 1/9/11
Urban Dog Ltd	6/3/11	£3,623.60	£18,118	Not declared or paid
Urban Dog	1/4/11	£16,324.69	£81,623.46	Not declared or paid

54. Miss Booth, when preparing the details as required by the 'Unless Order' has conceded that all the repayment claims apart from the first one date 1 March 2011 were withdrawn. In relation to the first one she is seeking £5,748 in respect of the input VAT. As to all the others, Miss Booth said that prior to the hearing on 8 May 2014 she had asked Mr Chapman if she should submit Voluntary Declarations so that a VAT officer could check the figures to confirm the dismissal of any claims of abusive practice by Sunlight's suppliers; the quantum claimed would be correct. Mr Chapman advised that as long as she correctly highlighted any concessions or changes that would suffice. Sunlight conceded the Input tax appertaining to the purchases from all the other companies.

55. We need to consider whether the Sunlight transactions are contrived and have examined the first deal with Luxol and Urban Dog. We have seen that Venetian Design de-registered on 1 September 2011 so that the transactions in March 2012 were not possible. Neither Miss Booth nor HMRC have provided a full set of invoices for Sunlight with regard to Lemon Ice and Snob Eyewear. However, as Miss Booth has conceded all these matters we assume that this why she has not provided them. The only other information we have is from Mr Chapman. We do have a substantial number of the invoices from Urban Dog which we have extrapolated at item b below.

It was agreed that there was only one Sunlight transactions carried out and that was by Mr Booth:-

a. Purchases from Luxol Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/11	3205	Frames 261	£1,928	£ 9,640	<b>£11,568</b>	
1/3/11	3214	Frames 420	£3,820	£19,100	<b>£22,920</b>	
1/3/11	3215	Frames 80	£ 800	£ 4,000	£ 4,800	
1/3/11	3219	Frames 450	£4,670	£23,350	£28,020	
	Total	1211	£11,210	£56,090	£67,300	<b>£38,400</b>

**Note:**

- The Contra statement refers to invoice 3206 for £3,938 which is not included with the invoices provided although the other two are and are emboldened.

Sales to Luxol Ltd

Date	Invoice	Description	VAT	Amount	Total	Contra
27/2/12	SD-02-2012-01	Frames 30	£700	£3500	<b>£4,200</b>	
27/2/12	SD-02-2012-02	Frames 33	£770	£3,850	<b>£4,620</b>	
27/2/12	SD-02-2012-03	Frames 146	£1,043.33	£4,616.67	<b>£5,660</b>	

27/2/12	SD-02-2012-04	Frames 78	£ 953.67	£4,768.33	<b>£5,722</b>	
27/2/12	SD-02-2012-05	Frames 76	£582.67	£2,913.33	<b>£3,496</b>	
27/2/12	SD-02-2012-06	Frames 50	£526.67	£2,583.33	<b>£3,100</b>	
27/2/12	SD-02-2012-07	Frames 50	£526.67	£2,583.33	<b>£3,100</b>	
27/2/12	SD-02-2012-08	Frames 50	£683.33	£3,416.67	<b>£4,100</b>	
27/2/12	SD-02-2012-09	Frames 54	£738	£3,690	<b>£4,428</b>	
	Totals	567	£6,524.34	£31,921.66	<b>£38,446</b>	

**Note:**

- 5
- All the invoices charged to Luxor have been used in the contra although the invoices are in the following year.
  - It is unclear why Sunlight purchased 1211 frames to sell back 567 to Luxol particularly as Colour Blast had purchased 976 from Luxol on the same day and sold back 539. The transaction makes no commercial sense when we have
- 10
- been told it was designed to assist Miss Booth in opening her first shop some 5 months later.
  - The total sales were £103,308 and the contras £38,426 leaving a balance of £64,882 outstanding. As before there has been no evidence as to how the
- 15
- balances had been dealt with, nor a reconciliation statement with regard to all the companies. Miss Booth had no available finance and was not in a position to carry out this level of trading before she had opened her shop. The transaction has to be contrived.

**b. Purchases from Urban Dog Ltd**

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/2011	UD-04-11-33	Frames 79	£677.95	£3,389.76	£4,067.71	<b>***£129,548.71</b>
1/3/2011	UD-04-11-32	Frames 77	£835.56	£4,177.80	£5,013.36	
1/3/2011	UD-04-11-31	Frames 12	£274.56	£1,372.80	£1,647.36	
1/3/2011	UD-04-11-30	Frames 26	£823.68	£4,118.40	£4,942.08	
1/3/2011	UD-04-11-29	Frames 100	£792.00	£3,960.00	£4,752.00	
1/3/2011	UD-04-11-28	Frames 135	£772.20	£3,861.00	£4,633.20	
1/3/2011	UD-04-11-27	Frames 111	£856.68	£4,283.40	£5,140.08	
1/3/2011	UD-04-11-26	Frames 22	£336.60	£1,683.00	£2,019.60	
1/3/2011	UD-04-11-25	Frames 202	£1,599.84	£7,999.20	£9,599.04	
1/3/2011	UD-04-11-24	Frames 100	£880.00	£4,400.00	£5,280.00	
1/3/2011	UD-04-11-23	Frames 28	£304.04	£1,520.20	£1,824.24	
1/3/2011	UD-04-11-22	Frames 32 and Digital meter print	£941.60	£4,708.00	£5,649.60	

Date	Invoice	Description	VAT	Amount	Total	Contra
1/3/2011	UD-04-11-21	Auto lens meter 2	£1,200	£6,000.00	£7,200	
1/3/2011	UD-04-11-20	Frames 38	£536.80	£2,684.00	£3,220.80	
1/3/2011	UD-04-11-19	Frames 73	£690.58	£3,452.90	£4,143.48	
1/3/2011	UD-04-11-13	Frames 119	£1,178.10	£5,890.50	£7,068.60	
1/3/2011	UD-04-11-12	Frames 84	£1,070.30	£5,351.50	£6,421.80	
1/3/2011	UD-04-11-11	Frames 258	£2,554.20	£12,771.00	£15,325.20	
1/3/2011	UD-04-11-10	Frames 100	£836.00	£4,180.00	£5,016.00	
1/3/2011	UD-04-11-09	Frames 104	£1,144.00	£5,720.00	£6,864.00	
1/3/2011	UD-04-11-08	Frames 92	£585.20	£2,926.00	£3,511.20	
1/3/2011	UD-04-11-07	Frames 170	£877.36	£4,386.80	£5,264.16	
1/3/2011	UD-04-11-06	Frames 63	£1,178.10	£5,890.50	£7,068.60	
6/3/2011	UD-03-11-09	Frames 60	£369.60	£1,848.00	£2,217.60	
6/3/2011	UD-03-11-08	Frames 90	£629.20	£3,146.00	£3,775.20	£1,659
6/3/2011	UD-03-11-07	Frames 24	£168.96	£844.80	£1,013.76	<b>**£17,865</b>
6/3/2011	UD-03-11-06	Frames 134	£943.36	£4,716.80	£5,660.16	
6/3/2011	UD-03-11-05	Frames 142	£999.68	£4,998.40	£5,998.08	
6/3/2011	UD-03-11-04	Frames 45	£316.80	£1,584.00	£1,900.80	
6/3/2011	UD-03-11-03	Frames 12 Display stand/Jungle set	£196.00	£980.00	£1,176.00	
	Total	Frames 2665	£24,568.95	£122,844.76	£147,413.71	

**Note:**

- Urban Dog's invoices are all sent from The Old School House, Church Brow, Walton-le-Dale, Mr Booth's home address. Mr Robinson had ceased trading when all his stock was stolen towards the end of March 2011.
- All the invoices from Urban Dog indicate:-  
"Right of Title: All goods are sold under UK Law and shall remain the property of the seller until paid in full."  
In spite of this, Mr Booth told us that the stock was moved to Sunlight as the sales took place and Urban Dog was never paid in full as £1659 was still due to it from Sunlight.
- Many of the invoices refer to assorted frames and, other than the price being the same, it is unclear how Mr Booth could identify the stock which had been sold by Urban Dog to move it around the warehouse. He has indicated that some of the stock was held at his home, which he said was "as safe as Jodrell Bank" because of all the alarms. That makes the logistics of moving the stock even more unlikely as it is unclear which stock was in the house and which in the warehouse building.

- We have not been told what an Auto Lens Meter is, but at £7,200 in addition to the £67,890, in relation to the equipment supplied by Savoy Eyewear and Lemon Ice, the purchase seems excessive. It is also unclear why Miss Booth would require 2 Auto Lens Meters. Further, the supply has been made 16 months before Miss Booth had acquired her shop and whilst she was still at school. It is unclear where such valuable pieces of equipment would have been kept.
- It is also unclear why Miss Booth, whilst just 18 and still at school anticipating starting up an opticians business would need to buy 2665 frames some 16 months before she opened her shop.

Sales to Urban Dog.

Date	Invoice	Description	VAT	Amount	Total	Contra
1/9/2011	S0-09-2011-01	Frames 114			£7640.00	
1/9/2011	S0-09-2011-02	Frames 264			£6,140.00	
1/3/2011	S0-09-2011-03	Frames 74			£4,085.00	<b>**£17,865</b>
24/04/2012	S0-04-2012-01	Frames 60			£4,500.00	
24/04/2012	S0-04-2012-02	Frames 105			£6,225.00	
24/04/2012	S0-04-2012-03	Frames 90			£5,400.00	
24/04/2012	S0-04-2012-04	Frames 85			£5,100.00	
24/04/2012	S0-04-2012-05	Frames 80			£6,000.00	
24/04/2012	S0-04-2012-06	Frames 70			£4,950.00	
24/04/2012	S0-04-2012-07	Frames 145			£5,800.00	
24/04/2012	S0-04-2012-08	Frames 120			£4,936.00	
24/04/2012	S0-04-2012-09	Frames 37			£3,760.00	
24/04/2012	S0-04-2012-10	Frames 43			£2,150.00	
24/04/2012	S0-04-2012-11	Frames 76			£7,235.00	
25/04/2012	S0-04-2012-17	Frames 63			£4,753.00	
25/04/2012	S0-04-2012-18	Frames 118			£4,969.00	
25/04/2012	S0-04-2012-19	Frames 98			£4,410.00	
25/04/2012	S0-04-2012-20	Frames 114			£4,356.00	
25/04/2012	S0-04-2012-21	Frames 100			£4,500.00	
25/04/2012	S0-04-2012-22	Frames 40			£5,916.00	
25/04/2012	S0-04-2012-23	Frames 101			£5,416.00	
25/04/2012	S0-04-2012-24	Frames 74			£4,588.00	
25/04/2012	S0-04-2012-25	Frames 203			£7,308.00	
26/04/2012	S0-04-2012-26	Frames 56			£4,260.00	
26/04/2012	S0-04-2012-27	Frames 45			£4,620.00	

Date	Invoice	Description	VAT	Amount	Total	Contra
26/04/2012	S0-04-2012-28	Frames 49			£4,116.00	***£129,548.71
26/04/2012	S0-04-2-12-36	Frames 60			£4,500.00	
26/04/2012	S0-04-2012-37	Frames 30			£3,975.00	
26/4/2012	S0-04-20912-38	Frames 70			£5,250.00	
26/04/2012	S0-04-2012-39	Frames 66			£2,890.00	
	Total	2650			£149,748	

**Note:**

- 5
- Mr Booth had written to HMRC on 19 March 2011 advising that he no longer acted as financial adviser to Urban Dog.
- 10
- It would appear that many of the frames sold back to Urban Dog by Sunlight were valued at substantially higher price than the original purchase price. Miss Booth told us that her father had fixed both the purchase and sale price. The transactions therefore could not be at arm's length. It is impossible to know if the frames re-sold were the same frames as Sunlight had received from Urban Dog, as it had purchased frames from Luxol, Lemon Ice, Snob Eyewear and Venetian Designs.
- 15
- \* It is unclear how the invoice number S0-04-2012-26 on 26 April 2012 follows the sequence from S0-04-2012-25, the day before unless there were no further sales on the 25 April and the first invoice the next day was to Urban Dog. We consider that to be most unlikely, which suggest that the invoice is contrived.
- 20
- Many of the re-sales were of one or two frames, which must have made the moving of the stock extraordinarily difficult. It is also unclear how Miss Booth, still at school, managed to agree which frames would be sold back as the majority of them were all held the warehouse.
- 25
- Mr Robinson told Mr Godley and Mr Taylor that he had closed down Urban Dog towards the end of March 2011. Mr Booth confirmed that he knew that was the position as he was aware that all the stock had been taken. It is unclear, if Urban Dog had closed down, how Sunlight managed to sell 2650 Frames to Urban Dog the following month. The sales must have been contrived.
- 30
- It makes no commercial sense for Urban Dog to sell 2665 frames to Sunlight in March 2011 for Sunlight to sell 2650 back to Urban Dog, ostensibly when it had ceased to trade in April 2010 at a loss of £2334.25. (£149.748 Bought from Sunlight against £147,413.71 sold to Sunlight).
- 35
- \*\* The invoices for the contra to 1 September 2011 amount to £17,865. Miss Booth has given no evidence as to how the balance of £1659 was to be paid to Urban Dog, particularly as Urban Dog went into liquidation on 21 May 2012. It is also surprising that the sales and

purchases matched almost exactly, which should not have happened between two separate companies, leaving Sunlight only owing £1,659 to Urban Dog.

- \*\*\*The Invoices produced for the contra for 26 April 2012 as SO-04-2012-36, 37 and 38 adding up to £13,725 do not appear on the contra list. The invoices on that list are S0-04-2012 29, 30, and 31 adding up to £14,280.

5  
10 56. Mr Taylor told us that during the period from March 2011 to the end of Sunlight's first quarter in May 2012 the company provided no evidence of a bank account yet still managed net sales of £225,615 and purchases of £304,443. All the transactions appear to have been barter transactions or on credit terms. In spite of having no credit history, Sunlight had obtained credit of over £227,000 by 1 July  
15 2011. Further, despite having stock of over £78,000 at the end of period 05/12 and making no sales in period 08/12, Sunlight purchased an additional £31,440 of spectacle frames in that period. (See the fifth entry in Mr Chapman's table at paragraph 55 above). All the purchases came from Snob Eyewear, a company whose sole director was Mr Booth and which was registered at the same address as Sunlight.

20 57. Mr Taylor submitted that there was little commerciality in a new business retaining this level of stock in excess of twelve months, in a market subject to trends and fashions. Miss Booth stated, in cross-examination, that she accepted that some spectacle frames were fashion items, but that there were many which were standard  
25 and remained marketable for many years. She had confirmed, however, that in spite of the substantial stock in both companies she had never taken out any insurance to cover either that stock or the expensive optical equipment.

30 58. Mr Taylor confirmed that for over £304,000 purchases by Sunlight up to it completing its first period VAT return, over £174,000 were purchased from Mr Booth's companies and every single purchase of stock by Sunlight had resulted in a tax loss. On the evidence it is inconceivable that Miss Booth could not have been aware that the transactions were fraudulent.

35 59. In her witness statement Miss Booth alleged:

40 "It is my belief now that it was Mr Taylor's intention from the outset to fabricate this appeal. He was continually evasive and dishonest. It had been my hope to encourage a positive and working relationship but it now becomes clear that I am the latest target in the vendetta against my father".

We have heard Mr Taylor give evidence and we can find no evidence of any such intention. We have found his evidence to be straight forward and courteous and given Miss Booth's relationship with her father, it was eminently sensible for him to be  
45 involved with the returns made by both companies.

60. We have checked all the invoices provided by Miss Booth under the “Unless Order” for both Colour Blast and Sunlight and note that the following number of frames, approximately, have been purchased and sold by Colour Blast and Sunlight. We say ‘approximately’ as it is not entirely clear what all the goods are, some are novelties and gifts, which we have left out of account. It is unclear why a 19 year old, starting her first business, would need to purchase 10,624 frames and re-sell 5975 leaving her with 4649 in her shop. The frames have not been purchased for the proposed new unit in Booths as those were to be purchased later by Sunlight.

				Total Transactions
Colour Blast’s purchases	5299	Sunlight’s purchases	5325	10,624
Colour Blast’s sales	2415	Sunlight’s sales	3560	5975
Frames remaining	2886	Frames remaining	1765	4651

10

**Mr Booth’s involvement and transactions.**

61. Mr Godley, a VAT higher officer, operating from the VAT assurance department gave evidence under oath. He was not taken through his 3 witness statements, which provided the entirety of his evidence in relation to all the transactions of Mr Booth’s companies. Mr Booth gave evidence, but was not able to produce details of the actual returns from each of the companies. He indicated that this was because they were, or a majority of them were, in Tribunal and he did not have the appropriate evidence. We found that response to be unsatisfactory.

62. We have been provided with a list of those tribunal hearings together with the stage they have reached as follows:-

25

<b>Appellant</b>	<b>Date Notice of Appeal</b>	<b>Date Statement of Case</b>	<b>Appeal Number</b>
Andrew Booth t/a J W Imports Ltd*	14/11/11	29/9/12	TC/2012/00714
Andrew Booth	None	None	TC/2012/02245
Andrew Booth	None	None	TC/2012/04429
Elite Eyewear Ltd	14/9/12	None	TC/2012/08267
Business 4 All Ltd *	14/9/12	None	TC/2012/08698
M C M Capital Ltd *	14/9/12	None	TC/2012/08716

<b>Appellant</b>	<b>Date of notice of appeal</b>	<b>Date of Statement of Case</b>	<b>Appeal Number</b>
Style Factory Ltd *	14/9/12	None	TC/2012/08717
Snob Eyewear Ltd *	14/9/12	None	TC/2012/08719
Andrew Booth t/a Optik Services * and Optik Services	04/7//12	23/5/14	TC/2013/00505 TC/2013/04469
Savoy Eyewear Ltd *	14/9/12	21/5/13	TC/2013/00506

The cases marked with an asterisk are some of the suppliers in this appeal. Miss Booth has told us, and it is evidenced by the various invoices to that effect, that she has been assisting her father with the preparation of all of these cases. Whilst we accept that there is a high volume, we do not believe that either she or her father are prevented from producing details of the returns and other documentation involved in those cases. They will have needed to retain copies of all documentation for the purposes of those hearings. We can therefore only assume that Mr Booth's companies have either not retained copies, or as suggested by Mr Godley, not filed appropriate returns. We can only act on the evidence before us.

63. Mr Godley's three statements were taken as read and Miss Booth cross-examined using similar questions prepared for Judge Porter as for Mr Taylor. Mr Godley was clearly frustrated by the way in which Mr Booth had dealt with him over the years. We shared Mr Godley's frustration, when we heard Mr Booth's evidence to which we refer later, but we found Mr Godley less than professional when giving evidence. We need to go through all the evidence in relation to the dealings by the 15 companies which have supplied goods to and/or received goods from both Colour Blast and Sunlight to establish whether there has been a tax loss or not in each company and to decide whether that tax loss has arisen fraudulently.

### **Luxol Ltd**

1. Mr Godley gave evidence as to the returns of which HMRC had details. He produced a document which had been generated by the VAT mainframe system at Southend (Printout), where all VAT returns are recorded when they have been filed by a trader. Mr Booth took exception to all of these Printouts. The Printout for the periods 10/7, 01/8 and 04/8 for Snob Eyewear Ltd deals with Luxol indicated that it had been corrected. In fact it had not been corrected properly. It showed £345,000 as the inputs for the period 10/7. Mr Holden (the member) suggested that as the input tax was £9,450 then the figure of £345,000 ought to have been £45,000. The operator presumably had hit the 3 key after having hit the same key with a capital lock, so that it would produce the £ sign, as it is the same key. Mr Godley conceded that the figures were typed in manually and that mistakes could be made. In spite of that error, we were satisfied that the Printouts generally revealed the VAT returns or lack of them, returned by Mr Booth's companies.

2. Mr Godley referred us specifically to the HMRC Printout for Colour Blast for the period 06/12 (being the first deal with Luxol) which revealed Output tax of £1500, Input tax of £22,261.20 and a repayment claim of £20,761.20. He noted that there had been intercompany supplies paid by offsetting one company's invoices against the others. He stated that if the invoices had been paid by contra, Luxol would be obliged to declare the VAT to HMRC on the appropriate VAT return. He had prepared a manual working, which listed the VAT return liability for each period that had been submitted by Luxol. For period 02/09 he had drawn a line which revealed that Luxol, at that time, had a liability of £47,497. From period 05/09 onwards, Luxol submitted just two more returns over a period of three years. The two returns that were submitted were for a liability of £20,444 and £16,416.

3. Mr Godley confirmed that physical returns had been submitted and these all revealed a nil liability. If a return had not been filed, as shown for Luxol for the periods 11/11, 02/12 and 05/12, an assessment would have been raised. In that case £4,403, £4,812 and £1,322 respectively. The Printout revealed that HMRC had assessed an estimated amount, based on the past trading history, to encourage the trader to submit the returns. He also stated that the contras had not been accounted for as Luxol's return had been filed as "nil". There was no output tax, no input tax, no purchases and no sales, which conflicts with the invoice shown in the contra statement for that period.

4. Output tax of £8,068 and £6,000 had been charged by Luxol to Colour Blast on 03/3/11 and 01/01/12. Similarly output tax of £10,718 and £6,000 was charged by Luxol to Sunlight on 01/03/11 and 01/01/12. (See the first entries on the tables at paragraphs 46 and 55 above). These values were not declared on either the 05/11 or the 02/12 returns. The business records for Luxol had been inspected on an earlier HMRC visit on 7 October 2009. Luxol had been registered for VAT from 2 April 2004 at that time and for the periods 05/04 to 11/06 Luxol had claimed net repayments of £43,448.12. Since the period 02/07 the company had filed 6 payment returns for a liability of £43,175.03 and failed to submit returns in 5 periods. It had also rendered 11 nil returns.

5. Luxol has not paid any VAT liability declared to HMRC since 08/08 and only declared any trading on its 11/09 VAT return before submitting consecutive nil returns and building up a debt of £51,149. The debt had accrued since the period 05/09 and included default surcharges of £3,752.21. The company was wound up on 26/3/12 as a result of the debt. Mr Booth said that the winding up was the reason that he was unable to produce the necessary information. He also said that Luxol Ltd operated on a cash accounting basis and would not therefore have necessarily accounted for the output tax in the periods. Mr Godley confirmed that that was the case, but, as a result, this allowed Mr Booth to obtain VAT repayments under invoice accounting

companies whilst never declaring or paying output tax due by the supplier companies.

5 6. In his third witness statement Mr Godley noted that Colour Blast had  
conceded input tax of £6000 charged by the company on 01/12/12. The input  
tax of £6,354 charged by Luxol on 01/3/11 and reclaimed by Colour Blast had  
not been recorded on Luxol's corresponding 05/11 return. In cross-examination  
Mr Booth stated that he did not declare the £6,354 on the company's VAT  
10 return because HMRC was threatening the company with a winding up petition.  
Such a payment would make him personally liable for the preference. We noted,  
however, that he was content to apply a contra for the various invoices when  
payment involved his daughter. The inclusion of the amount in the return would  
not necessarily mean that the payment had to be made, but the detail was  
15 required. In light of the payments to his daughter, we do not accept Mr Booth's  
argument.

20 7. We note, however, that Miss Booth charged £2080 to Luxol for a retainer for  
the period 1/3/11 to 1/3/12. It is inconceivable that she could not have known  
that Luxol was likely to be put into liquidation which occurred on 26 March  
2012. Any prudent businesswoman would have realised that even with the  
contras there was little prospect of Colour Blast being paid for the balance of  
the trades. On the evidence before us and on the balance of probabilities, we are  
satisfied that there is a tax loss to HMRC arising from the liquidation of Luxol.

25 8. Mr Godley set out in detail in his first witness statement the outstanding  
liabilities for each of the companies with which Colour Blast and Sunlight  
traded and commented further with regard to the evidence produced by Miss  
Booth under the "Unless Order". The liabilities have arisen on a similar basis  
to Luxol. In relation to Colour Blast and using the sequence in Mr Chapman's  
30 table at paragraphs 40 and 53 Mr Godley stated as follows:-

### **Lemon Ice Ltd**

35 1. Output tax values of £4,845.54 and £5,730 were charged by Lemon Ice to  
Colour Blast on 21/04/12 and 20/06/12. Output tax values of £180 and £2,897  
were charged by Lemon Ice to Sunlight on 01/03/11 and 21/04/12 respectively.  
These values have not been declared in Lemon Ice's 03/11 and 06/12 VAT  
returns. Lemon Ice had not declared any income or sales in any prescribed VAT  
accounting period since 06/07. The net VAT repayment due over the period  
40 12/03 to 06/07 amount to £60,700. The repayment was made and the company  
has not complied with its VAT obligation since. Lemon Ice accrued an unpaid  
debt of £89,336.18 prior to its liquidation on 29 October 2012.

45 2. Gary Kennedy, an officer of HMRC, had inspected Lemon Ice's records.  
On 17/10/09 he noted that Lemon Ice traded with associated companies run by

Mr Booth. MSM Capital Ltd and Business 4 All Ltd featured in Lemon Ices' sales records as customers.

5 3. Mr Booth said that Lemon Ice also operated on a cash accounting basis and would not therefore necessarily have accounted for the output tax in the periods. Mr Booth explained that he had not declared output tax on sales to those companies because HMRC had not repaid monies owed to them. Mr Booth also stated that HMRC had agreed in correspondence that he could set off VAT liabilities due in one company against repayments due in another. He referred us to a letter in June 2010 which was not in the bundle and had not been made available to the Tribunal nor HMRC until it was produced at the hearing. The letter referred to previous correspondence, which was not produced, but the letter did indicate that HMRC had allowed a set off of one company's liability against another's repayment entitlement. After representations from both Mr  
10  
15 Chapman and Miss Booth, Judge Porter decided that the letter could not be produced because it did not relate to the transactions in this appeal.

4. There is, however, a letter dated 23 October 2009 in Mr Booth's exhibits from HMRC to Style factory Ltd which states (inter alia):  
20

“...I feel that for the protection of the revenue I should insist that these liabilities\* should be paid before the repayments are released and I should require evidence that these amount be paid.

25 There is a provision whereby you may request set off between the companies if there is difficulty finding the liability. If you wish I will enquire about such arrangement.”

30 (\* The letter had earlier referred to payments due from Daytona, Luxol and Lemon Ice)

It would appear from the letter of 23 October that HMRC might agree a set off arrangement, but that needed to be agreed. Mr Booth has produced no evidence of any such agreement with regard to the transactions the subject of this appeal. Mr Booth accepted, however, that the correspondence did not relate to the transactions, the subject of this appeal. We accept that the correspondence did confirm that set offs were possible although Mr Godley had said that they were not.  
35

40 5. Miss Booth stated that Lemon Ice had not received its input tax, but was still being charged output tax at the time of its liquidation. Mr Booth contended that as a result, there had been no loss to HMRC as Lemon Ice had accounted for its output tax correctly and was indeed owed Input Tax at the time of its liquidation. She also stated that the documents for the company had been mixed up or destroyed in the Burglary. As we only have confirmation as to the sum of  
45 £89,336.18 at the time of the liquidation we have to accept that that represented

a tax loss to HMRC as the evidence provided by Miss Booth is insufficient to disprove it.

5 6. In his third Witness statement, Mr Godley noted that an input tax claim of £6,000 made on 01/03/11 had been withdrawn over two years after the supply took place. Input tax amounting to £10,575.54 was claimed by Colour Blast on its 06/12 period. Lemon Ice failed to render its 06/12 VAT return which should have included an output tax charge of £5,748. Returns up to 06/07 show that the company received net repayments of £60,700 before embarking on a period of non-compliance. From the period 09/07 the company failed to render 16 outstanding returns whilst submitting 6 nil returns. Mr Godley's disclosures of the Printout showed all return periods were set and assessed automatically by the computer when returns were not submitted.

15 7. On the evidence before us and on the balance of probabilities we are satisfied that there is a tax loss to HMRC arising from Lemon Ice.

**Business 4 All Ltd.** (Currently the subject of an appeal by the company dated 14 September 2012).

20 1. Mr Godley told us that Business 4 All charged Colour Blast £801.20 on 22/06/12, which was declared on its 07/12 VAT return. The liability declared on that return was not paid to HMRC and contributes to the company's current debt on file of £120,245.15. The company was registered for VAT on 1/06/08 and submitted 18 returns. 10 repayment claims have been made totalling £102,178.29. Mr Godley has produced his workings from the Printout which confirmed the position. 7 payment returns have been submitted totalling £68,417.48 none of which have been paid. The remainder of the debt relates to assessments raised to recover input tax claimed in earlier repayment periods 10/08 to 7/10 which Business 4 All cannot prove had been paid. The outstanding assessments are the subject of an appeal to the Tribunal see the table at paragraph 62. The Notice of Appeal was filed on 14 September 2012 and it is understood that that appeal and all the others in the table have been stayed behind this decision.

35 2. Mr Godley stated that it could be seen, therefore, that this company has consistently defaulted on all its payment returns after having secured significant repayments. There was a pattern of reclaiming input tax on an invoice basis before moving stock on to other associated companies, which also make input tax claims, leading to high value repayment claims. Any output tax due is never paid resulting in all Mr Booth's companies remaining in a permanent repayment position. Miss Booth has raised charges for accounting services and must therefore be fully aware that the £801.20 charged to Colour Blast has been declared on Business 4 All's 07/12 VAT return, but the net liability of 45 £5,041.40 remains unpaid.

3. Miss Booth explained in her report provided under the 'Unless Order' that the invoice CB041235 was used in part payment for the supplies received from Business 4 All, with a proportion of the £4,000 invoice total allocated in payment of the purchase. This explained why all the contra payments balanced perfectly. In this transaction the balance was settled by contra giving rise to the entitlement to input tax against the sales received from Business 4 All. As a result Colour Blast seeks a repayment of the £801.20. Miss Booth has extrapolated VAT details from 10/08 to 04/14 which shows that Business 4 All owes £12,987.14.

4. She observed that Mr Booth made a voluntary disclosure on 2 September 2009 to the effect that £3,604 was due to HMRC. Miss Booth suggests that such a disclosure was not one you would expect a fraudulent trader to make. Mr Booth made another voluntary disclosure for the period 07/09 indicating that HMRC owed Business 4 All £21,219. The disclosure indicates that the invoices were missed when entering data into the company's computer. In her letter of 9 July 2012 Mrs Brewis confirmed that after deducting the appropriate output tax £17,474 had been repaid to the company. A further voluntary disclosure was made for the period 10/10 indicating that HMRC owed Business 4 All a further £5,385.

5. Mrs Brewis in her review letter of 20 July 2012 concluded that amendments should be made to Mr Godley's figures and assessments as follows:

- Period 10/08. (£7,502 assessed in period 07/09)
  - There was insufficient evidence of payment to Snob Eyewear Ltd and she upheld the VAT assessed of £1,137.
  - She accepted that the other suppliers were paid. VAT £6,574.
  - The assessment of £7,502 to be reduced by the £6,574 to £928.
  - Mr Godley was to consider the recovery of bad debt relief allowed in this period.
- Period 01/09. (£32,889 assessed in period 10/09)
  - There was insufficient evidence of payment to Luxol, J W Eyewear, Lemon Ice, Elite Eyewear and Vision Eyewear. The VAT of £32,848 was upheld.
  - She accepted that the suppliers had been paid and allowed VAT of £6,637.
  - The assessment was to be reduced by £6,637 to £26,251.
- Period 04/09. (£2,462 assessed for period 01/10)
  - There was insufficient evidence of payment to Lemon Ice and the assessment of £2,064.40 was upheld.
  - £2,415.25 she accepted as paid to the other suppliers and it was to be allowed.
  - The assessment to be reduced to £47.

- 5           • Period 07/09. (£4,337 assessed in period 04/10)
  - There was insufficient evidence of payment to Vision Eyewear and the assessment of £3,888 was to be upheld.
  - She accepted that the other suppliers had been paid and that the VAT of £449 should be allowed
  - As a result the assessment of £4,337 should be reduced by £449 to £3,888
  - Mr Godley was to consider the tax adjusted by the voluntary disclosure: input tax £21,078.39, output tax £3,604.
- 10           • Period 10/09. (£2,843 assessed period 10/10)
  - The VAT has been assessed to the wrong period
  - Mr Godley was to reconsider the recovery of the bad debt relief allowed in period 10/09
- 15           • Period 01/10. (£11,396 assessed in period 10/10).
  - The Vat claimed in period 01/11 was from sales credit notes to Runcipal and Horizon Concepts (£11,396). It was not input tax.
  - As the VAT has been assessed in the wrong period it is to be withdrawn and Mr Godley is to consider the recovery of the bad debt relief allowed in period 01/10.
- 20           • Period 04/10. (£3,781 assessed in period 01/11).
  - The assessment was upheld as there was insufficient evidence of payment by Jill Eyewear Ltd.
- 25           • Period 07/10.
  - Mr Godley was to look at this period again.
  - An assessment in relation to an over declaration for this period appears in Miss Booth's exhibits and reveals for the period an over declaration of £11,983.

30           All the penalties were withdrawn but without prejudice to any further consideration which arises from the new assessments.

35           6. Miss Booth stated that Mrs Brewis in her review letter had reduced many of the assessments and withdrawn the penalties of £44,038.96 imposed by Mr Godley. This penalty is still on the file even though Mrs Brewis said they were to be removed. The background to this sale was that some of the sales to customers were cancelled by HMRC as being non-bonafide, but Mrs Brewis and HMRC still claimed the output tax. Miss Booth submitted that Mrs Brewis had been meeting with Mr Godley and Mr Taylor and that her decision could hardly have been independent.

40           7. In his third witness statement Mr Godley stated that he had been involved by Mrs Brewis because he needed to discuss the new evidence provided by Mr Booth. Mr Godley said that he had no details of Mr Booth's loan account although there is a returned receipt dated 26 October 2010 signed by Mr Booth which states:

“Retained 1x loan account  
1 x A Booth Bank Statement File”

5 8. Mr Godley had stated that no loan account had been provided for the  
period. In his third witness statement, however, Mr Godley confirmed that he  
had seen the loan account detail for the period 10/09. He said that the loan  
10 account detail was more like a cash book and it only revealed payments out not  
any monies coming in. We have been provided with a copy of Snob Eyewear’s  
loan account. This is a hand written ledger with 3 hand drawn columns. It starts  
on 9 January 2009 showing running totals up to 13 May 2009 and then for some  
reason continues on 27 November 2008 until 12 February 2008. It continues  
again on 24 April 2010 and runs through to 1 August 2010. With the statement:-

15 “ rent for Shop March, April, May, June, July, Aug 6 months wages not  
paid Feb ,March, April, May, June, July, Aug 7 months £17,500.”

The entries have not been added sequentially so that the account must have been  
written up at a later date. It shows no running balance nor how much was owed  
20 to Mr Booth. In the circumstances, it is of no value to indicate what the loan  
account might have been. There are similar pages for Elite Optical, Optik  
Services, and MC M Capital all hand written and with no running balance.

9. We have checked the balance sheets for the companies because under as  
25 they make reference to Mr Booth’s loan accounts at 2010 in each:

• Snob Eyewear as at November 2010	£26,821
• Business 4 All as at April 2010	£38,272
• Style Factory as at April 2012	£161,436
30 • MCM Capital as at April 2010	£108,626
• K D Optical as at April 2010 (Mrs J Booth)	£42,290
• Savoy Eyewear as at August 2010	£3,657
	<u>(Other) £45,230</u>
	Total £426,332

35 There has been no explanation how this sum has been funded unless it has  
been from the repayments of VAT that Mr Booth’s companies have received  
down the years. As all of the company’s show negative equity as at 2010, it is  
unclear why anyone would want to fund them privately at this level. The only  
40 loan account detail we have seen is totally meaningless.

10. In his letter of 9 July 2012 Mr Godley confirmed that Mr Booth’s appeal  
in relation to Business 4 All related to £73,258 input tax, which he had refused  
to allow because:

- 45
- The explanations were vague and elusive with no cross-referencing of documents by value, date, source and company record location.

- The loan account transactions cannot be traced through to the source of funding.
- There was no mention of Business 4 All in the cash book or the manual identification of payments in bank statements.
- 5       • The records supplied were disorganised and lack cohesion. The statements supplied to support claims to payment lack direction and conviction.
- There was insufficient evidence of payment supplied.

10       11. Mr Taylor has produced the accounts for Business 4 All for the year ended 30 April 2010, which reveal a turnover of £1,191 for that year and administrative costs of £41,280 and expenses of £16,000. Given that the administrations costs in all the other sets of accounts referred to were around  
15       £5000, it is extraordinary that these costs should be so high when the turnover was only £1,191. The company's net worth in April 2010 was negative at (-£73,206). The notes to the accounts revealed a VAT liability of £33,816. It is unclear how that has arisen on a turnover of £1,151. The company was effectively insolvent.

20       12. This matter is now stayed in the Tribunal pending the outcome of this appeal. Mr Booth stated that he believed HMRC owed Business 4 All more than that company owed HMRC. On the evidence before us from Miss Booth (see sub-paragraph 3 above) stating that Business 4 All owed £12,987.14, and from  
25       Mr Godley's third witness statement that the company owed £37,741.14 at least, and on the balance of probabilities, we are satisfied that there is a tax loss to HMRC arising from Business 4 All.

**Snob Eyewear Ltd.** (Currently the subject of an appeal by the company dated 14 September 2012).

30       1. Snob Eyewear charged Colour Blast £173.60 on 22 June 2012, which had been declared in its 07/12 VAT return. The net liability for this return of £5,952.37 has not been paid. The Printout produced for Snob Eyewear reveals that £146,601.29 including interest is outstanding.

35       2. Snob Eyewear also charged Sunlight VAT of £6,288 on 25 August 2012 which had not been declared on Snob Eyewear's 10/12 VAT return. The company was registered for VAT on 1 June 2006 and had submitted 25 VAT returns 18 of which had been for repayments totalling £160,486.52. Just 5  
40       payment returns had been submitted declaring £6,416.17 as due, all of which remain outstanding. Mr Booth stated that the company was owed a large amount of money by HMRC and that he had supplied Mr Godley with bank statements, full accounts and all the other evidence.

45       3. Mr Godley stated that Snob Eyewear's current debt on file is £146,438.50 ( a lesser sum than above) which relates mainly to assessments raised to recover input tax that the company was no longer entitled to because it has failed to

provide proof of payment. Miss Booth has charged Snob Eyewear identical charges for accountancy services as she has for all the companies. As a result, she must be aware that Snob Eyewear charged VAT to Colour Blast and Sunlight, which has not be paid to HMRC.

5

4. In her report, prepared as a result of the 'Unless Order', Miss Booth claimed £173.60 input tax in relation to Snob Eyewear. She also conceded the input tax appertaining to the purchases made by Sunlight in August 2012 and Colour Blast in September 2012. She stated that the amount arose from effectively a voluntary disclosure arising as a result of an amendment to the original claim and the change of the registration date to 1 April 2012. She had wished to submit a Voluntary Declaration prior to the continuation of the hearing in July 2014 with regard to this and the other companies, but Mr Chapman had advised that as long as she correctly highlighted any concessions or changes, that would suffice.

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5. Miss Booth has produced the VAT return for the period 10/12, which revealed a nil return as there were no sales in that period to Colour Blast from Snob Eyewear. There had been a proposed transaction, but it had been cancelled and it did not therefore appear on the return. The VAT return for the period 07/12 showed the sum of £5,952.37 due to HMRC. The VAT statement prepared by Miss Booth showed that over the period 01/07 to 01/14 Snob Eyewear was owed £60,563.96.

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6. She attached to her report, prepared as a result of the 'Unless Order' a partial exemption calculation for the period to January 2007 prepared by Mr Mullarky, which related to its retail store and was evidence that it did trade in spite of Mr Godley's comment that all the company's trades were shams. The purchase day book produced to the tribunal reveals that £33,225.77 had been paid to Mr Booth's loan account.

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7. For the period 1/10 £12,512.50 of input tax was offset against Luxol's VAT liability. Although input tax was never received by Snob Eyewear as a result of the offset, the output tax has been claimed against Luxol. She stated that the pattern of denying input tax whilst still claiming output tax against the supplier happened all the time. Further assessments were raised in this period because HMRC cancelled transactions between the company and Runcipal, Horizon Concepts and Pier77.

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8. Miss Booth stated that with regard to period 10/8, Mr Godley had stated that there was no record of payment to Vision Eyewear Limited. She indicated that the bank statements showed that payments had been made through the bank. Mr Godley had annexed to his statement some Barclays Bank accounts and a cash book which included several companies. Checking the whole of the year for 2008 we cannot find a reference to Vision Eyewear under the Snob Eyewear heading. Mr Booth's bank account detail for February to June 2008 shows a balance of £46.66 on the account and for August to December 2008

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show that there was only £46.66 in the account and no other movement. This is hardly indicative of a substantial business.

5 9. Miss Booth complained that Mr Godley had refused various VAT repayments, because he did not believe that Mr Booth's loan account had been underpinned by 'real money' as no evidence had been produced by Mr Booth justifying the payment of £87,590.74 when the loan account was created. Miss Booth states that Mr Godley was well aware that the loan account arose as a result of payments made by Mr Booth on behalf of Snob Eyewear. As a result, 10 Mr Godley denied a repayment claim of £18,422.09. She also suggests that Mr Godley does not appear to appreciate that Snob Eyewear dealt with wholesale and retail and as a result bad debt relief would not be allowed. We note from the letter that Mr Godley disallowed the bad debt relief because 'the output tax was generated in the retail businesses'

15 10. In his third witness statement Mr Godley stated that Snob Eyewear had not paid the VAT liability of £5,952.37 to HMRC (See reference in sub-paragraph 4 above). Since its registration on 01/06/06 Snob Eyewear's net sales of £385,936 were exceeded by purchases of £1,714,756 a paper loss of 20 £1,328,820. It had in the same period made repayment claims amounting to £148,070.35 nearly all of which have been refunded to it. Snob Eyewear has only generated in the same period payments of £3,341.78 none of which has been paid.

25 11. He confirmed that Snob Eyewear was one of Mr Booth's companies that made or intended to make retail sales. He considered that the scale of stock built up was unrealistic for the sales generated. For the period from 07/11 for the next 3 years Snob Eyewear generated retail sales of just £46,541 plus VAT of 30 £8,923.53 off a stock holding of £1.7 million. Mr Booth stated that he was not making payments of the VAT due in this company, because he was owed more money by HMRC than he owed to them. Mr Godley considered that that was not an appropriate reason for him not to make any payments.

35 12. Mr Taylor has produced copies of the accounts for Snob Eyewear which reveal a turnover of £51,738 for the year to 30 November 2010 with an overall loss of (- £61,196). It had stock of £677,832 and cash at bank of £240. The company's net worth was negative at (-£61,096) and it was effectively insolvent.

40 13. This matter is now stayed in the Tribunal pending the outcome of this appeal. On the evidence before us Snob Eyewear owes £146,438.50 and on the balance of probabilities we are satisfied that there is a tax loss to HMRC arising from Snob Eyewear.

45 **MCM Capital Ltd.** (Currently the subject of an appeal by the company dated 14 September 2012).

1. In his witness statement Mr Godley stated that MCM Capital charged Colour Blast output tax of £782.60 on 22 June 2012, which was not declared on MCM Capital's VAT return for the period 09/12, which unusually was a 9 month return. The company had been subjected to a de-registration action in March of 2012 because it was unclear whether it was trading. When the registration was re-instated a long period return from 01/01/12 to 30/09/12 was issued, which was submitted by MCM Capital as a nil return on 03/11/12. Mr Booth stated that the company had been de-registered without his knowledge and this had led to the difficulties in providing appropriate returns as no online authorisation had been supplied to allow him to file the same.

2. Prior to that period MCM Capital had been required to submit 14 other returns dating back to the first period 09/06. Six of these returns were for repayment claims totalling £66,966.87. The other seven returns were submitted as 'nil'. Over four and a half years MCM Capital have not submitted a payment return of any description. Miss Booth was appointed agent for MCM Capital with effect from 30/4/12 and would have known that the returns had been submitted without the £782.60 output tax, which Colour Blast was claiming. There are the same inter-company charges for accountancy work with a charge of £2500. Miss Booth must therefore have been aware of MCM Capital's VAT position.

3. Miss Booth explained that payments had been made by contra and that account CB041240 had been used in part to discharge £235.60 of the outstanding invoices. She explained, as before, why the contra figures always balanced. She was seeking £782.60 as the input tax to be allowed in relation to MCM Capital's supplies on 22 June 2012. Mr Taylor had told her that as a result of the change of the registration date she could not charge for work that had not been completed. She had amended the calculations accordingly.

4. It appears that MCM Capital's company records had been mixed up or destroyed in the Burglary and Colour Blast's charges for financial and accountancy advice had increased accordingly. MCM Capital was unable to supply the Tribunal with a copy of the print out of its online VAT return. In an email dated 17 October 2012, Miss Booth notified Mr Godley that as MCM Capital had been deregistered she had been unable to make the return on line for the period 7/12. MCM Capital had not received a paper return. It seems to us that even if she could not complete the return she could have put in a paper return of her own design, as she had all the figures, with the appropriate amount of VAT due and paid.

5. However, MCM Capital did supply VAT liability calculations and supporting paper work with regard to the period. It made sales to Colour Blast which revealed that MCM Capital was owed £28,896.78 for the period 06/14. She has produced a statement, which shows that a contra entry had been made of £110,916 in relation to the transactions between MCM Capital and Savoy Eyewear. A voluntary disclosure had be made on 18 November 2009 arising

from a customer wanting details of the transactions and the company realising that it had not included the invoices in the previous return. The disclosure identifies a sum of £107 as payable.

5           6.     Mr Taylor has produced copies of the accounts for MCM Capital for the year ending 30 April 2010 which reveal a turnover of £8,836 and a loss of £8,821. The company's net worth was negative at -£8,721.

10           7.     The figures provided by Mr Godley show VAT payable to HMRC of £15,086 and £12,793 as repayable to MCM Capital. We make that a balance due to HMRC of £2,293. Mr Godley has produced the Printout for the periods 09/10 to 03/13 which revealed that no VAT returns had been made to HMRC. We are satisfied that VAT is owing to HMRC.

15     **Style Factory Ltd.** (Currently the subject of an appeal by the company dated 14 September 2012).

20           1.     Mr Godley, in his witness statement, stated that Style Factory charged Colour Blast output tax of £860.60 on 22 June 2012. No VAT workings have been seen by HMRC and a liability of £6,130.57 for that period has not been paid which increased Style Factory's indebtedness to £76,465.98 as identified on the Printout of 17 May 2013. Since its registration on 19 October 2007 Style Factory had submitted 21 VAT returns claiming repayments of £80,731.40. Payment declarations on just 6 returns had been submitted amounting to over £22,289.63. The company had claimed the majority of the repayments up to the period 07/10. After that time the 5 payment returns were submitted, but none of them have been paid.

30           2.     Miss Booth is seeking £860.60 in input tax appertaining to the supplies received from Style Factory on 22 June 2012. Miss Booth confirmed that Colour Blast had provided assistance with Style Factory's company tax returns as it had for her father's other companies. Style Factory's records had also been affected by the Burglary at Walton-le Dale. As a result of Colour Blast's assistance with the accounts it had been able to purchase spectacle frames from Style Factory on terms, which she considered to be fair and commercial, and to pay for them by way of contra.

40           3.     She produced Style Factory's VAT return for 05/12 revealing £6,130.57 was due to HMRC. She has produced a statement showing the VAT position as she understood it for Style Factory for the period 04/08 to 04/14. The last return having been made for the period 07/12 showing £300 due from HMRC the running balance at 04/14 reveals that Style Factory owed £4676.12 and that no returns had been made since the last return of 07/12.

45           4.     Mr Booth submitted a notification of errors in VAT returns on 22 January 2011 claiming £7,859 as a repayment for the period 10/10 on the basis that credit notes had been issued because the VAT Officer would not refund the

input tax. It is unclear as to which transactions these refer. In her review letter of 20 July 2012 Mrs Brewis has asked Mr Godley to reconsider Style Factory's request in relation to the £7,858 and for Mr Godley to withdraw his decision.

5           5. Miss Booth has produced a copy of the letter HMRC wrote to Mr Booth on 9 July 2012 arising from a formal review requested in relation to the matters which are now the subject of an appeal and stayed behind this appeal. Input claw back corrections had been adjusted as under:

	Period 04/09	£11,794
10	Period 07/09	£ 9,834
	Period 10/09	£43,875
	Period 01/10	£39,548

15           Details of the loan account in an incomplete cash book were less than clear and HMRC considered that there was insufficient evidence for them to alter the liability.

20           4. The evidence provide by Miss Booth in relation to Style Factory's compliance is incomplete as full evidence will presumably be produced in considerable detail at the actual appeal. For our purposes she, has extrapolated some of Style Factory's defence, and the observations of Mrs Brewis in her review letter already referred to:

- Period 04/09. £8,511 assessed in period 01/10. Insufficient evidence of payment to Luxol Ltd. Assessment upheld.
- 25           • Period 07/09. £9,834 assessed in period 04/10. The VAT was charged by Runcipal Ltd a company which HMRC concluded had made no supplies and the VAT should have been disallowed in period 07/09 the assessment of £9,834 in period 04/10 to be withdrawn and a new assessment raised. Miss Booth stated that the output tax on supplies to Runcipal Ltd and Pier 77 were still being claimed.
- 30           • Period 10/09 £7,017 assessed in period 07/10. There was insufficient evidence of payment to Lemon Ice and the assessment was upheld.. Output tax should not have been credited to period 07/10 and the assessment was understated by £36,858.
- 35           • Period 01/10 £31,690 assessed in period 10/12. The VAT on sales credit notes was not recoverable under section 26A and should not have been assessed in period 10/12 .VAT £27,035. There was again insufficient evidence of payment to Luxol Ltd but the assessment was to be reduced to £4,655. Mr Godley was to consider the recovery of bad debt relief allowed in period 10/10.
- 40           • As explained in her covering letter the penalties were to be withdrawn. We note that the total penalty assessment was £60,666.94 but we have been provided with no further detail.
- 45           • Mr Booth has stated that set offs had been allowed on various amounts. Miss Booth has produced a letter dated 16 June 2010 from M E Gut confirming that in the period 10/08 Style Factory's repayment claim of £6,247 had been offset against Mr Kennedy's assessment of £6,988 for period 10/08. Mr Kennedy's assessment was

subsequently removed but the £6,247 for period 10/08 was never repaid. As mentioned previously it was unclear on what basis the set off had been allowed and, in any event, it did not relate to this transaction.

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5. Miss Booth has provided a copy of a letter dated 19 November 2009 dealing with complaints raised by Style Factory, Daytona Surf Ltd, MCM Capital and Business 4 all. In relation to Style Factory Mr Goble, an inspector with HMRC, indicated that £8,069.15 was still outstanding at 01/08. We assume that amount has not been paid as this is an appeal before the tribunal and Miss Booth alleges that at least £18,966 is due to be repaid to Style Factory, which has not been done.

6. Mr Taylor has produced copies of the accounts for Style Factory made up to 30 April 2010. They reveal a turnover of £245,740. The turnover for the previous year had been £16,771. The company's net worth was £5,764. This is the only company which did not appear to be insolvent. We accept that the accounts were only to April 2010, but given that the company only had £249 of cash we do not understand how it could fund substantial subsequent stock purchases. We are concerned with the periods 05/12 to 09/12 for the amounts claimed on behalf of Colour Blast and Sunlight. From the evidence supplied in relation to Style Factory we are satisfied that there is at least £72,465.98 VAT is still outstanding.

## 25 **K D Optical Ltd**

1. Mr Godley stated that K D Optical charged Colour Blast output tax of £762 which should have been declared by K D Optical on its return for the period 06/12. The return has not been submitted along with several other outstanding returns. Since its registration on 1 August 2007, the company had submitted 8 repayment returns claiming back £105,373.62 whilst only declaring £1,575 on the payment return for 09/10. All the returns submitted after the period 03/11 had either not been submitted at all or rendered as 'nil' The company had expended £657,740 whilst it had generated just £22,964 in sales since registration.

2. Mr Godley had visited K D Optical at 71 King Street, Whalley on 20 May 2001 (the premises used by several other businesses run by Mr Booth all trading wholesale optical stock). He specifically asked for details of the bank statements for the company, but none were produced then nor have they been forthcoming since. He was therefore unable to ascertain whether the stock had been paid for. All Mr Booth's companies, including K D Optical, have sourced stock from other companies all run, or with close association to, Mr Booth, which have also not paid their VAT liabilities. Miss Booth has charged the company for work done in relation to "VAT internal reviews; preparation of corporation tax returns; preparation of company accounts and for retained services".

3. Miss Booth has produced details of the dealings with K D Optical. All of the payments have been by way of contra. Invoices were changed as a result of Mr Taylor's comments arising from the change of the registration date and the fact that Colour Blast could not charge for work not yet completed. The total value of the Colour Blast invoices still outweighed the value of K D Optical supplies and, as a result, full payment for those supplies has been made. Colour Blast seek £762 in input tax arising from the supplies from K D Optical on 22 June 2012.

4. Miss Booth confirmed that most of the company's stock was wiped out entirely and its accounting records destroyed in the Burglary. We note that Colour Blast transaction with K D Optical were in June 2012 by which time that company must have prepared further records to enable it to start trading again. In the review letter dated 20 July 2012, requested by J D Optical, Mrs Brewis identified the matters still outstanding:

- Period 03/09 £8,219 assessed in period 12/09. All the purchases but one were from Business 4 All the other one for K Darl amounting to £700 she allowed.
- The output tax on the sales had been accounted for to M C M Capital which had not claimed any corresponding input tax. As a result, the output tax of £744 should not have been credited as bad debt relief.
- The assessment was to be reduced to £7,519 and Mr Godley should consider re-assessing the £744.
- Period 06/09 £11,116 assessed in period 06/10. There was insufficient evidence that Vision Eyewear had been paid and the assessment was to be upheld.
- Period 09/09 £14,200 assessed in period 06/10. There was insufficient evidence of payment and the assessment was to be upheld.
- Period 12/09 £6,432 assessed in period 09/10. There was insufficient evidence of payment to Luxol and the assessment was to be upheld.
- Period 03/10 £4,550 assessed in period 12/10. Again there was insufficient evidence of payment to Luxol and the assessment was to be upheld.
- Period 06/10 £16,602 assessed in period 03/11. There was insufficient evidence of payment to A W Opal Ltd and the assessment was to be upheld.
- Period 03/11 there was an unprocessed claim for £42,679.88 and Mr Godley had been asked to look at this period again to make a new decision.
- The penalties of £35,725.87 were to be withdrawn.
- It is noted that £60,419 has been assessed and even if the repayment of £42,679.88 were to be repaid there would still be £17,739.12 outstanding and due.

5. In his third statement in response to the information provided by Miss Booth under the "Unless Order", Mr Godley stated that although Colour Blast

had reclaimed the input tax of £762 that amount had not been declared by K D Optical. Mr Booth had stated that this was because of the Burglary and the company's subsequent liquidation. We fail to understand why the Burglary would affect the matter as KD Optical continued to trade and would have had no difficulty keeping on-going records. Mr Godley produced details of the company's returns from its registration on 1 August 2007 to its insolvency on 13 May 2013. Up until the period 12/11 the company obtained VAT repayments amounting to £61,119.62 whilst building up a stock of £437,346. The company's declared sales were £13,964 plus VAT of £2,319.60. The suppliers to the company were Luxol Ltd, A W Opal Ltd, and Vision Eyewear Ltd all of which he alleged were defaulters in the tax loss chains.

6. K D Optical accounts to 30 April 2010 reveal a net worth of – (£40,982) with trade creditors of £331,371 and a loan account to Mr Booth of £42,290. The company was effectively insolvent at that date. Mr Godley considered that K D Optical's trading performance was implausible when analysed over the 5 years to June 2012 revealing minimum sales and a repayment of £61,119.62. From the evidence before us we are satisfied that K D Optical is a defaulter and that VAT is outstanding of at least £17,739.12 which will be substantially more if the repayment of £42,679.88 is disallowed. It is understood that the company is now in liquidation so that there is no prospect of any VAT payments being made.

#### **A W Opal Ltd**

1. Mr Godley has confirmed that this company was run by Stuart Castle Robinson (Mr Robinson) until it was deregistered on 1 November 2011. Mr Robinson has provided a witness statement, but has not attended at the hearing and withdrew his statement to which we refer later. A W Opal reclaimed £44,057.74 in repayments across its first two periods 01/07 and 04/07 before failing to declare any trade at all on the next 17 returns up to and including its de-registration as evidenced by the VAT Print outs.

2. Miss Booth was nominated as the company's agent on 30 April 2012 nearly one year after the company de-registered. Mr Booth has suggested that he and his daughter were unaware of the de-registration and that they were entitled to accept the invoice from A W Opal at its face value and to declare the VAT shown on the invoice in Colour Blast's return. We note, however, that Miss Booth had charged for accountancy services identical to those referred to in the other companies. She was aware that Colour Blast had reclaimed input tax of £666.40 on a transaction with A W Opal on 22 June 2012. As A W Opal were not registered for VAT at that time it could not charge it.

3. Miss Booth has stated that Colour Blast had no choice but to concede the VAT sought appertaining to these supplies because HMRC said that the transactions took place post VAT de-registration of AW Opal Limited. She said that Colour Blast was issued with a VAT invoice and that it would have

been un-lawful for the company not to declare this VAT figure on its VAT return. She understood that the company was actively trading because she had been helping Mr. Robinson with his creditor claim in a Bankruptcy. We note that Miss Booth has charged a retainer and for accounting advice and it is ingenuous for her to say that she was unaware A W Opal was not registered for VAT.

### **Venetian Designs Ltd**

1. Mr Godley advised us that this was another company run by Mr Robinson. Venetian Designs never declared any sales for the periods 08/07 to 05/11 and ultimately de-registered on 1 September 2011 due to the ill-health of the director. Mr Booth indicated that he had no knowledge of this letter although he and Miss Booth had helped with these companies over the years and goods had continued to be supplied to Venetian Design. Given that Miss Booth has charged Venetian Designs in April 2012 for accountancy advice and under a retainer she must have been aware of the position.

2. A single transaction was charged by Venetian designs to Colour Blast on 1 March 2012 involving VAT of £2,401.09. The transaction took place seven months after the date of Venetian Designs' de-registration and HMRC had no evidence that the supply took place.

3. Mr Godley interviewed Mr Robinson on two occasion first on 2 February 2011 and subsequently on 12 December 2011. Mr Robinson had said that Venetian Designs purchased stock from Mr Booth's business 'Optic Services'. Mr Robinson could not recall that he had purchased £150,000 of optical stock from Optic Services. Mr Geoffrey Pearson (Mr Pearson) had prepared the VAT returns for him as he had been unable to do so due to his failing health.

4. Mr Chapman cross-examined Mr Booth with regard to his relationship and dealings with Mr Robinson. Mr Booth told us that Mr Robinson had been:-

"A. My personal friend, he introduced me to the optical trade. We had a fall out some years ago, I took his wife off him and he's the – my wife is the mother of Jessica. So we had something of a love/hate relationship. Although he was my mentor, I caused him to lose his wife. So, yes, we have a love/hate relationship, but we're still friends.

Q. You were still working together in 2011 and 2012.

A. I wouldn't say we were working together, no.

Q. You were working on behalf of his companies.

A. I helped him out because he's virtually blind".

5. Mr Robinson has produced a witness statement, but withdrew it before the hearing. The statement is not signed by Mr Robinson and we were told by Mr Booth:

5                   “Mr Robinson provided me with a witness statement and I, and he signed it but these witness statements were submitted by email it was agreed between the Commissioners that that was done, so I sent the Word document...”

10                   Subsequently we have been told that Miss Booth typed up the statement for Mr Robinson to sign. The statement presented to the Tribunal was unsigned and Mr Booth explained that that was because HMRC had agreed that documents could be sent by email. Mr Booth has confirmed that Mr Robinson was virtually blind in 2012.

15                   6. In his statement Mr Robinson alleges that Mr Godley and Mr Taylor bullied him and forced him to de-register Urban Dog and made it clear that if he did not provide them with a statement about Mr Booth he could face criminal proceedings. He also believed that Miss Booth had become the subject of a continuing vendetta carried out by VAT officers. He also confirmed:

20                   “I am aware that Miss Booth is about to open a large chain of retail opticians to be located within the supermarket of E H Booth & Co. This is a massive opportunity and it is my belief, from forty years of experience, that this could be the biggest independent optical chain in the north of England. I have supplied large quantities of spectacle frames to Colour Blast Limited as the business has the potential to have a very large turnover indeed”

30                   7. Mr Chapman referred Mr Booth to Mr Robinson’s statement at the interview on 2 February 2011 when Mr Godley recorded

35                   “Robinson also stated he knew these transactions were part of a scheme to cheat HMRC out of VAT. Booth had told him that the goods would be traded between different companies who would all make repayment claims.”

40                   8. Mr Booth denied that that was the case. We have considered Mr Robinson statement and have decided that it cannot be relied on. It is clear that the statement was produced by Mr and Miss Booth for Mr Robinson to sign in circumstances where he was virtually blind. There is no evidence that it has been read over to him. Mr Robinson would not have been aware of Miss Booth’s proposed venture with E H Booth & Co as he had effectively stopped working in March 2010. As we have seen, the transaction with E H Booth & Co was no more than Heads of Terms to take a lease of one of the units that it was proposing to let.

9. Miss Booth has produced evidence of the invoices with Venetian Designs, which reveal a contra of £13,980 identifying frames, necklaces etc. Colour Blast appears to have sold frames back to Venetian Designs and raised the same fees in relation to accountancy and legal work as have been raised with the other companies. She stated that prior to the hearing on 8 May 2014 Mr Chapman advised that as long as she correctly highlighted any concessions or changes she had wished to make there was no need to submit a voluntary declaration. She has conceded the Input Tax appertaining to the purchases made from Venetian Design Limited in March 2012.

10 She stated that prior to the hearing on 8<sup>th</sup> May 2014 she had asked Mr. Chapman if she was to submit Voluntary Declarations before the July proceedings. This arose because of the change in the registration date and was so that a VAT officer could check the figures to confirm that, following the dismissal of any claims of abusive practice by Colour Blast’s suppliers, the quantum claimed would be correct. Mr. Chapman had advised that as long as she correctly highlighted any concession or changes, then this would suffice for the Commissioners and the Tribunal. We have decided that Miss Booth and Mr Booth must have known that Colour Blast could not have traded with Venetian Design as Venetian Designs had been de-registered some seven months previously.

**Urban Dog Ltd**

1. Mr Godfrey stated that output values of £4,263.72 and £6,812.96 were charged to Colour Blast by Urban Dog on 5 March 2011 and 1 April 2011. Urban Dog had not rendered its return for the period 04/11 on which these values should have appeared. Although Mr Robinson was the director of Urban Dog, Mr Booth had been given authority to act as its agent. The bank account used by Urban Dog was in fact Mr Booth’s personal account with Barclays Bank. It was used to facilitate VAT repayment claims made by the company. Mr Godley has produced copies of the various bank accounts, which reveal that the £66,011.45 repayment was paid into the account on 20 September 2010. Subsequently £60,000 was transferred to Mr Booth’s NatWest account for the period 04/10.

2. Over the period 10/09 to 07/10 Urban Dog received VAT repayments amounting to £119,134.18 whilst building up stock levels of £989,636. The repayments from HMRC’s records were:

•	10/09	£34,723.79
•	01/10	£15,389.00
•	04/10	£66,011.45
•	<u>07/10</u>	<u>£ 3,009.94</u>
	Total	£119,134.18.

3. Mr Godley confirmed that Urban Dog had traded as a retail optician from rented property on Church Road, Great Harwood, Lancashire. He suggested that the stock built up was disproportionate to the level of stock required for a retail trade. When Urban Dog submitted its repayment claim in the period 04/10 for £66,011.45  
5 there were no retail sales declared. In the following period 07/10 retail sales amounted to £6,789 with VAT of £1,180.21.

4. Mr Taylor has produced a letter from Mr Robinson dated 30 July 2011 in which Mr Robinsons stated that due to his failing eyesight and his ill-health the doctor  
10 and his family have told him that he was not to work any longer. He indicated that everything had been left in his shop at Great Harwood. He had been ill towards the end of March and somebody had taken all the stock from his shop so that he was no longer able to trade. He stated:

15 “I was told the shop was emptied in my absence by persons unknown to me someone with a blue 4 x 4 and horse box everything was taken including all the paper work.”

No evidence has been produced of a notification to the Police of the unauthorised  
20 removal of this stock. Mr Booth in cross-examination said that he believed the individual to have been Mr Robinson’s Landlord who had traded in horses and had a blue Land Rover. Urban Dog went into liquidation on 21 May 2012 with a debt due to HMRC of £133,509.22.

25 5. The majority of the debt related to assessments raised on Urban Dog for £103,509.22 in order to recover input tax claimed by the company under section 26A of the Act, which relates to the non-payment of purchase invoices outstanding after 6 months. The last time that Urban Dog declared any output tax on its returns was in the period 10/10 the two transactions referred to above were not declared.  
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6. Miss Booth has produced evidence of the invoices of the sale of frames to Colour Blast by Urban Dog on 1 April 2011. Surprisingly Colour Blast appears to have purchased in excess of 1100 frames from Urban Dog and sold 477 back to it on  
35 5 April 2011 and 25 April 2012 as well as 429 assorted necklaces. Colour Blast also raised invoices for the retainer for the period 1 March 2011 to 1 March 2012. Given her dealings with the business she must have been aware that Urban Dog was in financial difficulties in that it went into liquidation two months later on 21 May 2012.

7. Miss Booth has referred to Mr Chapman’s comments with regard to providing a  
40 voluntary declaration. She stated that VAT appertaining the invoices UD031101, UD031102, UD031110 and UD031111 was sought as these supplies were paid for within 6 months. This amounts to £3,003.12. The VAT appertaining to the remaining supplies in March 2011 and April 2011 is conceded if it be the case that it would be subject to claw back action as payment for these supplies was  
45 not received within six months.

8. On the evidence and the balance of probabilities we are satisfied that Urban Dog went into liquidation owing HMRC a considerable amount of money.

**Savoy Eyewear Ltd.** (Currently the subject of an appeal by the company dated 14 September 2012)

1. In his witness statement, Mr Godley states that Savoy Eyewear was registered for VAT with effect from 1 January 2007 by Mr Pearson. On 13 March 2009 the company moved to St Leonards Parish Rooms, Church Brow, Walton le Dale, Preston, which is the address used for storage purposes by Mr Booth for some of his companies. Mr Booth was appointed a director in May 2011.
2. Savoy had been required to submit 22 returns since registration, 14 of which were submitted as repayment claims totalling £137,295.53. Seven other returns had been submitted declaring payment liabilities of £41,036.38 of which the sum of £25,250.25 relates to input tax claimed in the first period return, credited out of Savoy Eyewear's VAT accounts for 06/08 and 09/08 and off set against a repayment of £29,429.93. The residue of £4,606 was assessed later. Savoy was in a net repayment position of £96,259 over a 5 year period.
3. The company's VAT return for the period 12/07 was submitted claiming £28,340.10 as a repayment. The money was never released as the subsequent 06/08 and 09/08 payment returns included input tax corrections cancelling out any claims made in 2007. Repayment claims of £1,576.53 (12/08) and £1,691.99 (09/09) were refused because the company failed to produce adequate records to validate the claims.
4. Mr Pearson had claimed two repayments of £11,001.41 (12/09 and £9,013.15 (03/11) which were cleared centrally without any verification. HMRC discovered that the 12/09 claim was due to purchases from Lemon Ice, which never paid any of its VAT liabilities before entering into liquidation on 29 October 2012.
5. Shortly after Mr Booth took over the company from Mr Pearson in May 2011 the company increased its level of purchasing reclaiming net repayments of £85,461.50 for the 6 periods 06/11 to 09/12. In 12/12 the company submitted a return for a payment of £14,738.72 which has not been paid. The repayment claims for the periods 09/11, 12/11 and 03/12 have been withheld on the basis that they are fraudulent claims within the Kittel principal and are the subject of an appeal.
6. Savoy Eyewear had declared the £4,286.40 output tax charged to Colour Blast on 1 June 2012. Its 06/12 return was submitted for repayment of £8,922.34. Savoy Eyewear's 06/12 input tax total of £17,345.37 was

compiled from 3 companies as under, who have not declared or paid the corresponding output tax.

Venetian Designs Ltd	£14,822.20
K D Optical Ltd	£ 2,223.17
Colour Blast Ltd	£ 300.00
Total	£17,345.37

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By refusing the input tax on Savoy Eyewear's 06/12 return, Colour Blast's VAT liability becomes £8,423.03 as a result the tax loss has been diverted to Savoy Eyewear's input tax chain.

10 8. In response to Miss Booth's observations Mr Godley, in his third witness statement, has set out Savoy Eyewear's trading history for the period 09/11 to 09/12 as under:

Period	Output Tax	Input Tax	Net due	Net outputs	Net inputs
09/11	1,216.00	15,553.69	14,337.03	6,083.00	79,908.00
12/11	1,187.98	11,545.86	10,357.88	5,939.00	59,967.00
03/12	0.00	49,334.92	49,334.92	25,671.00	246,738.00
06/12	8,796.49	17,718.53	8,922.34	82,147.00	146,988.00
09/12	3,536.16	6,041.44	2,505.28	58,691.00	30,387.00
Total	14,736.63	100,194.44	85,457.45	178,531.00	563,988

15 9. Mr Godley stated that the company submitted repayment claims totalling £85,457.45 over five periods whilst incurring a net loss of £385,457. (£563,988 - £178,531). Since submitting these returns the company had submitted two payment returns, which have not been paid. The trading performance of Savoy Eyewear was, he suggested, implausible, with tax losses traced in the input tax chains for all the above periods to companies either run by Mr Booth or Mr Robinson.

20 10. Because tax losses have been traced to Savoy Eyewear's input tax chain, any output tax declaration made by Savoy Eyewear in respect of sales to Colour Blast had been negated. Miss Booth has complained at the length of time that the matters have been in hand and that HMRC had been considering the matter some 12 months earlier than Mr Godley had suggested. Mr Booth has chosen to run his optician's business through a large number of companies (see paragraph 65) and must not, therefore, be surprised if a substantial amount of time was needed to understand what was happening in his various companies.

25 11. We have considered these transactions in detail at page 27 above and specifically noted that an excessive amount of unnecessary equipment appears to have been supplied to Colour Blast. We also note from the examination of these transactions that Colour Blast purchased 460 frames

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from Savoy Eyewear, but sold back 483 which makes no commercial sense. Miss Booth in her observations supplied to the Tribunal under the “Unless Order” suggests that much of the equipment was second hand. It is noted that the invoices in that regard amounted to £76,990 which seems even more excessive, not only for a small business, but also if much of the equipment was second hand and therefore should have been a significantly less costly purchase as opposed to purchasing new goods.

12. Miss Booth has produced a statement which shows that as at 03/14 she believes that Colour Blast is owed by way of repayment £70,824.98. In an email dated 6 June 2012 to Mr Goble, Mr Booth stated:

“Throughout 2011, Savoy Eyewear Limited submitted all its VAT returns on time – on two of which we were owed repayments. Both periods were inspected, bank records were provided and full payment details of input invoices have been provided. Despite this, Mr Godley has kept his threat to make sure that no repayments will ever be made to us stating that the company’s VAT returns are under special investigation. This has now been the case for over a year.

We ask you to intervene and make arrangement for payment or to reduce our repayment to nil so that we can appeal the decision. Mr Godley’s tactic that it is under special investigation can go on for ever” [We note that this matter is before the Tribunal and that the Notice of Appeal was filed by Mr Booth on 14 September 2012 three months after the email.]

13. Reference has again been made to Mr Booth’s loan account. Miss Booth has advised that payments had been made through the Colour Blast’s bank for £18,000.00 worth of supplies. Miss Booth had been advised by her bank manager to ensure that smaller, regular amounts passed through the company bank account as this would be viewed favorably. This gave rise to this method of payment. With only £18,000.00 worth of supplies paid for, then only the VAT of £3,600.00 could be claimed. Colour Blast Limited continues to provide legal work in the Tribunal TC/2013/00505 and 00506 for the joined cases of Andrew Booth T/A Optik Service and Savoy Eyewear Limited.

14. Mr Taylor has produced the accounts for Savoy Eyewear made up to 31 July 2010. They reveal a turnover of £114,375 with cost of sales of £112,948. The company only had £3,761 in the bank at the start of the year so it is unclear how the sock was financed. The company had a negative net worth of (-£2,048). The transactions with Savoy Eyewear and Colour Blast make no commercial sense at all. We have no doubt that its other transactions follow the same pattern as with Colour Blast and we are satisfied that there is a tax loss arising from its failure to submit proper returns.

## **J W Eyewear Ltd**

Miss Booth is seeking a repayment of the input tax of £789.40. Miss Booth appeared before Judge Porter, on an earlier hearing, separate from this appeal, on behalf of J W Eyewear on her application to have HMRC's appeal struck out. It appeared that HMRC had applied to the High Court to have the application to wind up the company withdrawn, because the assessments had not been correctly assessed. It appeared that HMRC had not inspected the books before raising the assessments. As a result, the High Court agreed to the withdrawal and awarded costs against HMRC. When the matter came before Judge Porter he agreed that the case should be struck out and awarded costs against HMRC. A repayment of £ 59.600 was made to the company. Mr Godley accepts that there is no tax loss in relation to J W Eyewear Ltd.

## **15 J W Imports Ltd**

1. Mr Godley confirmed that J W Imports charged Colour Blast £169 on 22 June 2012, which amount has been declared in the 07/12 liability for £4,134.74 it has not been paid to HMRC. The return has not been verified as Mr Booth cancelled the proposed visit to the company by an email dated 7 January 2013 on the basis that the case was now before the Tribunal and any further enquiries need to be dealt with through the Tribunal.

2. Mr Robinson was a director of the company from 21/5/2010 to 28/10/11 when Mr Booth was appointed a director. During the time that Mr Robinson operated the company he claimed a repayment of £72,402.38 for the period to 04/10. Mr Robinson had been interviewed on 12 December 2011 by Mr Godley and Mr Taylor and he had said that he had no recollection of stock purchases amounting to £442,671. He said that he never saw the stock or records and no books were ever held by him. He had nowhere to store stock of this level. In his witness statement Mr Booth took exception to the details of this interview. He indicated that he did not believe that the interview had been properly recorded. He said that he was familiar with Mr Godley's and Mr Taylor's tactics and that he had had cause himself to nearly come to blows with Mr Godley. Mr Godley refused the repayment on the basis that he had received no books or bank accounts and he could not therefore verify the transactions.

3. Mr Godley noted that Miss Booth had raised invoices for Colour Blast's retainer and its tax and corporation work. She had been appointed the company's agent from 30 December 2012 so that she would have known that the £169 reclaimed as input tax by Colour Blast had not been paid by J W Imports. Miss Booth explained that the company had been unable to pay this amount as HMRC had threatened to put it into liquidation. Mr Booth suggested that as HMRC are no longer entitled to preference in the event of a liquidation he could not have paid the outstanding amount without being at

risk for making the payment. We note, however, that he had no such concerns when he arranged for the contra payments with Colour Blast.

5 4. The accounts for the company to 31 October 2010 reveal a gross profit of  
£131,692 but no expenses or administration costs. It had no cash at the bank,  
debtors of £456,798 and creditors of £319,106. If its debtors paid in full by  
February and it paid off its creditors it would have had £137,692 available to  
purchase goods worth £442,671 in the quarter to March 2010 to substantiate  
10 the VAT repayment claim of £72,402. It is unclear how it could have  
generated a further £300,000 of cash and turnover in the period given that its  
turnover in the year to October 2010 had only been £202,603.

15 5. Miss Booth has advised that HMRC have disallowed the purchases from  
Runcival Ltd, Pier 77 Ltd, and Horizon Concepts Ltd so that credit notes  
would have to be issued to those companies creating a bad debt relief claim  
in J W Imports. This case is to be heard after the decision in this case, but on  
the evidence before us, and not least the financial status of the company, we  
believe, on the balance of probabilities, that there is a tax loss in J W Import.

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### **Daytona Surf Ltd**

25 1. Mr Godley stated that although Mr Booth is a director of this company it  
had not been issued with a VAT return since 04/12 as HMRC were not  
prepared to accept a 'care of' address. In his witness statement Mr Booth  
stated that Mr Godley was well aware of the company's address and that he  
should have submitted returns to it. Mr Godley stated that Daytona was  
supplied with the appropriate form, but had not returned it. It had not therefore  
30 been able to declare the £469.80 charged to Colour Blast. Miss Booth has, as  
with all the other companies, been nominated as its agent and started from 30  
March 2012. Mr Godley advised that the company's current outstanding debt  
is £10,626.88

35 2. Mr Booth, in cross-examination, confirmed that Daytona had been unable  
to access its VAT account and in an email dated 17 October 2012 the company  
had advised Mr Godley that it had been unable to get on line. Despite a request  
for a paper return, Mr Godley had not provided one. When Daytona eventually  
got on line it revealed that £5,689.64 was due to HMRC. Mr Booth had said  
that he could not obtain a paper copy. The Tribunal had expressed surprise that  
40 he had not merely drafted one himself and at least sent the details and  
£5,689.64 to HMRC.

45 3. Miss Booth, in cross-examination, also stated that Daytona had been due  
a repayment of £2,462 because it had corrected an earlier claim and moved it  
to a later period as evidenced by the Notification of the Error provided to the  
Tribunal. A further Notification of Error had been served requesting £10,628

as HMRC had not allowed J W Import to process credits it believed were due to it. In her report she refers to a repayment claim of £14,932.

5 4. Contrary to Mr Godley's suggestion that set offs were never given, Miss Booth said that Mr Kennedy set off the £6,887.80 of interest and penalties due from Daytona against this repayment, but she has produced no evidence of that agreement. She also stated that Daytona was still due a repayment of £22,050.03. She has produced a statement from 01/08 to 05/12 revealing this refund as a running total. She has not produced any of the documentation to justify that it is correct. We have decided that there is a tax loss of at least 10 £10,626.88 arising in this company.

**Andrew Booth (t/a Optic Services)** (Currently the subject of an appeal by the company dated 14 September 2012)

15 1. Miss Booth has conceded that input tax is not due in relation to the invoice received from Andrew Booth on 29 June 2012 in the sum of £1,484. Miss Booth has supplied an internal calculation produced in her report, which reveals that Mr Booth considers that £149,361.16 is due to the business. This is 20 made up on the list of those VAT payments that the business should have paid less those repayments which the business has not, as yet, received. A VAT repayment of £53,058 was determined by the Tax Tribunal together with costs, but no payments have been paid to the company.

25 2. This matter also came before Judge Porter. It transpired that although HMRC had agreed that the amount was to be paid it was in fact paid to Mr Booth's Trustee in bankruptcy. Judge Porter had expressed concern as to why the payment had not been made to the company as Mr Booth's bankruptcy had ceased. Judge Porter has received no further explanation in that regard other 30 than that the solicitors for the trustee in Bankruptcy had indicated that the payment had been correctly made to the Trustee in Bankruptcy. The penalty of £64,000 was also removed.

35 64. Mr Godley concluded that the trading pattern of the companies was to secure repayment claims, followed by periods where payment returns were submitted, but never paid. Associated companies that had purchased goods derived an input tax benefit, as a result of which HMRC suffered tax losses. These tax losses have arisen either through the non-declaration of output tax or non-payment of input tax. All the defaulter companies have either Mr Booth or Mr Robinson as their directors. At 40 interview Mr Robinson advised that Mr Booth ran his companies. None of the companies have provided HMRC with comprehensive bank statements to prove the existence of genuine company funds, but have appeared to rely on a 'contra system' of payment. Several of the companies went into liquidation leaving their customers with an input tax benefit.

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## **Evidence provided by Mr Booth.**

65. Mr Booth produced a witness statement, gave evidence under oath and was cross-examined by Mr Chapman. We have read through Mr Booth's witness statement as he was cross-examined on it. Mr Chapman was concerned as to why Mr Booth had so many companies as Mr Chapman believed that Mr Booth's companies' structure was designed fraudulently to avoid VAT. Mr Godley, in his witness statement identified the following 19 companies, over and above the 15 further companies the subject of this appeal, of which Mr Booth was either the director or the controlling influence:

- Dales Optical Ltd
- Penny Black Trading Ltd
- Churchills Optical Manufacturers.
- Celtic Eyewear Ltd
- Pineapple Slice Ltd
- Lakeside Optical Ltd
- Stylottica Ltd
- Nirvana(UK) Ltd
- Abbeywear Eyewear Worsley Ltd
- Swiss Optic UK Ltd
- St Albans Optical Ltd
- AbbeyEyewear Ltd
- Swiss Optic Ltd
- Ripley Eyewear Ltd
- Elite Eyewear Ltd
- Bitz & Doins Ltd
- On-Line Eyewear Ltd
- Apple Design Enterprises Ltd
- Dales Retail Enterprises Ltd

66. In his witness statement, Mr Booth stated that he had been the managing director of many optical companies since 1990. The companies had operated in various arms of the optical trade; running both wholesale and retail optical businesses. His companies operated through the north of England and as a result had to deal with different VAT districts. It appeared that this resulted in those officers applying the VAT rules differently. Around 2005/6, because of the confusion as to the VAT rules between the Blackburn and Leeds offices, several of his companies had been placed under special investigation, although he was unaware of this at the time.

67. As a result of those requirements, several of his companies had had to provide security to continue trading. Those guarantees had been removed after 12 months successful trading. Following those investigations, Mr Kennedy, one of the officers involved, systematically refused his companies input tax and imposed massive penalties, which were subsequently withdrawn. Miss Booth had helped in drafting letters of complaint. 8 serious complaints had been made and were upheld, leading to

a refund of some £200,000 of VAT paid in 2009. Mr Booth has produced evidence of some of these complaints and we have no reason to believe that they did not occur.

68. In cross-examination Mr Booth explained that:

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"In our early days we had one company. That company grew enormously quick and we failed. The company went down because we grew too quick and after that we were advised to have several companies, some as purchasing companies, some as selling companies, and as we grew and as we grew more shops and as we  
10 grew more divisions and we sold more goods, it became definitely advantageous to run them through different companies".

He also explained that the some of the stock was exempt for VAT purposes and it was therefore very useful to be able to move the appropriate stock around so that the  
15 maximum exemption relief could be obtained.

69. In his witness statement, Mr Booth stated that in the late 1990s he operated a number of optical wholesale businesses. Some of these ran into financial difficulties because they were purchasing the frames from abroad without VAT. When the  
20 frames were sold output tax had to be paid, but the customers were not paying on time and the companies could not finance the VAT. Miss Boocock, the VAT officer at the time, suggested that the companies should use cash accounting. As a result, he adopted cash accounting for all his wholesale companies.

70. He has explained that the optical trade could be very restrictive, such that suppliers of designer frames restricted the supply of their more desirable brands to maintain exclusivity. As a result, he had combined with several of his competitors so that they could join together, buy in bulk, and then redistribute the frames between themselves. These purchases took place at several international fairs. In cross-  
25 examination Mr Chapman asked Mr Booth again why he had so many companies. Mr Booth said that they arose because of the VAT consequences, but denied that that was for fraudulent purposes.

71. Mr Booth also stated that he ran different companies because of the products they were selling. Mr Chapman asked:-  
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"Q. Now, you have all these different companies and you seem to be saying that that is simply because you choose to designate different companies for different models or different types. Is that fair?

40 A. Or a different product, yes, or a completely different item full stop.

Q. But the problem is that these companies trade with each other don't they?

A. Yes.

Q. Well, when they are trading with each other there doesn't need to be any sense of having different companies for different models because you are the one  
45 orchestrating it all when they are trading with each other, surely?

A. Yes, but within a group of companies that I deal with as well, not just me.”

Mr Booth conceded that his companies had purchased goods, sold them to other wholesalers, who in turn have sold other goods back to his companies. However, the net end user was some tens of thousands of individual retail customers, for which his companies had correctly accounted for VAT.

72. In cross-examination Mr Booth responded to the following questions in relation to the transactions with Colour Blast and Sunlight:-

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“Q Why, from a commercial perspective, do you have one company selling to another company that you control rather than just waiting for a third party to come along and then, for instance Luxol, selling straight to them rather than having to go to Sunlight first?

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A. It's better financially for us to do it that way. I can't say any more.

Q. Well, ironically that is what I am suggesting because actually what you are doing is you are creating a structure, aren't you, where these goods can move around because whenever you have Luxol, for instance, selling to Sunlight, you are creating a situation in which one company can reclaim input tax and one company has to pay output tax.

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A. Yes.

Q. That's right isn't it?

A. Yes.

Q. So, you are adding an extra layer of payments and complexity.

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A. Yes.

Q. Well, why do that when it is easier to wait for a third party to come along?

A. We don't necessarily want to do it that way.

Q. You don't necessarily want to sell to a third party?

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A. No, I'm saying that this is a question about VAT. We've offered to use cash accounting ---

Q. No, this isn't a question about VAT. This is a question as to why you are putting an extra layer of purchases and supplies.

A. And I am saying that so far as the VAT side goes, we prefer not to do it that way.

Q. I am asking you why.

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A. Because we prefer to use cash accounting on every company. Therefore, we wouldn't be in this room.

Q. Why?

A. Because you can't claim any VAT back unless you've paid your bill. That's how cash accounting works.

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Q. For instance, Luxol supply to Sunlight on 1 March 2011, so that was a point at which you were sole director of both of those companies. Mr Booth, let me be very clear about the reason for this question. Luxol sell to Sunlight on 1 March 2011. I am looking at the reason for that transaction taking place. Now, on the face of it one reason for that is because Luxol buys a large number and it needs to send some out to associated companies, cutting up the pie.

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A. Yes.

Q. When I asked you whether that was the reason, you said, "Well, not necessarily." So, can we discount that as a reason for this transaction then?

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A. Right. I would honestly say I can't remember what the reason was for that transaction at that time. That's my answer.”

This sequence of questions highlights the difficulty the Tribunal has had with Mr Booth from the beginning. He never appeared to be able to give a straight answer to a straight question without confusing the issue by introducing irrelevant observations. We remained unclear as to why Mr Booth needed to have so many  
5 companies to which we refer in the decision.

73. Under cross-examination Mr Booth confirmed that he retained most of the stocks for his various companies at one location. He confirmed that for every stock movement both with Colour Blast and Sunlight, as well as all the other companies the  
10 stock was moved around appropriately.

“Q. What actually happened to this stock physically? When you are going, to use Abbey Eyewear as an example, it is jumping through these different companies that you are connected to, does the stock actually move or does it  
15 just stay in the same warehouse?

A. No, we do tend to keep it separate. Abbey Eyewear had its own sort of retail stock area but within the same complex, because we had quite a big one, we had a totally separate stock room that held wholesale stock, as we do today.

Q So it is in the same building then?

A. No, it wasn't. It wasn't even the same building. We operated a place at Whalley Abbey, so one building was our shop, another building was where the stock, another building was the shop fittings that were kept physically separate.

Q. No, but physically what happens to the goods as soon as that deal is done?

A. It would move. It would move.

Q. From where to where?

A. Depending where. If it was held at Whalley Abbey but it was being sold to a business that operated from Walton it would have been ---

Q. But it was not though, it was being sold to Luxol.

A. Yes, but Luxol's main stock was held at Walton. So we moved it. The place where we had a Burglary is at Walton. It is a huge building and that's where we keep most of our stock. So it would be physically moved.

74. We are not convinced that Mr Booth moved the stock around to accommodate the transactions with Colour Blast, Sunlight and his other customers. On the occasion of the appeal in Andrew Booth T/A Optic Services, Mr Booth had appeared before Judge Demack, who directed that HMRC should examine the stock relating to  
40 Optic Services. HMRC had initially refused to attend to take stock as it would have tied up too many of its staff. It eventually inspect the stock and conceded that it existed and as a result the case was withdrawn. We do not accept, however, that the stock in relation to the 15 companies involved in the various transactions was physically moved around the stock room as it was sold and repurchased in these  
45 transactions. The stock was substantial as to its volume and small as to the individual items.

75. Other than as commented under the individual traders above, Mr Booth has produced no evidence as to the transactions within all his companies or any relevant VAT returns. He has relied on the fact that he has been successful in several of the complaints he has raised against HMRC and the two Tribunal hearings before Judge Porter where HMRC's cases have been struck out and costs awarded. He has also alleged that HMRC owed his companies more VAT by way of repayments and arising from the various complaints and Judgments, where payment has not been made. He was not prepared to pay HMRC monies he said was due from his companies whilst HMRC owed his companies substantial amounts.

“Q....the debts that you say HMRC owe you relate to historic debts, they do not relate to the periods for which you had to make payment? Is that correct?”

A. Yes.

Q. That is not a reason not to make payment of your output tax for those periods, is it?

A. Well, I say it is.

Q. And there was nothing from HMRC saying it was okay for you not to pay in relation to those.

A. The point being is that we had a dispute about it, and it goes back with Luxol and Lemon Ice where we had paid by set-off.

Q. So that is the only reason that you have not paid the VAT on the Luxol and Colour Blast/Sunlight deals then, is it?

A. Yes.”

76. He also alleged that HMRC had applied a right of set off against his companies in the past. Mr Booth confirmed in cross-examination that set off had been applied historically across many of his companies, where a repayment was to be made and one or more of the other companies owed VAT to HMRC. He referred us to a letter dated 7 October 2004 in which HMRC agreed to set off £13,447.17 due by way of repayment to Riplex Ltd against the security payments of £14,000 due from Riplex, Churchill Optical Manufacturers Ltd and Lemon Ice.

77. Mr Booth also referred us specifically to a letter dated 10 September 2007. The letter related to £44,058 claimed as a repayment to Lemon Ice which it suggested should be set off against input tax not paid in another company. Mr Chapman referred Mr Booth to the letter and Mr Booth conceded that the evidence of the set off arrangements were all historical and did not relate to this appeal. Mr Chapman also pointed out that the letter stated that the set off was within the same company and not between different companies. We have decided that no intercompany set offs have been applied in relation to the companies in this appeal.

78. In his witness statement, Mr Booth has commented that despite all of the work and experience that Miss Booth had gained working for his companies she did not have, and had not been involved in, any decision making process as to how the companies were run. She had no involvement in the sales and purchasing activities or as to how the companies accounted for VAT. She had no involvement in the companies banking or payment processes and was not responsible for the final

preparation of the accounts. Her role was to prepare the information in order that the final accounts could be produced.

79. He has conceded however:

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“Regarding the legal work for which her companies have make charge: Miss Booth has become very experienced and is a valuable member of my team. Miss Booth researches the law, VAT rules and assists in providing legal argument. Miss Booth helps to produce statements of case, attends witnesses, compiles statements and has attended numerous hearings.

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The statement that Miss Booth has little or no legal knowledge is, in my opinion, flawed. The fact is: Miss Booth’s clients have won every case in which she has been involved....”

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**Mr Chapman’s submissions.**

80. Mr Chapman has provided a written submission of some 34 pages the first 13 of which set out the law as he sees it. He submitted that the following issues arose for determination: The legal framework.

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- (1) Whether or not the Suppliers are fraudulent defaulters.
- (2) The Companies’ involvement.
- (3) In the light of the above, whether or not the repayment claims should have been denied.
- (4) The relevance of the date of registration.

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81. We have set out the law as we understand it at paragraphs 11 to 19 above, which appear to contain much the same argument as Mr Chapman’s submissions and we do not propose to reiterate them save as to his paragraphs 53, 54, 55, and 56:-

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53 “By contrast, the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity' are not met where tax is evaded by the taxable person himself (see *Halifax plc v Customs and Excise Comrs* (Case C-255/02) [2006] STC 919, [2006] Ch 387, para 59).

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54. As the Court has already observed, preventing tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive (see Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-5337, paragraph 76). Community Law cannot be

relied on for abusive or fraudulent ends (see, inter alia, Case C-367/96 *Kefalas and Others* [1998] ECR I-2843, paragraph 20; Case C-373/97 *Diamantis* [2000] ECR I-1705, paragraph 33; and Case C-32/03 *Fini H* [2005] ECR I-1599, paragraph 32).

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55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retrospectively (see, inter alia, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 24; Case C-110/94 *INZO* [1996] ECR I-857, paragraph 24; and *Gabalfrisa*, paragraph 46). It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends (see *Fini H*, paragraph 34).

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

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82. Mr Chapman then proceeded to submit HMRC's position with regard to Mr Booth's companies followed by his consideration of Miss Booth's transactions in this appeal. We propose to reverse the order and deal with his submissions with regard to Miss Booth's transactions first. He submitted that the links between Colour Blast and Sunlight with Mr Booth's companies were so close that, on the balance of probabilities, Colour Blast and Sunlight were active participants in the suppliers' frauds to which he alluded later. The only remaining transaction involving Sunlight was with Luxol and took place on 1 March 2011. At that time, Mr Booth was a director of Sunlight' but Miss Booth had not yet been appointed

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### **The Companies involvement.**

83. We have imported some of Mr Chapman's submissions verbatim:

"Colour Blast's direct involvement, knowledge or means of knowledge turns upon an analysis of Miss Booth's evidence. It is submitted that Colour Blast was either directly involved in the fraudulent or abusive practice, or alternatively knew or should have known about the Suppliers' fraud. The recurrent themes are: first, that Colour Blast's activities were choreographed by Mr Booth; secondly, that Colour Blast's activities lacked commercial reality; and, thirdly, that Miss Booth knew or at least was in a position to know about the Suppliers' fraud."

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84. Mr Booth's choreography of Colour Blast's activities is shown by the following:

5 “1. The context of Miss Booth’s written and oral evidence is important. Miss Booth ought to have realised throughout this appeal that she needed to explain her transactions. However, during the first tranche of hearing days it became clear that she was not in a position to do so. Miss Booth was then (rightly) given  
10 substantial assistance by the Tribunal and HMRC in order to ensure that her case was being properly put and so was given a clear explanation of the information which she needed in order to make out her case. During the second and third tranches of hearing days, it became clear that even this was not the full picture (particularly in respect of inter-company balances which had not been  
15 evidenced). It is surprising that information about Colour Blast’s finances and transactions was not easily to hand and within Miss Booth’s knowledge at the outset. It is submitted that this suggests that Miss Booth was not actually controlling Colour Blast’s role within the transactions.

2. Unusually given Colour Blast’s role as a provider of accounting and administrative services, Mr Pearson drew up Colour Blast’s accounts and VAT returns.

3. Colour Blast’s accounts show Mr Booth as a director and shareholder of Colour Blast. Despite having signed the accounts as true and correct, Miss Booth maintained in cross-examination that this was incorrect and that they  
20 must have been based upon an assumption by Mr Pearson. It is submitted that this reveals that Miss Booth was not in control of Colour Blast since she appears to have signed the accounts without even reading them.

4. Miss Booth accepted that she learnt the accountancy side of her business from Mr Booth and Mr Pearson, and that Mr Booth’s companies were the only  
25 exposure that she had had to running a business. It is submitted that this taints Colour Blast with the inherent abuses within the Suppliers’ activities as Colour Blast effectively adopts the same business model as the Suppliers.

5. Mr Booth suggested the business model to Miss Booth, including building up stock purchased from his companies and paying for them by contras. Miss  
30 Booth’s oral evidence was as follows:

35 *A. He didn’t say, “This is the way we’re going to do it”, but he has incorporated the company and he said, “You are doing all this work for me and there’s all these tribunals coming up”, and I knew that other companies were having troubles as well so I would say that I didn’t know about contra then so my dad did suggest to me that you can use the work you are doing to accrue the stock that you want.*

*Q. Right, so all this is his idea, not your idea.*

*A. It was my idea to start my business, but he suggested to me how to do it.*

6. Mr Booth was in control of the price paid for stock, which Suppliers the stock would be purchased from, what would be an appropriate charge for Colour Blast's work, and came without any negotiation or challenge by Miss Booth. Miss Booth's evidence during cross-examination was as follows:

1. *Q. It is your dad calling the shots in terms of the transactions with his companies. I am not looking at the moment about decision making in respect of Booths or in terms of what you are doing in the future. I am just looking at decision making within these transactions. In fact not just at the start but all the way through it is your father taking the decision making as to what you are going to charge him and what you are going to get in return, is it not?*

2. *A. At the outset, yes, but then obviously.*

3. *Q. When does that change then? At what point does that change so that it is you taking the decisions and not your father?*

2. *A. There isn't a set point. These tribunals, as you know, can take some years. So when it comes to doing another task down the line it's, "Well, you said it was reasonable for me to charge that earlier on," so it makes it just a natural progression. I don't feel that anything's changing.*

7. Miss Booth had no input in deciding which invoices would be included in a contra. Miss Booth's evidence was that this was controlled by Mr Pearson."

85. The lack of commercial reality in Colour Blast's activities is shown by the following:

1. Miss Booth appears simply to have accepted the bank's refusal to give her a company account. She did not use a personal account or ask her father to assist by using his account or him being a director. On being asked why not, she replied:

*Because I just I didn't. It didn't cross my mind. Find it surprising or not, I just didn't.*

2. The whole context of building up large amounts of stock lacks commercial reality. Miss Booth had no real explanation for why she needed so much stock and why she would not have been better requiring payment from Mr Booth to provide her with working capital.

3. Colour Blast charged large and arbitrary sums for work in circumstances in which the Suppliers' accounts appear to have been done by Mr Pearson. This is particularly stark in respect of Colour Blast's £2,080 annual retainer without any clear explanation of how such a retainer was justified.
- 5 4. There was no negotiation with Mr Booth about the Suppliers' charges for stock.
- 10 5. Miss Booth did not give a satisfactory answer as to why she needed to have a complex process of contras rather than just having inter-company balances which could be calculated from time to time. Instead, she simply said that she relied upon Mr Booth and Mr Pearson and, "*That's the way they'd always done things.*"
- 15 6. It is odd that the Suppliers' and Colour Blast's invoices appear to match in accommodating the contra charges. Mr Booth and Miss Booth attempt to resolve this by saying that there were surpluses created by part payments of invoices within the contras.
- 20 7. However, Miss Booth did not refer to inter-company balances in her written evidence. Indeed, it is submitted that the tenor of her various commentaries is that the contras were in full and final settlement of the balances.
- 25 8. It is noteworthy that the majority of the contras result in a surplus payment due to Colour Blast.
9. Miss Booth states that the surpluses are still owing to Colour Blast, and yet could not explain how much those surpluses are or why the surpluses were not paid for with further stock.
- 30 10. Miss Booth has amended invoices after the event, showing the artificiality of the contra process.
11. Although no longer part of the appeal, it is not clear how Colour Blast was able to enter into transactions with Mr Robinson's companies (Opal, Venetian and Urban Dog) when they were no longer trading.
86. Miss Booth's knowledge or means of knowledge is shown by the following:
- (1) Miss Booth stated as follows in the opening of this appeal:

*I say that I don't think that there is a fraud and I say that I don't think that Halifax or Kittel is relevant because there is nothing for me to know*

*about. I say that the work that I have done gives me a unique overview and I have access to more information than a director is usually privy to because I carry out this work.*

5 87. Similarly, Miss Booth accepted during cross-examination that if there had been a fraud she would have known about it.

10 *Q. All I am saying at this stage is that, if there had been a fraud going on, you would have been in a position to know about that because you would have had all the material available to you. Regardless of what conclusion you came to as to whether or not there was fraudulent activity by your father, you actually had the means of knowledge about what he was doing in 2011 and 2012, didn't you?*

15 *A. I would have said that if there was a fraud to know about, then I suppose that I could have known, but I didn't think that there was, because from the information that was being made available to me whilst I was completing the work I didn't see anything that would give me any reason to doubt that they weren't acting properly. ...*

88. Miss Booth accepted that when she first became involved in Colour Blast she was already aware that HMRC had its concerns over the way in which the Suppliers were run.

20 89. Miss Booth accepted that what her father was advising her to do was accepted in an uncritical way. Whilst this is understandable given her trust in him as her father, she ought not to have done so in her position as a company director.

90. Miss Booth stated as follows during cross-examination in respect of the accrual of stock in return for work done.

25 *A. ... It didn't seem uncommercial to me at the time. It doesn't seem uncommercial to me now. It just seems like me making the best of my situation.*

30 *Q. But, Miss Booth, this is my point, that the impact of it appearing uncommercial and bizarre that you are doing it this way is that it reveals that actually it was your father that was saying to you, "This is how we are going to do it," because –*

*A. This is how you can do it, not we. It was not his company. He wasn't a director.*

*Q. Okay, so he is giving you advice on how you can do it.*

A. Yes.

*Q. Do you question any of that advice at the time?*

*A. No, because he has run a successful business for many years and it's what's kept us going.*

5 90. Similarly, Miss Booth stated as follows when asked whether or not she accepted Mr Booth's advice uncritically about the price she should pay to Mr Booth's companies for the stock:

10 (2) *A. Because he's my dad and I don't think he's going to put me in the position where I would do anything wrong. He's looking out for me. I don't have any reason to doubt what he's telling me is the right way to do it. Because otherwise he would be on the dole and he wouldn't drive an X5 ... He has supported us for such a long time and I don't believe that he can do that by anything wrong because otherwise we wouldn't be in the privileged position that we were.*

15 **Whether or not the suppliers are fraudulent defaulters.**

91. Mr Chapman submitted that Mr Booth's evidence was not credible. He was evasive on various occasions; unable to remember any detail of how the transactions with Colour Blast and Sunlight were negotiated; criticised HMRC and focused on cash accounting; referred repeatedly to 'we' and 'our' when he was talking about  
20 Colour Blast and Sunlight suggesting that the two companies were trading as family owned companies rather than the corporate separation, which he and Miss Booth were insisting on; insisting that the 'contra' payments were a convenient way to tie off accounts to end an accounting process when in fact further monies were still owed.

92. Mr Booth's explanation as to why he needed so many companies lacked  
25 credibility or logic. This was particularly stark given that each of his companies was selling to another for a profit. Indeed, his whole structure of inter-connected companies trading with each other was overly complex, lacked any genuine commercial logic and appeared contrived.

93. Mr Booth was keen to avoid any suggestion that he was preferring HMRC over  
30 other creditors. However, the payments in kind to Miss Booth would themselves be preferences. Mr Booth said that it was a matter for him who he paid and that he paid Miss Booth because she is his daughter.

94. Mr Booth repeatedly tried to answer for his actions by saying that he had been  
35 told to do things that way by HMRC. It is submitted that there was no evidence of him being told to compile his accounts in any particular way and, in any event, this would

not change his own responsibilities. Crucially, Mr Booth controlled and choreographed the transactions with Colour Blast.

96. In relation to Mr Booth's individual companies Mr Chapman submitted:-

A. **In respect of Luxol :**

- 5                   1.     The output tax relating to the transactions with the Companies was not declared on any of Luxol's VAT returns, including 05/11.
2.     Luxol has not paid any VAT liability declared to HMRC since 08/08 and last declared any trading on their 11/09 VAT return before then submitting 7 consecutive nil returns.
- 10                  3.     The debt since 05/09 includes default surcharges of £3,752.21
4.     HMRC successfully petitioned for Luxol's winding up as a result of this debt. The winding up order was made on 26 March 2012.
5.     Mr Booth did not give any explanation for the nil returns.
- 15                  6.     Mr Booth said that he did not pay HMRC, because he did not want to be liable for a preference. This was not relevant as a petition had not been presented. In any event, he did not inform HMRC about this, did not investigate the potential for a validation order and was content to prefer Miss Booth over HMRC and other creditors.
- 20                  7.     Mr Booth also argued that HMRC owed Luxol more money than Luxol owed HMRC (in fact, this was the sole reason referred to in his written evidence, begging the question as to why in cross-examination he focused only on the winding up petition until this was pointed out). However, he accepted that this did not relate to 05/11. As such, it is submitted that this would be irrelevant even if made out.

25                  B. **In respect of Lemon Ice:**

1.     The output tax relating to the transactions with the Companies was not declared on any of Lemon Ice's VAT returns, including 03/11 and 06/12
2.     Lemon Ice has not declared any income or sales since 06/07.
- 30                  3.     Lemon Ice has submitted 7 nil returns since 06/07 and failed to submit 16 VAT returns.

4. Lemon Ice accrued an unpaid debt to HMRC of £89,336.18 prior to liquidation on 29 October 2012.

5. Mr Booth's evidence in cross-examination was that the non-payment was because HMRC owed Snob more than Lemon Ice owed HMRC. It is submitted that even if correct this would not justify non-payment by Lemon Ice.

**C. In respect of Business 4 All:**

1. Business declared the output tax on its transaction with Colour Blast on its 07/12 return in the sum of £801.20. This has not been paid.

2. Business' current debt to HMRC is in the sum of £102,178.29. This includes assessments under section 26A of the Value Added Tax Act 1994 as there is no evidence that the supplies have been paid for within six months.

3. Business has consistently defaulted on all payment returns after securing significant earlier repayments.

**D. In respect of Snob Eyewear:**

1. Snob declared the output tax on its transaction with Colour Blast on its 07/12 return in the sum of £5,952.37. This has not been paid.

2. Snob's current debt to HMRC is in the sum of £146,438.50. Again this includes assessments pursuant to section 26A of the Value Added Tax Act 1994.

**E. In respect of MCM Capital:**

1. MCM has not declared the output tax on its transaction with Colour Blast.

2. MCM's long period 09/12 return was submitted as a nil return.

3. Mr Booth maintained that it could not put in a return. However, this is inconsistent with the existence of the nil return.

4. In any event, Mr Booth could still have put in a hard copy return, paid the amount he calculated as owing or alternatively written to HMRC explaining his predicament.

**F. In respect of Style Factory:**

1. The output tax of £860.60 charged to Colour Blast has been declared but has not been paid.

2. Style's current debt to HMRC is £76,465.98.

5 3. Since registration on 19 October 2007, Style has submitted 21 VAT returns reclaiming payments of £80,731.40. However, payment declarations have been made on only six returns in the sum of £22,289.63

10 4. Mr Booth maintains that the non-payment was because HMRC owed Style more than Style owed HMRC. Again, this assertion is not evidenced and is in any event irrelevant, because it could only relate to different periods.

**G. In respect of KD Optical:**

15 1. Returns since 03/11 have either not been submitted or are nil returns. As such, the output tax in respect of Colour Blast has not been declared or paid.

2. KD's trading performance is implausible and is not supported by records.

3. Since registration on 1 August 2007, KD has incurred expenditure of £657,740 and yet generated only £22,964 in sales.

20 **H. In respect of Savoy Eyewear:**

1. Tax losses have been traced to Savoy's input tax chains as set out in paragraphs 65 to 79 of Mr Godley's first witness statement.

2. In particular, Mr Godley states as follows at paragraph 74:

25 74. The picture is therefore very clear. A group of companies all controlled by Andrew Booth trade wholesale commercial stock between each other. The purchasing companies reclaim input tax on an invoice basis whilst the supplying companies stall on paying liabilities due to HMRC. Eventually, companies such as Lemon Ice Ltd and Luxol Ltd go into liquidation whilst other customers derive  
30 an input tax benefit.

3. The denial of Savoy's input tax chains means that the output tax declarations made by Savoy in respect of sales made to Colour Blast are payable. However, they have not been paid.

5 4. Mr Booth maintains that the non-payment was because HMRC owed Savoy more than Savoy owed HMRC. Again, this assertion is not evidenced and is in any event irrelevant because it could only relate to different periods.

I. **In respect of JW Imports:**

10 1. Imports declared the output tax on its transaction with Colour Blast on its 07/12 VAT return in the sum of £169.

2. This sum has not been paid. The total liability under the 07/12 VAT return was £4,134.74.

15 3. Notwithstanding a claim for a repayment of £72,402.38 on the 04/10 return, Mr Robinson informed Mr Godley that he had no recollection of stock purchases in 04/10 in the sum of £442,671, that Mr Pearson and Mr Booth dealt with "the books" and that there was nowhere to store such a level of stock.

20 4. Mr Booth maintained that the non-payment was as a result of a winding up petition. However, there is no evidence as to when the petition was presented and why he did not inform HMRC of his reason for not paying. Again, if this was really the reason for non-payment then Mr Booth would have no justification for paying Colour Blast by way of contra.

J. **In respect of Daytona:**

25 1. Daytona has not been issued with any VAT returns since 04/12 as HMRC has refused to accept the "care of" address provided.

2. As such, Daytona has not declared its transaction with Colour Blast.

3. Daytona has an outstanding debt to HMRC in the sum of £10,626.88 in respect of its 10/10 liability.

30 K **In respect of Mr Booth t/a Optic Services:**

1. Mr Booth accepted that the output tax had been declared, but not paid.

2. Mr Booth maintains that the non-payment was because HMRC owed him more than he owed HMRC. Again, he accepted that this related to different periods. As such, it is irrelevant.

**L JW Eyewear:**

5 Mr Robinson was questioned once again on the appointment of Andrew Booth as company Director. He was asked to explain how agreement was reached within the company to appoint Mr Booth. Mr Robinson explained that Mr Booth had telephoned him to say he was taking over

10 97. Mr Chapman submitted that the evidence in relation to all the companies makes it more likely than not that Mr Robinson's explanation of Mr Booth's activities in general is correct (albeit that Mr Robinson was dealing with other transactions, did not give evidence and Mr Booth strongly disagreed with it in cross-examination)

a. A visit report setting out Mr Robinson's position dated 2 February 2011 states, *inter alia*, as follows:

15 "Robinson also stated that he knew that these transactions were part of a scheme to cheat HMRC out of VAT. Booth had told him that the goods would be traded between many different companies who would all make repayment claims and there was nothing HMRC could do about it."

20 b. A further visit report dated 12 December 2011 states, *inter alia*, as follows:

25 "He stated that much of the stock was old "cheap tat" not worth £1.00 a frame. ... Booth apparently has high levels of this cheap stock which is moved around between companies at inflated values....."

Robinson repeated his claims that a 66k VAT repayment received by Urban Dog was received direct into Andrew Booths [sic] personal account. Robinson never saw a penny of this, which resulted in his Great Harwood shop having to close."

30 **Denial of the Repayment Claims:**

98. Mr Chapman submitted that HMRC are entitled to deny the repayment claims as fraudulent or abusive practices for the following reasons:

1. As set out above, the Suppliers and the Companies were actively involved in fraud.
  2. Fraud is contrary to the provisions of the Sixth Directive.
  3. Crucially, the fraud or abusive practice is the scheme whereby the Companies trade with Suppliers who will evade VAT by either not declaring the output tax or declaring the output tax and not paying it, whilst the Companies seek a repayment for input tax on the same transactions.
  4. The tax advantage is an essential aim of the transactions.
99. Similarly, it is submitted that HMRC are entitled to deny the repayment claims upon the *Kittel* principle for the following reasons:
1. As set out above, the Suppliers have fraudulently evaded VAT.
  2. The tax losses are connected to the Companies transactions as they are the output tax on those same transactions.
  3. As set out above, the Companies knew or should have known that their transactions were connected with fraudulent evasion.

**Dates of Registration:**

100. Mr Chapman submitted that Colour Blast appears to accept its registration date as 1 April 2012. Sunlight appears to object to its registration date of 25 April 2012. However, any possible alternative substantially post-dates the only transaction. In any event, whichever date of registration is taken it will not affect the basis of HMRC's denial of the repayments.

**Miss Booth's submissions.**

101. Miss Booth has provided 9 pages of written submissions. She submits that under duress of ever-increasing hardship, but conviction and belief in the companies' case, she chose to represent them before the Tribunal. She states that Colour Blast was incorporated in February 2010 whilst she was still studying at secondary school, although she had been appointed the only director and sole owner of the same. (We

note that she was born on 28 February 1993 so she would have been 16 at the time.) Colour Blast opened its first retail optician's shop in July 2012 (when she was 19) and employed a qualified optician to complete eye examinations and dispense prescription spectacles frames to the public. Prior to the opening of the retail shop, Colour Blast  
5 had supplied services to her father's companies pursuing appeals in the First-tier Tax tribunal and independent reviews.

102. She became a director of Sunlight in April 2012 .We note it has been agreed that the Sunlight transaction was carried out by her father and before she became involved. She submitted that Colour Blast and Sunlight entered into their transactions  
10 in good faith and on a commercial basis. She submitted that the transactions were legal and valid.

103. It is her understanding that abusive practice can only be found to exist when the only reasonable explanation for entering into the transactions was to deceive and to gain a tax advantage. The *Kittel* principle and, in particular, the ability to have  
15 knowledge of fraudulent and abusive practices was examined in the court of Appeal in *Moblix*. In paragraph 55 of the judgment, Judge Moses LJ stated as follows:-

20 "55. 'If HMRC was right and it was sufficient to show that the trader should have known that his purchase was connected with fraud, the principle of legal certainty would, in my view, be infringed. A trader who knows or could have known no more than that there was a risk of fraud will find it difficult to gauge the extent of the risk; nor will he be able to foresee whether the circumstances are such that it will be asserted against him that this risk of fraud was so great that he should not have entered into the transaction. In short, he will not be in a position to know before he enters into the  
25 transactions that, if he does so, he will not be entitled to deduct input VAT. The principle of legal certainty will be infringed.'

and at paragraph 56 he said:

30 56. A trader who should have known that he was running the risk that by his purchase he might be taking part in a transaction connected with fraudulent evasion of VAT cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in *Kittel*, nor is it  
35 the language it used. In those circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase

5 he was taking part in such a transaction, as the Chancellor concluded in his judgment in BSG :- “The relevant knowledge is that BSG ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough”.’

104. She submits that it is not enough to say that Colour Blast and Sunlight should have been worried that the transactions they were entering into might involve fraud and on that basis they should have shied away. HMRC have to prove that there was fraud and that Colour Blast and Sunlight either knew of that fraud or ought to have done so. The burden of proof with regard to the fraud lies with HMRC. We have confirmed that to be the position under our interpretation of the law at paragraph 18 above.

105. Miss Booth submits that the standard of proof as argued in *Halifax* is not necessarily on the balance of probabilities at paragraph 75:-

75. ‘Secondly, it must also be apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain a tax advantage. As the Advocate general observed in para 89 of his opinion, the prohibition of abuse is not relevant where the economic activity carried out may have some explanation other than their mere attainment of tax advantages’

On this basis she submits that it is suggested that there is another possible reason for the economic activity and that HMRC are suggesting that it is more likely than not that the transactions were fraudulent and abusive.

106. Miss Booth accepted that the Tribunal could look at all the surrounding circumstances and referred to paragraph 82 of Judge Moses LJ’s diction in *Moblix*:

“82. But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. As I indicated in relation to the BSG appeal, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transaction take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger is focusing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.”

Judge Moses is placing weight upon the importance of fraudulent and abusive practice being “the only reasonable explanation”.

107. Miss Booth has supplied the narrative in the two volumes produced under the ‘Unless Order’ in so far as they related to the supplier default and she referred us to that narrative, which we have included in the evidence under each of the supplier companies’ transactions. Although Mr Godley, expressing his opinion, spoke at great length about monies owed with regard to historical VAT returns, those matters were outside the scope of the Tribunal. It is important to note that Mr Godley made assertions supported by internal notes but he did not provide hard copies of any VAT returns in spite of the fact that he was in possession of them. Numerous numerical errors were highlighted during the course of his evidence and Miss Booth submits that these various documents should not be relied on.

108. It has been suggested that where Mr Booth had been unable to submit an appropriate VAT return, he should have put in a hard copy and paid the VAT or written to HMRC to explain the difficulty. In fact Mr Booth produced evidence to the effect that he had written to Mr Godley explaining his difficulties, who had chosen not to assist. Mr Godley had accepted, when the proposition was put to him in cross-examination, that Colour Blast and Sunlight may have had commercial reasons for purchasing the goods. Miss Booth submitted that this confirmed that there was another reason other than any fraud as to why the transactions took place.

109. Mr Godley also acknowledged that Colour Blast and Sunlight had provided assistance in relation to Tribunal matters not least in relation to the success of Andrew Booth t/a Optic Services and J W Eyewear Ltd in their appeals. Those two companies had clearly obtained a benefit from the work that Miss Booth had done with Colour Blast and Sunlight, which was other than a tax advantage. To use the observation in *Halifax* “As the Advocate general observed in para 89 of his opinion, the prohibition of abuse is not relevant where the economic activity carried out may have some explanation other than there mere attainment of tax advantages”.

### **Colour Blast’s and Sunlight’s knowledge of fraud.**

110. Miss Booth submitted that she had provided evidence in her two volumes in relation to the transactions (other than the Supplier Default). She did not believe that either of the companies, nor the supplier companies, acted fraudulently or with the intent to deceive. Referring directly to the submissions:

- a) Firstly, and most crucially, Miss Booth does not believe that her father would place her in the position where she had done anything wrong. Miss Booth felt assured that her father wanted to help her set up in business with goodwill.
- b) Secondly, the Supplier Companies had been in business for many years; some of them operating (or having operated) retail stores that completed

sight test examinations and sold spectacle frames to thousands of individual patients. Miss Booth witnessed day to day honest running of a business. Colour Blast provided leafleting work for Snob Eyewear Limited. This is a marketing activity to attempt to increase footfall and, hence, drive sales. There is no question as to the commercial benefit

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c) Many of these companies, having felt aggrieved by the treatment received from HMRC, sought intervention from the Complaints team. Miss Booth has typed dictated letters to the Complaints team, which resulted in thorough inspections. As a result, thousands of pounds were repaid to many of the Supplier companies. Miss Booth felt further assured by the findings that the companies had acted properly.

10

d) Miss Booth had also helped to collate information for the attention of independent reviewing officers. Again, the reviewing officer found in favour of the Supplier Companies and monies were to be repaid. This instils further confidence, and demonstrates that there was commercial reason for the purchase of services in this regard from Colour Blast limited – the work resulted in a successful outcome.

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111. Of every tribunal action that Colour Blast provided work for each one has been won with costs awarded due to the unreasonable behaviour of HMRC. This demonstrates that there was commercial reason for the purchase of services in this regard from Colour Blast Limited – the work was done and resulted in a successful outcome.

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112. Colour Blast and Sunlight had charged for work done, raising an invoice, after the event. She maintains that she was told to amend these invoices, but Mr Taylor has denied that. Miss Booth submitted that it was her understanding that she had to amend the invoices and that Mr Taylor had stated that she should not submit Voluntary Declarations. She has asked the Tribunal to realise that she entered into the transactions in the way that she did:-

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*“Because he’s my dad and I don’t think he’s going to put me in the position where I would do anything wrong. He’s looking out for me. I don’t have any reason to doubt what he’s telling me is the right way to do it... “*

35 113. Miss Booth has concluded as follows:-

- On both sides of the transactions, there was a commercial benefit. The Appellants acquired stock, equipment and shop fittings for their retail store, which they utilized and the Supplier Companies received help and services that helped them to achieve positive outcomes.

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• Miss Booth did not set out to deceive. Miss Booth was at the outset of her working life and simply took the opportunity to acquire what she felt was needed to open her shop.

5 • Miss Booth acknowledges that she did look to her father for direction, because he had a wealth of experience within the optical trade. Moving forward, this was a feature that made her attractive to business contacts, because she had guidance and so was not simply a ‘start up’.

10 • Having seen her father’s companies examined many times by HMRC, only for monies to be found to be due, gave Miss Booth confidence that Mr Booth was acting correctly.

15 • Miss Booth now finds herself in the same position. She feels that she tried her best to be cooperative with HMRC. She looked to her VAT officer, Mr. Taylor, for guidance and followed his instruction only, now, for HMRC to deny that he ever gave such instruction, list the fact she had changed invoices to be evidence of artificiality and accuse her Companies as being active participants in a fraud.

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25 • This case is in its second year. It has been a great hardship for the Companies to pursue this case, particularly being self-represented. Miss Booth, as a result, has felt that this Tribunal has leaked into all aspects of her life and soured her business. Her relationship with her father has been deeply affected; so much so she now no longer lives at home.

30 114. Whilst this is not relevant to the transactions, Miss Booth asks the Tribunal to understand that this is demonstrative of the strength of Miss Booth’s belief; belief that her Companies are being wrongly accused and that her father and his Companies are being painted to be something that she profoundly believes they are not.

### **The Decision.**

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115. We have considered the law and the evidence and we dismiss the appeals. As to the law, it is necessary to consider whether Colour Blast, Sunlight and Mr Booth’s companies have met the objective criteria to enable Colour Blast and Sunlight to claim the repayment. We have decided that they have not.

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“...the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity' are not met where tax is evaded by the taxable person himself. (See *Halifax*).”

45 Miss Booth is incorrect in relation to the standard of proof, which has been established in VAT fraud tribunal cases to be on the balance of probabilities, although

it is accepted that the evidence to establish the fraud needs to be cogent, which we consider it is.

116. We have had considerable difficulty dealing with the evidence in this case,  
5 because of the Companies lack of professional representation. We failed to understand why Mr Booth had not instructed counsel to act on behalf of his daughter. He indicated that with the several cases he had in the Tribunal it was not financially feasible to do so. From the evidence in this appeal alone, it would appear that his companies have had in excess of £250,000 in repayments since 2010. Miss Booth  
10 also indicated in her evidence that the family had a comfortably lifestyle.

117. Miss Booth has provided evidence to the best of her ability, but her recurring ill-health has resulted in the case having to be adjourned. In relation to the ‘Unless Order’ she has shown a substantial understanding of quite complex legal argument  
15 and denied having had any assistance. Judge Porter asked her to prepare a list of the questions she wished to put to the witnesses, which she has done, although many of those questions were never asked as the examination did not give rise to the need to use them all.

118. We suspect that Mr Godley has dealt with Mr Booth aggressively during his investigations not least because he believed that Mr Booth was fraudulent. Signs of that irritation occurred during his evidence together with occasional sarcastic remarks. We have some sympathy with him, as we found Mr Booth’s evidence to be  
20 unsatisfactory. He seldom answered the questions put to him and frequently went off at a tangent on an unrelated matter possibly to confuse the Tribunal.  
25

119. Miss Booth in opening, told us the position with Booths:-

30 “In October 2012 I’m in Garstang, which is a small market town near where I live, and see that the Booths supermarket has office space to let. So I made contact with Booths’ letting agent and we agreed to meet in the October. Cutting a long story short, because I know you’ve been wondering what the relevance is, I’m the envy of the optical trade. I’m a 20 year old who’s come out of school and has managed to, I don’t know, say gain the ear of Mr  
35 Booth.”

120. It transpires that Jessica Booth t/a Jessica Booth Eyewear and not Colour Blast had agreed terms for the lease of a unit in a Booths’ store. It is unclear how Colour Blast has been involved save that we were led to understand that Jessica Booth  
40 Eyewear became Colour Blast. No evidence has been given as to any agreement with Booths for her to be involved in any other stores. We have been told that Mr Booth has been involved in the negotiations and that if Booths wanted an upfront payment for even 6 months of the rent Miss Booth could not have funded it.

121. We are satisfied from the evidence, and the oral evidence given by Miss Booth, that Booths would not have granted a lease of the premises to a business run by an  
45 impecunious 19 year old girl unless there was support from Mr Booth and that he

could provide a down payment of 12 months' rent in advance. As Mr Booth had been involved in all the negotiations, we are satisfied that he was fundamentally involved in the proposals and, that as he was a shareholder in and a director of Colour Blast, the deal with Booths was with him not Miss Booth. Miss Booth has told us that she had no funding when she started her business and as a consequence she was wholly unable to enter into such an agreement alone.

122. In her opening Miss Booth also told us in relation to the shop at 2 Church Street:-

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“...it stood out to me as a good place to start, to dip my toe in the water, because the rates were reasonable, the rent was more manageable, I'd seen it being operated as an optician before, I was familiar with the area and the age demographic of the people round there and I thought that it would suit my business, so I took it.”

15

At that time she had not finished her 'A levels' and had decided at 18/19 years old to start in the Optician Business having left school in March 2011. In those circumstances we would have expected Mr Booth to help her set up her business, provide some finance and, once she had the shop, provide sufficient frames and equipment to enable her to start trading. That is not what happened. Miss Booth told us that she had started purchasing frames and trading before she acquired the shop so that she would have sufficient frames and equipment when she found a shop. As we have seen, she had purchased at least 10,624 spectacle frames from some 15 companies and sold back 5975 leaving her with 4651. (See paragraph 60 above). We do not know how many frames a small opticians might need but we would imagine 1000 would be excessive.

123. It is clear from the evidence that all the transactions entered into with Colour Blast and Sunlight were contrived and either with Mr Booth personally as in the case of the only transaction with Sunlight or under his orchestration:

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- Colour Blast's total purchases in the period were £336,870.04 with sales of £307,766.51. We do not believe that an 18 year old, who only left school in March 2011, and who started trading in August 2012 from a small shop in Great Harwood until October 2012, when the flooding became too bad to continue, could have achieved that level of turnover in the short period in which it had been trading.
- Miss Booth told us that she had started buying and selling from her father's companies before she acquired the shop. The goods she dealt in must have been retained by Mr Booth and we have decided that he did not move the stock around to accommodate his daughter's transactions.
- Miss Booth told us that her father fixed both the purchase and selling prices and told her what she needed to buy. In those circumstances we are satisfied that Mr Booth was the controlling mind behind the transactions.
- No meaningful bank account details have been supplied for Colour Blast. Given the level of the turnover there must have been a bank account.

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- 5
- We took an entirely random selection of 7 of the transactions. It was unusual that the two groups of invoices for Business 4 all and MCM Capital were identical as to the amount charged and the description of the work was entirely different. As these were ostensibly two entirely separate businesses this could only happen if the transactions were contrived.
- 10
- Two of the groups of invoices, Savoy Eyewear and Lemon Ice, related to the supply of furnishings and equipment at a cost of £67,890. Urban Dog had supplied two Auto Lens meters for a further £7,200. Miss Booth had told us that 2 Church Street had been an optician's and that the Optician had left behind testing kit and her optician's chair. We have also been told that some of the equipment was second hand. The equipment supplied through Mr Booth's companies included 4 desks, 3 tables of assorted sizes, 11 filing cabinets, 6 steel carousels and 2 sets of drawers, all of which cost £75,090 and would, we suggest, have kitted out a substantial Optician's unit.
- 15
- Miss Booth cannot say that the equipment was purchased in anticipation of the unit with Booths as she had not been involved with that unit until December 2012. Her email to Mr Taylor of 4 December 2012 indicated that the stock would be supplied by Sunlight and after that date.
- 20
- Luxol charged Colour Blast £36,000 for "Staff and service charges, accountancy charges and travel expense charges" on 1 January 2012 seven months before Miss Booth opened 2 Church Street. The charges were for the periods 2010, 2011 and 2012 at the beginning of which she was at school. In any event she had no money out of which she could pay for the services.
- 25
- Colour Blast has charged all the companies a retainer of £2080 and Luxol on 25 March 2012 £6000 for preparation of company accounts and corporation tax returns for the years 2006, 2007 and 2008 in spite of the fact that Luxol went into liquidation on 26 March 2012, the next day. Mr Taylor has produced accounts to show that Luxol filed dormant accounts for the years 2009 and 2010 as it had not traded.
- 30
- 2 of the companies, A E W Opal and Venetian Designs had been de-registered before Colour Blast entered into business with them. As Miss Booth had raised similar charges against them for accounts etc she must have known that they were not registered.
- 35
- It was not until the hearing that Miss Booth indicated that although the contras all balance there were further sums outstanding, which still needed to be paid or collected. She has provided no information as to those balances, how they were made up and what the proposals for payment were.
- 40
- Mr Booth told us that all the stock in all the transactions was moved between the warehouse building and his home. This in spite of the fact that the purchases and sales of very large quantity of frames took place within a period of 6 months. The fact that Optic Services was able to produce details of the stock for that specific transaction in its appeal does not mean that the stock was moved for all the other transactions in this appeal. (see paragraph 129 below) It only means that, on the balance of
- 45

probabilities, Mr Booth had some stock. What quantity and value that stock might be has never been identified.

- Surprisingly, although Miss Booth took out insurance eventually in October for 2 Church Street, she does not appear to have had any cover for her business and stock.
- The only transaction with Sunlight was carried out by Mr Booth and made no commercial sense as to the timing of the transactions and the amount of money owed by Sunlight to Luxol. The Transactions with Urban Dog were even more extraordinary as Mr Booth had admitted that he knew all its stock had been removed by its Landlord and the business had closed down before the sales by Sunlight took place.

We are satisfied from the evidence and our consideration of all the above transactions that they were all contrived, with a view to giving rise to a repayment claim.

124. Miss Booth has told us that Mr Pearson prepared the accounts and that she had helped re-constitute documentation after the Burglary. She had subsequently appeared with her father at the tribunal hearings and written the complaints. Miss Booth told us that she had had no assistance with the presentation for these appeals. She had not only completed the two volumes required under the “Unless Order” but also all the bundles. At the hearing of the appeal she appeared to understand how the businesses operated. In all those circumstances, we have decided that she knew what was happening and was a party to it. As a result Colour Blast has not met the objective criteria sufficient for it to receive the repayments as she has been a party to the fraud.

125. Miss Booth has withdrawn all the repayment claims for Sunlight apart from the first transaction. Mr Booth has agreed that that transaction was carried out by him. The transaction was carried out in March 2011 some 16 months before Miss Booth could have needed the frames. We noted that Sunlight had purchased 5325 frames from Mr Booths various companies and sold back 3560 leaving a balance of 1765. The quantities of the frames are very similar to the other transactions with Colour Blast. For the transaction in question Miss Booth purchased 1211 frames from Luxol on 1 March 2011 and on 20 March 2011 sold back 567 (see paragraph 55 above). It was unnecessary for Miss Booth to acquire that many frames. It is no answer for Miss Booth to say that she was carrying out transactions earlier to have sufficient stock to start her business.

126. The transactions with Sunlight are with the same companies as Colour Blast traded with. We have considered the first transactions on 1 March 2011 with Luxol and all the transactions with Urban Dog. It would appear that Mr Booth retained all the stock at his central building. We note that the frames in the Sunlight deal, as with all the others, were different and numerous sold, in lots of 40s, 30s, 20s, 15s, 10s and single figures. Given the quantity and variety it is unrealistic to believe that Mr Booth separated them all out and moved them within the building and then returned them all to their original companies some 20 days later. We would add, where we have not been able to consider all the transactions in detail, that we suspect the remaining Sunlight transactions, not least because of the evidence with regard to Mr Booth’s

other companies to which we refer later, were similar to the transactions for Colour Blast and contrived. In *Red 12 Trading Ltd* Christopher Clarke J said at paragraph 109:-

5           “109     Examining individual transactions on their merits does not,  
however, require them to be regarded in isolation without regard to their  
attendant circumstances and context. Nor does it require the tribunal to ignore  
compelling similarities between one transaction and another or preclude the  
drawing of inferences, where appropriate, from a pattern of transactions of  
10           which the individual transaction in question forms part, as to its true nature  
e.g. that it is part of a fraudulent scheme. The character of an individual  
transaction may be discerned from material other than the bare facts of the  
transaction itself, including circumstantial and "similar fact" evidence. That is  
not to alter its character by reference to earlier or later transactions but to  
15           discern it.”

127. We are in some difficulties with regard to Mr Booth's companies and the tax losses as the evidence supplied by Mr Booth is confused. In view of the fact that several of the appeals are stayed behind this one, we have considered such of the  
20           evidence before us in some detail. In light of the cases stayed behind this decision, and even though we have found that the transactions with Colour Blast and Sunlight are contrived, we consider we need to address the allegations of the tax losses.

128. Mr Booth told us that he had formed so many companies because his first  
25           business had expanded too quickly and failed. He had been advised that he should form a number of companies so that he would not lose all his business again. He then indicated that it was clearly advantageous to run a number of companies, because some of his transactions were exempt and he could deal with the exempt transactions in the company with the least expenses to obtain a maximum benefit. We consider  
30           that if the exemptions had been used across all the companies, as they arose, then the same relief would have been obtained.

129. In cross-examination, he told us that he operated a number of wholesale  
35           companies and it was useful to have separate companies so that he could register for cash accounting in relation to his wholesale businesses. Again, he said that the optical trade was very restrictive, which had meant that he had to join with his competitors to be able to buy the more exclusive designer frames. The companies would then distribute the frames amongst each other and he said it was helpful to have several  
40           companies so that he could allocate the purchases to each.

130. Although Mr Booth gave four separate reasons why he consider running several  
45           companies it was still unclear why Mr Booth wanted so many. For our part we have decided it was to disguise the contrived nature of some of the transactions. It makes no sense to have the 34 different companies of which we know. Certainly it makes no commercial sense at all to let a 19 year old daughter trade with 15 of them, when she was just learning how to run a small business. The accounting detail alone would be self-defeating because she had no professional training or qualifications.

131. Miss Booth has given evidence that she had managed to obtain a unit with Booths, which, she believed, would result in her taking other units in all their stores. It would have made sense for Mr Booth to have companies all containing the name 'Booth'. Specsavers and Boots appear to have believed that.

132. We can only decide whether Mr Booth's companies traded fraudulent for VAT purposes on the evidence before us in this appeal. We have considered that evidence in some detail and conclude as follows:-

- **VAT returns.** Mr Booth has told us that none of these were available because either they had been retained by HMRC with regard to the current 7 appeals or HMRC had not recorded them properly on their Printout. We do not accept that. He must have retained copies of all documents sent to HMRC. We accept that there was an error on one of the Printouts, but we do not accept the numerous Printouts that we have seen were also incorrect. It is clear that the companies have either made nil returns or not made returns at all as identified by Mr Godley. The only reason for that must have been to avoid having to pay the VAT. A trader cannot withhold VAT which is due because HMRC has not agreed a repayment in another company.
- **Luxol.** As there had been nil returns HMRC had raised assessment. The company had paid no VAT liability since 08/08 and only declared any trading on its 11/09 return before submitting 7 consecutive nil returns building up a debt of £51,149. Luxol was wound up on 26 March 2012 owing £51,149 which cannot now be recovered.
- **Lemon Ice Ltd.** Mr Booth has said that he has not paid the VAT due from this company as he was owed money by HMRC for his other companies. He has confirmed that there was no formal set off arrangement in these transactions with HMRC so that his failure to pay the VAT cannot be so justified. We are not satisfied that there was ever a set off arrangement with HMRC. There was a letter on 23 October 2009 which stated:

“There is a provision whereby you may request set off between the companies if there is difficulty finding the liability. If you wish I will enquire about such arrangement.”

Mr Booth has produced no formal documentation as to whether that offer was ever taken up. Nor has he produced any other cogent evidence as to the right of set off. Lemon Ice went into liquidation on 29 October 2012. Mr Godley identified an accrued debt of £89,336.18 which cannot now be recovered due to the liquidation.

- **Business 4 All.** Miss Booth accepts that the company owes £12,987.14 VAT. Mr Godley has produced evidence to the effect that it owes £37,741.14. Given the negative position of the company in April 2010 and the lack of any evidence as to how the stocks were financed there is a tax loss in this company.

- **Snob Eyewear.** Mr Booth has said that he has not paid the outstanding VAT because he is owed money by HMRC. A trader cannot withhold VAT which is due because HMRC has not agreed a repayment in another company.
- 5     • Mr Booth has produced a hand written detail of the loan account due to Andrew Booth (Optic Services) which reveals £100,379.97 has been lent to Snob Eyewear for the period 9 January 2010 to 1 August 2010. The accounts to 30 November 2010 shows a loan balance of £26,821. There is no evidence as to how £73,558.97 has been paid off over the three months to the year end as there is no detail of payments out of the account to Mr Booth in the records. We share  
10     Mr Godley's view that Mr Booth's loan accounts amounting to £423,332 do not appear to have been underpinned with 'real money'. (See paragraph 9 above).
- Mr Taylor has produced the accounts for Snob Eyewear to 30 November 2010. They reveal a turnover of £51,738 and a negative net worth of -£61,169. Surprisingly it has £677,832 of stock and is owed £186,641 by its customers,  
15     which is extraordinary as it only turned over £51,738. Mr Godley has advised that over the 6 years since June 2006 the company had purchases of £1,714,756. The company has creditors of £901,620 and only achieved sales of £51,738. Again it is unclear how these purchases were financed as Mr Booth's loan account only appears to be £26,821. As the company was insolvent in 2010 it is  
20     difficult to see how this turnover has been achieved and how it can pay the outstanding VAT of £146,438.50.
- **M C M Capital.** Over 4 ½ years the company has not submitted a repayment return of any description. Trading appears to have followed the same patterns as before relying on contra payments with a VAT balance of £2,293 being due  
25     from the company. Mr Taylor has produced the accounts for the company as at 30 April 2010 which reveal a turnover of £8,835 and unidentified expenses of £16,000 with no administration costs. The Company had a net worth of - (£8,821) with stocks of £338,246 and creditors of £403,867. Given the level of its stock and its lack of finance it is unclear how it could continue to trade.
- 30     • **Style Factory.** We are satisfied from the evidence that £72,456.90 VAT is still outstanding. The accounts produced by Mr Taylor reveal a turnover of £245,740 for the period to 30 April 2010 but with no administration fees or expenses. As a result there was a small profit of £5,654 after deducting losses carried forward. Creditors are £617,347 and the net worth of the company is £5,754. It is unclear  
35     how the company will finance its creditors given the level of its turnover.
- **K D Optical.** As indicted in the evidence, the company has paid out £657,740 whilst only generating £22,940 of sales. The accounts produced by Mr Taylor reveal that it did not trade at all up to 30 April 2010. The company had a  
40     negative net worth of -£40,982. It is difficult to see how it could achieve that amount of purchases when it has very little cash and was potentially insolvent. Not surprisingly, the Company went into liquidation on 12 May 2013. Mr Godley had been unable to examine any bank statements so that he could not discover how the stock had been paid for. Miss Booth has said that the stock was wiped out at the time of the burglary. As we have had no details of the  
45     Burglary we are not clear what that means given that there was £277,780 of stock shown on the balance sheet to April 2010. In light of the insolvency there is no prospect of the company paying any outstanding VAT.

- **A W Opal, Venetian Designs and Urban Dog.** These companies were run by Mr Robinson, but with the assistance of Miss Booth, who has raised her standard professional charges for the accounting and tax advice for A W Opal and Venetian Designs. Mr Booth had been given authority by Mr Robinson to run Urban Dog although he withdrew his financial advice in March 2011. Mr Robinson was partially sighted and suffered from ill health. Miss Booth, Mr Booth and Mr Robinson must have known that the companies had been de-registered and that Urban Dog had ceased to trade having no stock. Having de-registered and ceased to trade none of the companies could issue or receive valid invoices. Any VAT claimed would therefore not be allowable. Urban Dog went into liquidation on 21 May 2012. We are satisfied that there has been a tax loss and that Mr Booth was fully aware of the same.
- **Savoy Eyewear.** This company's accounts follow the same pattern as the others. It had a negative net worth of -£2,048 at the end of July 2010. It had submitted repayment claims totalling £85,457.45 over five periods whilst incurring a net loss of £385,457. Its payment returns have not been paid. The company has provided an inordinate amount of equipment and appears to have purchased 23 more frames from Colour Blast than it sold. Given that the purpose of the transaction was to help Miss Booth start her retail business the sales and purchases were totally unnecessary and we have concluded that the transactions were contrived. We suspect that the company's other transactions will be equally contrived as there is no commercial reality to the ones we have seen. Mr Booth was fully aware of that as he controlled and ran the company.
- **Daytona Surf Ltd.** We have been advised that the outstanding debt is £10,626.88. In spite of knowing the VAT liability for £5,689.64 was due in October 2012 Mr Booth failed to make any payment because he could not access the VAT computer. Given the various difficulties he had been having with HMRC, we consider it would have been prudent to have made a paper payment on account. In light of the transactions we have considered, we believe that the transactions with Daytona were also contrived and rely on the decision in *Red 12*. Both Mr Booth and Miss Booth were aware of the contrivance with regard to this company.
- **J W Eyewear and Andrew Booth t/a Optic Services** were the two cases which Judge Porter dealt with which were struck out and HMRC were penalised in costs. No evidence was produced as to the facts in those cases. It appeared that HMRC had dealt with them both inadequately and it was not therefore in a position to progress them. The transactions appear to have been carried out in exactly the same way as the others with reliance placed on the contra payments to justify the lack of cash. Miss Booth has charged the same retainer and the professional fees for accountancy work she has ostensibly carried out. As decided in *Red 12* we believe that these transactions, in spite of the findings against HMRC, were also contrived.
- **J W Imports.** This is a company which had been run by Mr Robinson. We have had evidence that he had ceased to trade in three of his companies in March 2011 due to ill-health. It appears that Mr Booth had continued to run the business thereafter. The accounts produced by Mr Taylor reveal that the company was not in a financial position to trade successfully. It appears that Mr

Robinson had no knowledge of stock purchases amounting to £442,671 when interviewed in December 2011. Whilst we accept that this evidence is hearsay it appears to be consistent with Mr Booth's acknowledgement that Mr Robinson had been so unwell in March 2011 that he had ceased trading. We have no  
5 doubt that J W Imports' trading activities, once Mr Booth was involved followed the same patterns as those we have considered.

### Generally

10 133. Mr Chapman has submitted that in excess of £425,000 of VAT is owed by Mr Booth's Companies. Of the 15 companies which we have considered Luxol, Lemon Ice, K D Optical and Urban Dog have all gone into liquidation owing VAT to HMRC. It is no answer for Mr Booth to say that he is owed substantial sums of money by  
15 HMRC and he does not see why he should make any payments until he is paid.

134. Venetian Design and A W Opal had been de-registered before most of the trading took place. Miss Booth has charged nearly all the Booth's companies in excess of £100,000 by way of retainer and for corporation tax and accounting advice. On any showing this is a huge amount of money for a non-qualified 18/19 year old to  
20 charge for this kind of work. She has told us that Mr Pearson carried out the detail work and that she supplied the appropriate information. Some of the work could not have been carried out because the companies were no longer trading

135. Of the 15 Companies we have considered nearly all of them have substantial stock and creditors but very little turnover. Nearly all of them have no cash to speak  
25 of, are technically insolvent, but appear to have been able to trade. Their turnovers have been consistently substantially less than their purchases. This confirms that the trading model was designed to maximise the VAT repayments. Further, Luxol, Lemon Ice, K D Optical and Urban Dog have all gone into liquidation owing  
30 substantial VAT amounts. Venetian Design and A W Opal both were de-register although Mr Booth and Miss Booth still continued to trade with them. Business 4 All and M C M Capital have shown identical purchases from Colour Blast but in a slightly different order, which has to be contrived. The evidence has shown that  
35 £60,000 of a VAT repayment due to Urban Dog was paid into Mr Booth's personal account. Out of a totally random selection of 7 of the companies trading patterns all of them have been shown to be contrived.

136. Miss Booth has denied that any assistance has been given to her with regard to her preparation and conducting of these appeals and that she prepared accounts and  
40 supplied legal advice to the companies. In those circumstances we can only conclude in the light of the documentary evidence that she must have realised what her father was doing with the transactions between the companies and been a party to it.

137. As to Mr Booth's various companies, we suggest that they conducted their  
45 transactions in the same way as those we have considered. Mr Booth has conceded that a contra arrangement had been used. Mr Booth has effectively traded with himself all be it through separate companies. The transactions with Colour Blast and

Sunlight have all been contrived as they make no commercial sense if they were designed to assist a 18/19 year old to start her own business.

5 138. We find that the transactions between Colour Blast and Sunlight were contrived and fraudulent and that Miss Booth knew that they were. We also find that Mr Booths' 15 companies, the subject of this appeal, also carried out contrived transactions given the evidence we have heard and not least the lack of evidence as to how the various companies could have financed any of the deals

10 139. We have not been addressed as to costs, but we understood that this case has been identified as complex. If that is the case then HMRC will need to address us with regard to any claim it might wish to make relating to its costs.

15 140 . 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.

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**DAVID S PORTER  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 March 2015**

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