Neutral Citation: [2025] UKUT 00236 **(TCC)**

Case Number: UT/2024/000069
UT/2024/000082

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London, EC4

Value added tax and national insurance contributions – power to de-register a company for VAT purposes pursuant to CJEU decision in Ablessio where there was a VAT fraud – whether requirement that the directors of company must have known, or should have known, of the fraud – no – whether the pleading by HMRC about the fraud was sufficient – yes

Heard on: 20 and 23 May 2025
Judgment date: 17 July 2025

Before

MR JUSTICE RAJAH
JUDGE ANDREW SCOTT

Between

(1) ELPHYSIC LIMITED
(2) PHYARREIDON LIMITED
(3) ROSSCANA LIMITED
(4) ZRAYTUMBIAX LIMITED

Appellants/ Respondents

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents/ Appellants

Representation:

For the Appellants/ Respondents:	Mr Margolin KC and Mr MacWhannell of, and Mr Bedenham KC of counsel instructed by, Joseph Hage Aaronson LLP
For the Respondents/ Appellants:	Mr Puzey and Mr Millington, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

Introduction

1. This case concerns a decision of the First-tier Tribunal ("the FTT") in relation to the temporary labour sector and, in particular, an employment and payroll model that involves the use of employers known as "mini-umbrella companies" or "MUCs".

2. Under this model, a MUC:

> (1) employs temporary workers and deals with HMRC in relation to liabilities to tax or national insurance contributions arising from the employment;
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> (2) supplies the labour of their employees to intermediaries, who supply that labour to recruitment agencies (who then provide the workers to the end customers in need of the temporary labour);
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> (3) charges VAT to the intermediaries at the standard VAT rate of 20% but accounts to HMRC for VAT under the so-called flat-rate scheme (or the FRS): this is a simplified scheme under which taxpayers are not entitled to make deductions for input tax but instead apply a lower percentage than the standard rate to the total value of their supplies and account to HMRC for VAT at that lower rate; and
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> (4) claims an employment allowance under the National Insurance Contributions Act 2014 ("the NICS Act 2014") the effect of which is to reduce the liabilities of the MUCs to pay national insurance contributions.

3. Each of the appellants in this case – Elphysic Limited, Phyarreidon Limited, Rosscana Limited, Zraytumbiax Limited – is a MUC and each of them sought to take advantage of both the FRS and the employment allowance.

4. HMRC de-registered the appellants from VAT, issued assessments to VAT (on the basis that the appellants were not entitled to use the FRS) and denied their entitlement to use the employment allowance. HMRC considered that the appellants were part of a scheme involving over 18,000 other MUCs to defraud the public revenue of hundreds of millions of pounds.

5. Although there were separate decisions in respect of those other MUCs, HMRC's stated position in relation to them was in all material respects the same. Given the factual and legal similarities in HMRC's case against each of the MUCs, the appellants were specified as lead appellants under rule 18 of the First-tier Tribunal (Tax Chamber) (Procedure) Rules 2009. In the remainder of this judgment, we refer to the appellants (as the FTT did) as "the Lead Appellants".

6. As part of their appeals, the Lead Appellants raised concerns about the adequacy and propriety of HMRC's pleadings. In particular, the Lead Appellants were concerned that, in both HMRC's statement of case and their skeleton argument before the FTT, HMRC had used various terms (such as 'organisers') without making it clear whether those terms were intended to denote fraud or dishonesty, and, if they were being used in that way, who was alleged to fulfil these roles and by reference to what evidence.

7. In a decision of the FTT [2024] UKFTT 291 (TC), released on 27 March 2024, the FTT:

> (1) allowed the appeals of the Lead Appellants against HMRC's decisions to de-register them from VAT in reliance on the CJEU decision in Case C-527/11 *Valsts ienemumu dienests v Ablessio SIA* EU:C:2013:168 ("*Ablessio*"); but
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> (2) dismissed their appeals against HMRC's decisions to terminate their authorisations to use the FRS and deny them an entitlement to an employment allowance under the NICS Act 2014.

8. The FTT granted the Lead Appellants permission to appeal against its decision on five separate grounds:

> (1) Ground 1: the FTT erred in holding that HMRC had adequately pleaded and particularised their case that the "MUC scheme as a whole was and is itself fraudulent".
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> (2) Ground 2: in circumstances where (a) HMRC put their case on the basis that the alleged fraud had been organised/operated by named individuals, and (b) the FTT found that HMRC's pleaded case did not contain "the particularisation necessary to enable us to identify the fraudster or fraudsters behind the MUC scheme", the FTT erred in nonetheless proceeding to find that there had been a fraud in operation as part of which the Lead Appellants were being "controlled" by (unnamed) "organisers" who had not been identified as fraudsters in HMRC's pleaded case. Such a finding was (1) not open to the FTT as a matter of principle and logic, and/or (2) perverse, and/or (3) procedurally unfair.
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> (3) Ground 3: the FTT failed to give adequate reasons for its central conclusion that the "organisers of the MUC scheme must have known that the Lead Appellants were not entitled to use the FRS … and only entitled to claim EA in consequence of avoidance arrangements".
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> (4) Ground 4: the FTT's central conclusion that the "organisers of the MUC scheme must have known that the Lead Appellants were not entitled to use the FRS … and only entitled to claim EA in consequence of avoidance arrangements" was not one properly open to it.
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> (5) Ground 5: the FTT erred in concluding that a finding that the Lead Appellants were under the "control" or "dominant influence" of the "scheme organisers" was a relevant consideration in determining whether Regulation 55(L)(1)(d)(iii) of the Value Added Tax Regulations 1995 ("the 1995 Regulations") applied.

9. The FTT also granted HMRC permission to appeal against its decision concerning the principle in *Ablessio* on the ground that, despite the finding of the FTT to the contrary, HMRC were not required to prove that the directors of the MUCs knew, or should have known, that they were facilitating the organisers of the fraud.

Relevant law

10. Whether or not HMRC were entitled to de-register the Lead Appellants for the purposes of VAT turns on the meaning and application of the case law of the CJEU. It was common ground that, as a result of the provision made by the European Union (Withdrawal) Act 2018 as read

with section 42 of the Taxation (Cross-border Trade) Act 2018, the relevant CJEU case law continued to form part of the law of the United Kingdom and was, therefore, relevant to the decisions to de-register the Lead Appellants even though all of the decisions were made after the United Kingdom had left the European Union. It was also common ground that, as a result of the provision made by section 28 of the Finance Act 2024, the provision made by the Retained EU Law (Revocation and Reform) Act 2023 had not changed the position.

11. We deal with the relevant CJEU case law in the part of our decision addressing HMRC's appeal.

12. Relying on the power conferred by s.26B of the Value Added Tax Act 1994, provision has been included as Part 7A of the 1995 Regulations establishing the flat-rate scheme (or FRS). Under the FRS, a taxable person may, if authorised to do so by HMRC, elect to calculate their VAT liability by applying an "appropriate percentage" to the total value of their supplies (taxable or exempt) together with the VAT chargeable on the supplies. The "appropriate percentage" is determined by reference to the category of business carried on by the taxable person.

13. Under Regulation 55L(1)(d)(iii) of the 1995 Regulations, a taxable person is eligible to be authorised under the FRS at any time if, among other conditions, "he is not, and has not been within the past 24 months …associated with another person". And, under Regulation 55M(1)(f) of the 1995 Regulations, a person ceases to be eligible if he "becomes" associated with another person.

14. Regulation 55A(2) of the 1995 Regulations sets out how to determine whether persons are associated with each other:

> "(2) For the purposes of this Part, a person is associated with another person at any time if that other person makes supplies in the course or furtherance of a business carried on by him, and—
>
> (a) the business of one is under the dominant influence of the other, or
>
> (b) the persons are closely bound to one another by financial, economic and organisational links."

15. Section 1 of the NICS Act 2014 provides for an employment allowance, which entitles employers qualifying for the allowance to make a deduction up to the amount of the allowance from payments of national insurance contributions that they would otherwise be liable to make.

16. Section 2 of that Act sets out a number of exceptions to that entitlement, including the following provisions relevant to this appeal:

> "(10) A person cannot qualify for an employment allowance for a tax year if, apart from this subsection, the person would qualify in consequence of avoidance arrangements.
>
> (11) …
>
> (12) In subsections (10) and (11) "avoidance arrangements" means

> arrangements the main purpose, or one of the main purposes, of which is to secure that a person benefits, or benefits further, from the application of the employment allowance provisions.
>
> (13) In subsection (12) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)."

The FTT's decision

17. At the start of the part of its decision entitled "Discussion", which set out the reasoning for the decisions falling to be made in the case, the FTT summarised at [316] the position of HMRC that the Lead Appellants were part of "an organised and contrived structure with the purpose of defrauding the Revenue by claiming tax benefits (the FRS and EA) to which they were not entitled" and the "VAT numbers [of the Lead Appellants] were being used as part of that VAT fraud". At [317] the FTT noted that this was disputed by the Lead Appellants who alleged, among other things, that HMRC had not pleaded allegations of fraud with sufficient particularity.

18. In relation to HMRC's decision to de-register the Lead Appellants from VAT relying on *Ablessio*, the FTT recorded at [318] that the burden of proof was on HMRC and "no allegation of fraud or dishonesty is made against the directors of the Lead Appellants of whom, it is accepted, that they neither knew nor should have known of any alleged fraud".

19. So far as the pleading was concerned, the FTT noted at [327] the submission on behalf of HMRC that it was plain from the outset that the case was one of fraud. This was, they submitted, made clear from the first paragraph of their statement of case, which said this:

> "The Appellants in this litigation are participants in an organised and contrived structure with the purpose of defrauding the Revenue by claiming tax benefits to which they were not entitled. These tax benefits include registration for VAT, the use of the VAT Flat Rate Scheme (FRS), and the use of the Employment Allowance (EA). The Respondents estimate the tax lost from the scheme as a whole to be over £260 million."

20. The FTT then went on to record at [329] fifteen different features of the scheme set out in the statement of the case that HMRC said were relevant to the fraud. Those features included the following: (1) the scheme involved the disaggregation of labour supplies into a network of interconnected MUCs each employing a small number of workers; (2) the initial directors of the MUCs were directors in name only; (3) the directors who replaced the initial directors and who were based in the Philippines were also directors in name only, making no investment in the MUCs and exercising no practical control over the companies; (4) the scheme depended on the tax advantages obtained from the misuse of the FRS and the employment allowance: in the absence of those advantages, the scheme did not make economic sense; and (5) control over the MUCs was exercised by the organisers/facilitators of the scheme.

21. The FTT also quoted from paragraphs 111 to 120 of HMRC's statement of case, which HMRC said reinforced the clarity of their pleaded case. That run of paragraphs came under the heading "THE OPERATION OF THE MUCS – AN OVERALL SCHEME TO DEFRAUD THE REVENUE". Paragraph 111 was in these terms:

> "The Respondents assert that the MUCs were set up and controlled by the Scheme organisers as part of an orchestrated overall scheme to defraud the Revenue whether or not the directors of the MUCs themselves were aware of that fact."

22. The FTT determined the pleading issue as follows:

> "331. …Mr Margolin contends that the SOC fails to give any adequate or sufficient particulars of the acts or omissions that are said to constitute the alleged fraud, who undertook dishonest acts and the basis on which any relevant acts or knowledge is to be attributed to the Lead Appellants. We agree with him that it should not be for the Lead Appellants or the Tribunal to wade through the SOC seeking to ascertain whether an act or omission is relied upon as a basis for the allegation of fraud. Additionally, we note that neither the words "dishonest" nor "dishonestly" appears anywhere in the SOC.
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> 332. That said, the SOC does contain references to certain individuals such as Mr Funtanilla being the director of Compass Star (which had a significant degree of control in the running of the MUCs) and other individuals who, like Mr Funtanilla, attended hospitality events such as "Director's Nights" in the Philippines and are alleged to be "key players", promotors, "closely linked" to Compass Star and "central to the MUC model". However, as Officer Knowles accepted, there are no specific allegations particularised in the SOC that any individual or corporate entity is dishonest or has knowingly committed fraudulent acts.
>
> 333. As such, although we do not consider that the SOC contains the particularisation necessary to enable us to identify the fraudster or fraudsters behind the MUC scheme, we do consider that it does just enough to make it clear to the Lead Appellants that HMRC's case, the case they have to meet, is that the MUC scheme as whole was and is itself fraudulent. We also consider that the Lead Appellants were aware of the case they had to meet and that this is clear by the evidence served by them on 3 August 2023, in particular that of Mr Funtanilla who, as Mr Puzey put it, was, "at pains to address and dispute the allegation that the MUC scheme was dishonest"."

23. Having come to that conclusion, the FTT recorded at [334] that it was then necessary to consider whether the MUC scheme "involved the fraudulent use of the Lead Appellants' VAT numbers". As to which, the FTT considered that:

> "339… [The] evidence before us leads to an inevitable conclusion as to the lack of any independence or control by the directors of the Lead Appellants of "their" MUCs who, as alleged in the SOC are "directors in name only" and approve whatever is asked of them by the organisers of the fraud who clearly have a dominant influence over them.
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> 345. … Although we agree with Mr Margolin that control is not synonymous with fraud, it is clear that, without the tax advantages obtained by the FRS and EA, the MUCs were unable to make a profit, something that Mr Southern QC warned in his Opinion would undermine "their commercial credibility".
>
> 346. Therefore, having regard to all the circumstances, the organisers of the MUC scheme must have known that the Lead Appellants were not entitled to use the FRS as a result of their association with the organisers and being closely

> bound to one another by financial, economic and organisational links and only entitled to claim EA in consequence of avoidance arrangements."

24. Having made those findings, the FTT stated its conclusion in relation to the decision of HMRC to de-register the Lead Appellants from VAT:

> "347. As such, we consider that there is sound evidence giving objective grounds for concluding that the VAT numbers of the Lead Appellants were used for fraudulent purposes and, subject to whether their directors knew or should have known that this was the case (which we consider next) we find, applying *Ablessio,* that the Lead Appellants were liable to be de-registered for VAT."

25. The FTT determined whether knowledge on the part of the directors was required for the application of the *Ablessio* principle concluding that it was:

> "353. … We agree with Mr Margolin who, relying on the observations of both the Upper Tribunal and FTT in *Impact,* contends that any argument advanced by HMRC on the basis of *Ablessio* cannot succeed in the absence of any knowledge by the directors of the Lead Appellants that they were facilitating (enabling) the fraud of another, i.e. the organisers of that fraud.
>
> 354. It is quite possible that we would have reached a different conclusion if it had been pleaded and put to the directors of the Lead Appellants in cross examination that, having regard to all the circumstances, particularly in light of how they were appointed, their limited duties and responsibilities, their lack of any real decision making and their receipt of payments from Compass Star rather than the companies of which they were directors, they had either known or should have known of the fraud."

26. The FTT set out its reasoning in relation to the application of the FRS as follows:

> "358 … [H]aving found that the Lead Appellants were not independent entities but under the control or "dominant influence" of others, the scheme organisers, we do not agree with Mr Margolin that HMRC were unreasonable to take into account their association with others within the meaning of Regulations 55L and 55A(2) of the 1995 Regulations.
>
> 361. Accordingly, we find that HMRC's decision to terminate the Lead Appellants' use of the FRS, having considered it was necessary for the protection of the revenue, was reasonable as were the assessments issued in consequence of that decision. However, even if that were not the case, having concluded that the Lead Appellants were associated with another person and therefore ineligible for the FRS, we consider that it was inevitable that HMRC would have come to the same conclusion (see *John Dee Limited v C&E Commissioners*)."

27. Finally, it dealt with the issue of the entitlement to the employment allowance:

> "363. Given our conclusion that HMRC have established that the MUC scheme as a whole was fraudulent, it must follow that the Lead Appellants were only entitled to qualify for EA "in consequence of avoidance arrangements". Therefore, under s 2(10) NICA the Lead Appellants "cannot qualify" for EA and their appeals against HMRC's decisions that they were not entitled to the EA cannot succeed."

HMRC's appeal on the application of the *Ablessio* principle

Preliminary observations

28. We start with HMRC's appeal in relation to the *Ablessio* principle. We do so because that is the necessary context for the determination of the pleading issue. If, as we consider is the case, it is sufficient for HMRC to establish that there has been a fraud without a need to establish that the person being de-registered for VAT knew, or should have known, of the fraud and without having to prove that any other, identified person was fraudulent, that legal test is plainly relevant to the sufficiency of the pleading in this case. Much of the case advanced by the Lead Appellants turned on the alleged need for HMRC to show that the MUCs knew of the fraud or that some other person knew of the fraud in circumstances where the knowledge of the fraud of that other person could be attributed to the MUCs. We do not accept either of those propositions.

29. Moreover, it is only in relation to the *Ablessio* principle for which the existence of a VAT fraud is directly relevant to the legal question. By contrast, whether or not a taxpayer is entitled to use the FRS, or is entitled to use the employment allowance, does not depend on the existence of a fraud and, moreover, does not depend on the state of mind of the taxpayer concerned. The legal tests are addressed at very different matters:

> (1) in the case of the FRS, the entitlement rests on (so far as relevant to this appeal) whether or not the taxpayer using the FRS is associated with others by reference to the relationships which the taxpayer has with those others; and
>
> (2) in the case of the employment allowance, the entitlement rests on (so far as relevant to this appeal) whether there are arrangements the main purpose, or one of the main purposes, of which is to secure that a person benefits, or benefits further, from the application of the employment allowance provisions.

30. Of course, it is open to HMRC to rely (as they did in this case) on the same facts, or the same inferences from the facts, alleged to support a finding of fraud for the *Ablessio* issue to justify the decisions made in relation to the FRS and the employment allowance. But if the pleading is sufficient for the *Ablessio* issue, it would, in our view, follow that it is also sufficient for the purposes of the FRS and the employment allowance.

Relevant CJEU case law about abuse: Halifax and Kittel

31. Shortly before the hearing before us, the Court of Appeal (in a judgment given by Falk LJ with which Popplewell LJ and Moylan LJ agreed) released its decision in *Impact Contracting Solutions Limited v HMRC* [2025] EWCA Civ 623 ("*Impact*"). In that case, the Court of Appeal held, agreeing with the Upper Tribunal, that HMRC could, relying on *Ablessio*, de-register a company which had not itself fraudulently evaded VAT but had facilitated the VAT fraud of another in circumstances where the company knew, or should have known, that it was facilitating that other person's VAT fraud.

32. The FTT decided in this case that HMRC could not de-register any of the Lead Appellants, in reliance on *Ablessio*, unless, in the circumstances of this case, it was shown that the directors of the Lead Appellant concerned knew that they were facilitating (or enabling) the fraud of another, namely, the organisers of that fraud.

33. As we explain below, we consider that this is a conclusion founded on a misunderstanding of *Ablessio* and the CJEU case law on abuse. The argument to the contrary involves reading in a qualification allegedly present in *Impact* for which there is, in our opinion, no proper basis.

34. In order to understand why these errors were made, it is necessary to start with the leading CJEU decisions on abuse so far as applicable to the VAT system, namely:

> (1) the decision in *Halifax plc v Commissioners of Customs & Excise* [2006] Ch 387 ("*Halifax*"), and
>
> (2) the decision in the joined Cases C-439/04 and C-440/04 *Kittel v Belgium and Belgium v Recolta Recycling SPRL* [2006] ECR I-6161, [2008] STC 1537 ("*Kittel*").

35. The case of *Halifax* concerned a complex avoidance scheme under which Halifax plc (which mainly made exempt supplies) sought to increase the effective rate of input VAT that it could recover through the use of two subsidiaries. The Commissioners of Customs & Excise disallowed the input tax deductions claimed by those subsidiaries. The CJEU held that the right to deduct input VAT was lost where the transactions from which the right derived constituted an abusive practice. The rationale for this was set out by the CJEU at [68] to [71] of its decision:

> "68. …according to settled case law, Community law cannot be relied on for abusive or fraudulent ends ...
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> 69. The application of Community rules cannot be extended to cover abusive practices by economic operators, that is to say transactions carried out not in the context of normal commercial operations, but solely for the purpose of wrongfully obtaining advantages provided for by Community law […]
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> 70. That principle of prohibiting abusive practices also applies to the sphere of VAT.
>
> 71. Preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive..."

36. Accordingly, the CJEU held that the EU abuse-of-law principle operated in the context of the VAT system. At [76] the court said this:

> "It is for the national court to verify in accordance with the rules of evidence of national law, provided that the effectiveness of Community law is not undermined, whether action constituting such an abusive practice has taken place in the case before it."

37. The case of *Kittel* concerned the denial of deductions for input tax by the Belgian fiscal authorities. The court began its findings in that case by noting that the relevant VAT directive assigned a very wide scope to VAT ([40]) and that some of the key concepts relevant to the VAT system (such as 'supply of goods', 'economic activities' and 'taxable person') were objective in nature and applied without regard to the purpose or results of the transactions concerned ([41]). If the tax authorities were required to determine the intention of the taxable person in entering the transactions, that would undermine the common system of VAT ([42]). And that was even more so if they were required to determine the intentions of a trader other than the taxable person ([43]).

38. Accordingly, the court considered (at [52]) that the effect of Belgian law that transactions were void was not itself sufficient to displace the right to deduct input VAT. But the court then went on to consider whether there were other circumstances in which the right to deduct input VAT could be lost:

> "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…
>
> 54. As the court has already observed, preventing tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive... Community law cannot be relied on for abusive or fraudulent ends...
>
> 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 retroactively... 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…
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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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> 57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.
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> 58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.
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> 59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets 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'."

The decision in Ablessio etc

39. The case of *Ablessio* also considered the abuse-of-law principle in the context of the VAT system but this time in relation to the requirement under EU law to maintain accurate registers of taxable persons. As Falk LJ noted in *Impact*, the CJEU made its decision without the benefit of an Advocate General's opinion on the basis that the case raised no new point of law. In *Ablessio* the Latvian tax authorities had refused to register a company because they considered that it did not have the necessary financial and other resources to trade and that its shareholder had made previous applications to register undertakings in circumstances where the Latvian tax authorities considered that those undertakings did not carry on real economic activity.

40. The CJEU made at [18] to [23] a number of important, preliminary points about the VAT registration system: (1) the essential aim of identifying taxable persons was to ensure that the VAT system operated properly; (2) the allocation of a VAT number simplified the inspection of taxable persons with a view to ensuring the correct collection of VAT; (3) the VAT number was an important piece of evidence of the operations carried out; and (4) although no conditions were

placed under the relevant VAT directive in respect of the issue of VAT numbers, the discretion to issue them was not unrestricted: a refusal to register could not be made without legitimate grounds.

41. The CJEU held that the grounds relied on by the Latvian tax authorities were insufficient in themselves to constitute legitimate grounds (see [27]) but went on to explain the circumstances in which a VAT registration could be refused:

> "28. However, according to settled case-law of the Court, Member States have a legitimate interest in taking appropriate steps to protect their financial interests, and the prevention of tax evasion, avoidance and abuse is an objective recognised and encouraged by Directive 2006/112 ...
>
> 29. Furthermore, Member States are obliged to guarantee the accuracy of the entries in the register of taxable persons to ensure that the VAT system operates properly...
>
> 30. Therefore, Member States can … legitimately take measures that are necessary to prevent the misuse of identification numbers, in particular by undertakings whose activity, and consequently their status as taxable persons, is purely fictitious. However, these measures must not go beyond what is necessary for the correct collection of the tax and the prevention of evasion, and they must not systematically undermine the right to deduct VAT, and hence the neutrality of that tax…"

42. The CJEU then considered when refusing to register a person for VAT could be considered proportionate:

> "34. In order to be considered proportionate to the objective of preventing evasion, a refusal to identify a taxable person by an individual number must be based on sound evidence giving objective grounds for considering that it is probable that the VAT identification number assigned to that taxable person will be used fraudulently. Such a decision must be based on an overall assessment of all the circumstances of the case and of the evidence gathered when checking the information provided by the undertaking concerned.
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> 35. …
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> 36. In the circumstances of the case in the main proceedings, it must be noted that the fact that a taxable person is not in possession of the material, technical and financial resources to carry out the declared economic activity is not, in itself, sufficient to demonstrate that it is probable that the latter intends to commit tax evasion. However, it cannot be excluded that circumstances of this nature, corroborated by the presence of other objective elements leading to the suspicion of the taxable person's fraudulent intentions, may constitute factors that have to be taken into account as part of the overall assessment of the risk of evasion.
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> 37. ….
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> 38. It is for the referring court to examine whether, having regard to all the circumstances of the case, the tax authority has established to the requisite legal standard the existence of sound evidence from which it may be concluded that the application for registration in the register of taxable persons subject to VAT by *Ablessio* might result in the misuse of the identification number or other VAT fraud."

43. The CJEU concluded at [39] in these terms:

> "Articles 213, 214 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the tax authority of a Member State may not refuse to assign a value added tax identification number to a company solely on the ground that, in the opinion of that authority, the company does not have at its disposal the material, technical and financial resources to carry out the economic activity declared, and that the owner of the shares in that company has already obtained, on various occasions, such an identification number for companies which never carried out any real economic activity, and the shares of which were transferred immediately after obtaining the individual number, where the tax authority concerned has not established, on the basis of objective factors, that there is sound evidence leading to the suspicion that the value added tax identification number assigned will be used fraudulently. It is for the referring court to assess whether that tax authority provided serious evidence of the existence of a risk of tax evasion in the case in the main proceedings."

44. Before turning to the Court of Appeal's decision in *Impact*, we must first deal briefly with *Case C-164/24 'Cityland' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Veliko Tarnovo* ("*Cityland*"), which concerned Bulgarian legislation under which a person could be de-registered for a failure to comply with VAT obligations.

45. The CJEU considered that, for reasons set out at [46] and [47] of its decision, legislation of the kind in question was in substance a penalty and was not proportionate:

> "46. Legislation which allows the tax authorities to remove a taxable person from the VAT register without providing for an obligation on the part of those authorities to examine fully the conduct of that taxable person in order to assess whether there is a risk to tax revenue and a likelihood of VAT fraud goes beyond what is necessary for ensuring the collection of all the VAT and combating VAT fraud.
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> 47. Without such a full examination of the conduct of the taxable person at issue, it is impossible to ascertain exactly the nature and the extent of any tax fraud committed by that taxable person and, consequently, to assess whether the removal of that taxable person from the VAT register constitutes an appropriate penalty for ensuring the collection of all the VAT and combating VAT fraud."

Domestic authorities

46. The case of *Impact*, like the appeals before us, involved the use of MUCs. However, there is a critical distinction: the appellant ("ICSL") in *Impact* was an intermediary whose customers were temporary work agencies and whose suppliers were the MUCs. The issues in *Impact* were focused, therefore, on whether HMRC could deregister ICSL where it had not itself fraudulently evaded VAT but had facilitated the VAT fraud of another and whether it mattered if ISCL was making supplies unconnected to the fraud and whether a de-registration in those circumstances would breach EU principles of proportionality, fiscal neutrality or legal certainty.

47. Accordingly, the focus in *Impact* was not on the perpetrator of the VAT fraud but on those persons who could be said to be facilitating it by entering into supplies "connected" to the VAT fraud.

48. Having set out the CJEU case law authorities (most relevantly for our purposes the cases of *Halifax*, *Kittel*, *Ablessio* and *Cityland*), Falk LJ noted at [55] that, if ISCL was correct, then, even if a taxable person was party to a conspiracy to defraud the revenue, HMRC would not be able to de-register the party if the actual VAT default was committed by another party to the conspiracy. She went on to note at [56] that:

> "VAT fraud has proved to be a very significant problem. If the tools available to HMRC were limited in the way that ICSL maintains that they are, then they would be likely to be of limited effect in preventing future abuse. Importantly, there would be nothing to prevent the relevant person's participation in further fraudulent schemes, with HMRC attempting to play "catch up", trying to close the proverbial stable door after the horse has bolted. In contrast, deregistration is prospective in effect and, as is obvious, will prevent a trader from using its VAT number in fraudulent transaction chains in the future."

49. Falk LJ held at [58] that the lawfulness of HMRC's decision to de-register ISCL depended on two different matters: (1) whether ISCL knew, or should have known, that it was taking part in transactions connected with the fraudulent evasion of VAT; and (2) whether deregistration was, in the particular circumstances of ICSL, proportionate.

50. Falk LJ considered at [62] that it was of significance that, in both *Ablessio* and *Cityland*, references to fraud were included in the context of the broader *Halifax* abuse principle:

> "… Properly understood and in the context of that case law, I consider that those references are intended to make it clear that the decisions in those cases do not prevent tax authorities taking steps to counter VAT fraud, including in relation to VAT registration. However, and as HMRC accept, those steps must be proportionate."

51. Falk LJ then emphasised, consistent with the overarching nature of the principle and its central importance in the fight against VAT fraud, the width of the abuse principle:

> "63. … The reference to both misuse of a VAT number and "other VAT fraud" in *Ablessio* at [38] also indicates that the CJEU was not intending to be prescriptive in describing the particular type of fraud that was required. (The reference at [30] to fictitious activity "in particular" was rightly not relied on by Mr Margolin as limiting what was said only to activity of that nature.)
>
> 64. It is true that the reference in *Ablessio* at [36] to "the taxable person's fraudulent intentions" is arguably more consistent with ICSL's case. The same can be said of the reference to "tax fraud committed by that taxable person" in *Cityland* at [47]. However, I do not consider that, by those brief references, the CJEU was intending to limit the scope of the principle in that way ...
>
> 65. Further, even read as ICSL submits, the references in these paragraphs are far from definitive. *Ablessio* refers at [36] only to a "suspicion" of fraudulent intentions as a factor to take into account, and as already indicated other references to "misuse" are broader. In *Cityland*, the preceding paragraph, [46], refers more broadly to a "risk to tax revenue and a likelihood of VAT fraud",

> and at [47] the immediate context is the stated need to examine the taxable person's conduct to ascertain the "nature and extent" of "any" tax fraud committed by them, so as to assess whether deregistration is an "appropriate penalty for ensuring the collection of all the VAT and combating VAT fraud". It does not state in terms that they must have fraudulently evaded VAT.
>
> 66. The *dispositif* in *Cityland* refers to a requirement for the tax authority to analyse "the nature of the infringements committed and the conduct of the taxable person at issue", which is considerably broader than ICSL's case would suggest."

52. Falk LJ dealt with the requirement for proportionality in these terms:

> "67. What *Ablessio* and *Cityland* do emphasise is the requirement to comply with the principle of proportionality. Deregistration cannot be based on mere suspicion. Rather, there must be "sound evidence giving objective grounds for considering that it is probable that the VAT identification number assigned to that taxable person will be used fraudulently", and the decision must be based on an "overall assessment" (*Ablessio* at [34]). The "nature and the degree of seriousness of the infringements committed" must be examined (*Cityland* at [45]).
>
> ….
>
> 72… I cannot see a logical basis to distinguish between those who evade or may evade VAT themselves and facilitators as a matter of principle. Of course, the proximity and extent of a facilitator's involvement in VAT fraud are likely to be relevant factors in determining whether the tax authority's action is proportionate on the facts, alongside other factors including the extent of the anticipated untainted supplies, but that is very different to ruling out action in relation to VAT registration altogether."

Discussion

53. The CJEU decisions in *Halifax* and *Kittel* establish that:

> (1) EU law cannot be relied on for abusive or fraudulent ends ([68] of *Halifax* and [54] of *Kittel*);
>
> (2) the principle of prohibiting abusive practices applied to the VAT system ([70] of *Halifax* and [55] of *Kittel*); and
>
> (3) the prevention of tax evasion, avoidance and abuse was itself an objective recognised and encouraged by the applicable VAT directive ([71] of *Halifax* and [54] of *Kittel*).

54. The CJEU addressed in *Halifax* and *Kittel* how this overarching principle of abuse related to the more particular, governing principles of the VAT system: see [76] in *Halifax* and [59] in *Kittel*. In the case of *Kittel*, it is clear that the CJEU gave priority to the prohibition of abusive practices even where the transactions in question met the objective criteria contained in the relevant VAT directive (see [59]). The underlying rationale of the decision is, in our view, most evident at [58] where the CJEU noted that by treating "accomplices" of a VAT fraud in the same way as the "perpetrators" the objective of preventing fraudulent transactions is furthered: it would make it more difficult to carry out fraudulent transactions.

55. However, there was no indication in either *Halifax* or *Kittel* that the principle of abuse was subject to a more closely articulated series of pre-conditions. On the contrary, the decisions in *Halifax* and *Kittel* make it clear that the focus was a more teleological and practical one, namely prohibiting abusive practices in a way that was effective.

56. The decision in *Ablessio* should, in our view, be read in the same way. As was the case in *Halifax* and *Kittel*, the focus in *Ablessio* was on the ultimate objective of taking steps that "are necessary to prevent the misuse of identification numbers" or "might result in the misuse of the identification number or other VAT fraud" ([34] and [38]) or "the objective of preventing evasion" ([35]). It was, consequently, wholly in keeping with a focus on those high-level objectives that in other parts of its judgment the court expressed itself in a very general way about how the abuse was being carried out: for example, at [34] it simply referred to the probability of a VAT number being used fraudulently without saying who was carrying out the fraud and who knew, or should have known, about the fraud. This was recognised as such by Falk LJ at [63] of *Impact* where, in discussing *Ablessio*, she noted that "the CJEU was not intending to be prescriptive in describing the particular type of fraud that was required".

57. In our view, the reason for this is clear: a more granular focus on the precise way in which the fraud had been carried out would be likely to undermine the practical, operational effectiveness of the rule. In *Impact* Falk LJ made this point in clear terms at [56]: she referred to the significant problems caused by VAT fraud and implicitly recognised the need for HMRC to have an effective tool for combatting VAT fraud in the future (by means of controlling the use of VAT numbers) rather than playing "catch up" by raising assessments in relation to supplies already made. As she made clear elsewhere in the judgment, the protection given to taxpayers against an overzealous exercise of the power to de-register by HMRC came from the separate requirement for the power to be exercised in a proportionate way.

58. Falk LJ also made it clear at [67] of *Impact* that, relying on *Cityland*, the "nature and the degree of seriousness of the infringements" must be examined. Proportionality required an overall assessment of the circumstances. In that connection, Falk LJ went on to note at [72] that "the proximity and extent of a facilitator's involvement in VAT fraud are likely to be relevant factors in determining whether the tax authority's action is proportionate on the facts, alongside other factors".

59. It is, in our view, difficult to conceive of a more proximate involvement of a company in VAT fraud than its being the very means by which the fraud is being carried out. It would be inconsistent with the *Ablessio* principle to impose a requirement about the knowledge of the directors of the company in relation to VAT fraud in circumstances where it was the company's own VAT number that was the means by which the fraud was being carried out and where it was a critical design feature of the scheme that, as the FTT found, the directors of the company concerned were "in name" only. There is no need to establish that the directors knew or should have known that they were facilitating a fraud or that any other person was dishonest or fraudulent. A requirement to that effect in the circumstances of this case would seriously undermine the effectiveness of the *Ablessio* principle in meeting the objective of making it more difficult for fraudulent transactions to be carried out. It would, in our view, represent a simple opportunity to those seeking to secure the opposite outcome.

60. It is true that in certain but limited places in their judgment in *Ablessio* (see [36]) and *Cityland* (see [47]) the CJEU referred to the fraud of the taxable person whose VAT number was in issue. But, as Falk LJ explained in *Impact* at [64] to [66], those references, read in the context of the judgments as a whole, do not "limit the scope of the principle" ([64]). In the case of *Ablessio*, the reference at [36] was, in our view, merely addressing the particular facts of the particular case concerned: see the opening words of the paragraph "In the circumstances of the case in the main proceedings".

61. For the reasons given above, we consider therefore that HMRC's appeal must succeed. There was an error of law at [353] of the FTT's decision. We deal with the consequences of this finding once we have considered the grounds of appeal advanced by the Lead Appellants.

Ground 1: adequacy of the pleading by HMRC

The law

62. The purpose of pleadings and particulars within pleadings is to ensure that the opposing party knows the case it has to meet: see *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* [1994] 45 Con LR at pages 4-5; and *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at 792j to 793b. This is a principle of fairness and natural justice.

63. Where allegations of misconduct are made, it is particularly important that the opposing party knows what is being alleged and can prepare for trial accordingly. This is so whether the allegations relied upon as part of the claim are of misconduct by the opposing party or by a non-party. The more serious the allegation of misconduct, the greater is the need for particulars of the basis for the allegation. There is ample authority for higher vigilance in relation to particularisation of allegations of dishonesty, bad faith or fraud: see, for example, *Re H (sexual abuse, standard of proof)* [1996] AC 563 at 586 (Lord Nicholls)*; Three Rivers DC v Bank of England* (No.3) [2001] UKHL 16; [2003] 2 AC 1 at [51] (Lord Hope), [184] - [187] (Lord Millet)*; Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250 at 268 (Buckley LJ); *Armitage v Nurse [1998] Ch 241, 256-257* (Millet LJ); and *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400 (Millet LJ).

64. Part 16 of the Civil Procedure Rules ("CPR") requires a claimant to set out any allegation of fraud in the particulars of claim. The Chancery Guide at paragraph 4.8 requires a party who alleges fraud, dishonesty, malice or illegality to state it in a Statement of Case and give full particulars, including the primary facts from which any alleged fraud or dishonesty is to be inferred. An identical provision can be found in the Commercial Court Guide: see C.1.3(c). As paragraph 4.9 of the Chancery Guide says, a party must not make allegations of fraud or dishonesty unless there is credible evidence in support. These statements of well-established principles, conveniently summarised in those guides, are applicable to all proceedings, including those in the FTT: see *Ingenious Games LLP v HMRC* [2015] UKUT 105 at [63]; and *Citibank NA v HMRC* at [90(iii)], [103].

65. Most of the authorities are concerned with fairness to a party to the litigation but there also needs to be fairness to non-parties. In *Vogon International Ltd v Serious Fraud Office* [2004] EWCA Civ 104 the Court of Appeal held that a judge was not entitled to make findings of fraud against a witness appearing for the defendant when fraud had neither been pleaded nor put to the witness in cross-examination. May LJ (with whom Lord Phillips MR and Jonathan Parker LJ agreed) said:

> "It is, I regret to say, elementary common fairness that neither parties to the litigation, their counsel nor judges should make serious imputations or findings in any litigation when the person concerned against whom such imputations or findings are made have not been given a proper opportunity of dealing with the imputations and defending themselves."

66. In *MRH Solicitors* [2015] EWHC 1795 (Admin), Nicol J said;

> "…[I]n the absence of good reason a Judge ought to be extremely cautious before making conclusive findings of fraud unless the person concerned has at least had the opportunity to rebut the allegations."

67. The issue of whether a judge should make such findings against a non-party, however, is simply one of fairness and depends on the facts of the case. In *HMRC v Katib* [2019] UKUT 189, where no fraud or dishonesty was pleaded, the Upper Tribunal was satisfied that HMRC had been given sufficient notice of Mr Katib's allegations of fraud on the part of a non-party in Mr Katib's witness statement, and, in the circumstances of that case, it was fair for the FTT to have made findings of dishonesty against the non-party in his absence.

68. Where the non-party is a witness, fairness to both the defendant and the witness dictates that a witness is not ambushed with allegations of impropriety. That is usually not the way in which that witness can give their best evidence as the overriding objective requires: see rule 1.1(a) of the CPR and the corresponding rule in the FTT's procedural rules. It has been said that specific allegations of dishonesty which are going to be put to a witness should be pleaded even where the allegations are not part of the claim being made: this is to ensure that the defendant has a proper opportunity to consider the allegations and decide how he may wish to defend himself (see *Alta Trading UK Ltd v Bosworth* [2025] EWHC 91 (Comm)).

The Lead Appellants' case

69. The FTT accepted HMRC's case that "the MUC scheme as a whole was and is fraudulent". The Lead Appellants' case is that this finding was not open to the FTT in circumstances where HMRC's pleaded case did not identify who the perpetrators of the fraud were or the acts they did which constituted the fraud and how such acts or relevant knowledge were to be attributed to the Lead Appellants. The FTT declined to make any finding on the identity of the perpetrators of the fraud on the basis that the issue had not been sufficiently pleaded.

HMRC's pleading

70. In their statement of case ("the SOC"), HMRC asserted that: (1) the Lead Appellants "are participants in an organised and contrived structure with the purpose of defrauding the Revenue by claiming tax benefits to which they were not entitled" (para. 1); and (2) the *Ablessio* decisions were made "on the grounds [the Lead Appellants] used VAT registration for abusive purposes including misusing VAT registration by obtaining the benefits of the FRS when they were not eligible to do so" (para. 2.1) and as "part of an overall scheme to defraud" (para 2.2 and 2.5).

71. Particulars of the fraudulent scheme alleged were provided in paragraphs 12 to 43 of the SOC under the heading "Overview of the Scheme" and at paragraphs 111 to 120 under the heading "THE OPERATION OF THE MUCS – AN OVERALL SCHEME TO DEFRAUD THE REVENUE". In particular, the SOC set out the following:

(1) The scheme involved the disaggregation of labour supplies into a network of thousands of interconnected MUCs each employing a small number of workers (SOC paragraph 13). There were over 18,000 allegedly unconnected MUCs in this scheme (SOC paragraph 42).

(2) The MUCs were, however, not independent entities and were not controlled by their initial directors recruited through social media, who were directors in name only and paid to complete paperwork on the instructions of "those involved in managing the scheme" (SOC paragraph 14 and 15). Once registered as a company, a MUC applied, in accordance with an overall scheme to defraud the Revenue, to be registered for VAT and to use the FRS (SOC paragraph 16).

(3) The initial directors of the MUCs were replaced with directors based in the Philippines. These Filipino directors were recruited by Compass Star Ltd, which was integral to the MUC scheme (SOC paragraph 20). Compass Star Ltd advertised for those willing to be appointed directors of MUCs to carry out tasks that would be allocated to them by Compass Star Ltd (SOC paragraph 22). Compass Star Ltd offered to make payments to the Filipino directors, and payments for referrals of additional directors (SOC paragraph 23). The Filipino directors were directors in name only: they made no investment in the MUCs and did not exercise any practical control over the MUCs (SOC paragraph 28).

(4) The MUC scheme depended for its viability on tax advantages obtained from misusing tax reliefs and the MUCs were a key component in the scheme (SOC paragraph 31). The supply chains for the labour were provided by the online platform Supplierland, operated by Mr Funtanilla, the director of Compass Star Ltd (SOC paragraph 36). The MUC supplied its labour to a UK promoter company. It applied for, and was accepted on, the FRS with the consequence that it paid VAT at a percentage of its gross sales to HMRC lower than the standard rate of 20%. However, the promoter received a VAT invoice with VAT at 20%, which it then deducted as input tax. The VAT saving in the MUCs was then 'swallowed up' by fees charged by the promoters and back-office service companies so the advantage of using the scheme was not retained in the MUC. Often the tax advantage was passed further up the supply chain by the payment of rebates to the employment agency (SOC paragraph 32).

(5) Compass Star Ltd controlled, or had a significant degree of control in the running of, the MUCs (SOC paragraph 29 and 37).

(6) The MUCs were not independent entities but operated under the same overall control and for the benefit of others (SOC paragraph 38). Control over the MUCs was exercised by "the organisers/facilitators" of the scheme (SOC paragraph 40) and the scheme would have been unworkable if they did not exercise a dominant influence over the MUCs (SOC paragraph 41).

(7) HMRC asserted that the MUCs were set up and controlled by "the Scheme organisers" as part of an orchestrated overall scheme to defraud the Revenue, whether or not the directors of the MUCs themselves were aware of that fact.

No plea of identity of perpetrator

72. There can, in our view, be no doubt from the above summary that HMRC were asserting in their pleading that the Lead Appellants were participants in a scheme designed to defraud the Revenue and this justified the de-registration of the Lead Appellants. What HMRC did not do in their pleading was identify who they said were the "organisers" or "facilitators" of the scheme or "those involved in managing the scheme". Various persons are referred to as having had a role or involvement in the operation of some part of the scheme but it is not expressly asserted in the pleading that any of them was an organiser or facilitator of the fraudulent scheme. Nor was it pleaded that any of them were dishonest or fraudulent.

73. An experienced pleader reading this pleading would likely conclude that HMRC had taken a deliberate decision not to plead fraud against any particular person, perhaps conscious of its obligation not to do so without sufficient credible evidence of their dishonesty. Mr Puzey, whose pleading it is, says this is not so. He said that the identities of those against whom fraud had been asserted could be inferred from the pleaded facts. The highpoint of this submission was that the role of Compass Star Ltd had been sufficiently pleaded to make clear that it was alleged to be fraudulent. Mr Puzey submitted that, having pleaded that the MUCs were involved in a fraudulent scheme and that the companies were controlled by Compass Star Ltd, that was sufficient to establish that Compass Star Ltd was acting fraudulently. We reject that submission.

74. As discussed above, a party who is alleging fraud must state it clearly and unambiguously in a pleading and provide full particulars. There must be no room for doubt as to whether an allegation of fraud or dishonesty is being made. Hoping that the reader will be able to infer an allegation is not good enough. Simply saying, for example, that "Compass Star had a significant degree of control in the day to day running of the MUC" (para. 37) or that it was "integral to this scheme" (para. 20) is not a distinct and unambiguous allegation of fraud or dishonesty against Compass Star Ltd: a person can have "control" over a company or be "integral" to a fraudulent business model without necessarily being fraudulent or dishonest. This is a real issue in circumstances where it appears from HMRC's submissions that they were asserting that Compass Star Ltd (and its director) were doing the bidding of other persons that HMRC asserted were the ultimate organisers of the scheme. HMRC accepted that the directors of the MUCs were not acting fraudulently even though the MUCs were doing the bidding of Compass Star – there may, therefore, have been a real issue as to whether Compass Star Ltd and its director were acting dishonestly in doing the bidding of the ultimate organisers.

75. The FTT found that HMRC had not pleaded the identity of the perpetrators of the fraud with sufficient particularity. We agree.

76. Mr Puzey submitted that, as happened in *Khatib*, the allegations of fraud could be fairly made against a non-party through statements made in HMRC's evidence. As *Khatib* shows, in principle, that is correct. Mr Christopher Harker (an officer of HMRC giving evidence on their behalf) in a section of his witness statement dated 28 April 2023 headed "Key Individuals" mentions 20 to 30 different persons. No allegation of fraud or dishonesty by any of those persons was expressly made although they were said to be involved or connected, in varying degrees, to a fraudulent scheme. Mr Nolan and the Aspire Group were described as "key players". Mr Harker described Compass Star Ltd and Mr Funtanilla as "also deeply involved". No adjective was used to describe the role of the other "key individuals" (including Annabel

McLoughlin and her company Vertrio Ltd). In our view, this falls far short of being a clear and unambiguous allegation of fraud made against any given person. Indeed, this was made plain when, in giving evidence during his cross-examination, Mr Harker said in terms that he was not intending in his witness statement to allege that any individual had behaved dishonestly or had carried out fraudulent acts.

77. Mr Puzey made his submissions that HMRC had sufficiently pleaded or set out their case that certain persons were the perpetrators of the fraud apparently in answer to the assertion of the Lead Appellants that HMRC's failure to do so meant that the FTT's decision was flawed. We reject Mr Puzey's submissions that HMRC had sufficiently pleaded, or set out in evidence, the identity of the perpetrators of the fraud. There was, in any event, no cross-appeal against the FTT's finding that there was no sufficiently particularised pleading as to the identity of the fraudsters. Nor was there any cross-appeal against the FTT's decision to make no finding as to the identity of the perpetrators.

Was a plea or a finding of identity of perpetrator necessary?

78. The FTT found at [333] that the SOC did "just enough" to make it clear to the Lead Appellants that HMRC's case was that that the scheme as a whole was a fraudulent one. We do not have the reservation that the pleading did "just enough": the pleading was clear that the scheme as a whole was fraudulent.

79. As we have explained above, the existence of a fraudulent or otherwise abusive scheme is legally relevant to the determination of the *Ablessio* issue. But the *Ablessio* principle requires no more than that. HMRC needed to show that, as part of an overall assessment, there was sound evidence giving objective grounds for considering that it is probable that the VAT identification number of the person to be de-registered will be used fraudulently.

80. We consider that a determination that it is probable that a VAT number will be used fraudulently can be made as a result of inferences drawn by reference to the evidence as a whole, whether or not any given person could be said to be fraudulent and whether or not any knowledge or act or omission of a particular person (whether described as an organiser or in some other way) could be attributed to a MUC. If HMRC could establish that the VAT numbers assigned to the Lead Appellants had been used fraudulently, there would (in the absence of any evidence pointing in the contrary direction) be "sound evidence" that it is "probable" that state of affairs "will" continue to be the case. That was the case the Lead Appellants had to meet.

81. Accordingly, we dismiss ground 1.

Ground 2: the FTT's finding of fraud without naming anyone

82. The principal submissions by the Lead Appellants under this ground of appeal are founded on the fact that the FTT had rejected HMRC's submission that they had adequately pleaded fraud or dishonesty against particular individuals: see [332] and [333] of the FTT's decision.

83. It is then said to follow, as a matter of principle and logic, that once the FTT had done that, it could not properly go on to find that the fraud (which HMRC said those individuals were responsible for) had, nonetheless, been established: the FTT erred in finding that the whole could be greater than the sum of its parts. This error was said to be compounded by the fact

that it involved the FTT reaching its decision on a basis that was different from that advanced by HMRC. The Lead Appellants claim that proceeding in this way was procedurally unfair.

84. We are unable to accept those submissions.

85. HMRC put forward their case that the MUC scheme was fraudulent, relying on a range of factors. We have already found that the way in which HMRC pleaded their case was sufficient to make the Lead Appellants aware that a fraud was being alleged. It was, in our view, the cumulative impact of the fifteen separate matters identified by the FTT at [329] of its decision that was critical to the decision made by the FTT that the scheme as a whole was fraudulent. Those matters framed the FTT's separate detailed findings at [339] to [345] all of which were relied on by the FTT in reaching its conclusion at [347] that the VAT numbers of the Lead Appellants were used for fraudulent purposes. The conclusion at [347] involved the drawing of inferences from the findings of fact made earlier in its decision and from all the circumstances of the case. We can detect no error of law in the FTT proceeding in this way.

86. Nor do we consider that the allegedly different way in which HMRC presented the case at the hearing before the FTT affects this conclusion. It cannot be said, in our view, to "compound" the basis on which the FTT came to its conclusion when that basis was, as we hold above, open to the FTT in the first place. So far as there is anything in this point, it would not be a failure of principle or logic in the decision-making on the part of the FTT but would be an issue concerning procedural unfairness, a matter that we discuss in connection with grounds 3 and 4.

Grounds 3 and 4: failure to provide reasons, perverse decision and procedural unfairness

87. There is a very significant overlap between grounds 3 and 4 and the alleged lack of principle in the FTT's reaching its decision as to the existence of a fraud in circumstances where it declined to make any findings that particular persons had been fraudulent.

88. Mr Margolin submitted that, in circumstances where the organisers of the MUC scheme had not been identified in the SOC, the FTT could not properly then conclude – as it did at [346] of its decision – that the unidentified organisers "must have known" that the Lead Appellants were not entitled to use the FRS as a result of their association with the organisers and were only entitled to claim the employment allowance in consequence of avoidance arrangements. This was a perverse finding or was wrong as a matter of logic. There was no reasoning to support it.

89. We do not consider that there is anything in these submissions.

90. As we have explained above, the FTT identified at [339] to [345] those aspects of the evidence justifying its "conclusion as to the lack of any independence or control by the directors of the Lead Appellants of "their" MUCs who, as alleged in the SOC are "directors in name only" and approve whatever is asked of them by the organisers of the fraud who clearly have a dominant influence over them." The FTT found as a fact that the directors of the Lead Appellants were not genuinely in control of the MUCs of which they were directors.

91. The FTT's conclusion at [346] was, as the FTT expressly stated, based on "all of the circumstances" of the case (including, but not limited, to the matters discussed at [339] to [345]). In addition, having stated its conclusion in clear terms at the beginning of [346], the FTT also went on to hold that "applications for the FRS and EA were made not only knowing that was the case but also disguising the fact from HMRC by creating the false impression of the MUCs being independent entities when that was clearly not the case." In other words, the FTT found as facts that the MUCs were not independent entities and that steps had been taken to create the false impression that they were. In the light of those findings, we consider that it was open to the FTT to reach the conclusions that it did at [346].

92. Mr Margolin also submits that it was procedurally unfair for the FTT to make this central finding because (1) this was not the case advanced by HMRC, and (2) in circumstances where the "organisers" were never identified, it was in practical terms impossible for the Lead Appellants to have addressed the issue of whether they "must have known" that the MUCs were not entitled to use the FRS and were entitled to the employment allowance only in consequence of avoidance arrangements.

93. We reject that submission.

94. In his oral submissions, Mr Margolin said that if HMRC had pleaded or identified clearly in evidence who it alleged were the perpetrators of the fraud, the Lead Appellants might have called different witnesses or otherwise approached the case in a different way. We do not consider there is any substance to this point. HMRC had identified the key individuals and the facts they relied on as to their involvement. They just did not clearly assert that one or more of the key individuals was a fraudster. The Lead Appellants had all the information they needed as the FTT had found at [333]: in fact, the Lead Appellants did file evidence, and make submissions, designed to address the core contention made by HMRC that the MUC scheme was a fraudulent scheme.

95. Mr Margolin also submitted that the case they came to meet was a case that the promoters or intermediaries were the fraudsters. This was based on the fact that one of the many references to "organisers/facilitators" was in paragraph 41 of the SOC, which said:

> "The MUCs only existed <u>to supply the organisers/facilitators</u> and to pay for associated services. The organisers/facilitators business model relied on it solely purchasing from the MUCs. The MUCs, and organisers/facilitators operated for the benefit of the Scheme as a whole. The Scheme would have been unworkable if the organisers/facilitators did not have a dominant influence over the MUCs, and if the MUCS were free to contract elsewhere." [emphasis added]

96. From the emphasised words it is said that HMRC's case was understood to be that the organisers/facilitators were the intermediaries or promoters to whom the MUCs supplied labour. However, it seems to us that the pleading, when read objectively as a whole, is clear that HMRC were not identifying the promoters or intermediaries as the organiser/facilitators of the fraudulent scheme – they were, in fact, studiously avoiding identifying who any of the organisers/facilitators were. That seems to us also to be clear when paragraph 41 is read in the context of paragraph 40, which was in these terms:

> "The MUCs were all associated with another person. The MUCs were each under the dominant influence of at least one other person. Further, the MUCs and that other person were closely bound to one another by financial, economic, and organisational links. The organisers/facilitators were, either individually or cumulatively, that "other person". The Filipino director of each MUC exercised no practical day-to-day control of their business. That control was exercised by the organisers/ facilitators who arranged the supply of the individual workers by each MUC and dealt with all the financial aspects of the MUCs transactions."

97. Paragraph 40 refers to the unidentified ringleaders of the scheme. The reference in paragraph 41 to the "organisers/facilitators" is, therefore, a reference to the organisers/facilitators in paragraph 40. In any event, if the Lead Appellants really had difficulty in understanding paragraph 41, they could and should have made a request for further information. But they did not.

98. We also note that, in the cross-examination of Mr Funtanilla and Ms McLoughlin, the FTT allowed it to be put to them that they knew the scheme was intended to give a false impression that the MUCs were independent entities. They each denied it. The FTT reserved for further consideration whether it would take this line of questioning into account. In the event, the FTT made no findings in relation to either witness of fraud or dishonesty.

99. We do not think that this way of proceeding by the FTT created any procedural unfairness. In particular, we find unconvincing the assertion made by Mr Margolin that the possibility of what was a very limited line of questioning in the context of the proceedings as a whole lasting 13 days put the Lead Appellants at a disadvantage in preparing for the hearing. Looked at in the round, they knew the case they had to meet.

100. For the reasons given above, we reject grounds 3 and 4.

Ground 5: the application of Regulation 55L(1)(d)(iii) of the 1995 Regulations

101. As formulated in their notice of appeal, the Lead Appellants took issue with the FTT's finding at [358] that they were under the control or dominant influence of others with the result that HMRC were entitled to have regard to that association in making their decision to de-register the Lead Appellants.

102. The short point behind this ground of appeal was that this finding by the FTT must have been a reference to the provision of Regulation 55A(2) of the 1995 Regulations under which one person is associated with "another person" if that other person "makes supplies in the course or furtherance of a business carried on by him" and, as per paragraph (a), "the business of one is under the dominant influence of the other". As the FTT had not identified the organisers of the scheme, it was not, so said the Lead Appellants, in a position to find that those unidentified persons were making supplies in the course or furtherance of a business carried on by them, which was a precondition for the application of paragraph (a).

103. However, as HMRC pointed out, the FTT had also found at [346] that the Lead Appellants "were not entitled to use the FRS as a result of their association with the organisers and being closely bound to one another by financial, economic and organisational links". That was a clear reference to paragraph (b) of Regulation 55A(2) (which referred to those links in precisely those terms), and, as it was clear that the MUCs were making supplies, there was no further

need to establish that the organisers were making supplies in the course or furtherance of a business carried on by them. We agree with HMRC that this is the clear effect of Regulation 55A(2).

104. Indeed, in his oral submissions before us, Mr Margolin accepted that this was the case and that, despite what he said to be an error in the way the FTT expressed itself at [358] of its decision, HMRC could, in principle, rely on paragraph (b) of Regulation 55A(2). However, he submitted that they could do so in this case if, but only if, the finding made by the FTT at [346] about the links between the organisers and the Lead Appellants was not vitiated by an error of law. As to which, Mr Margolin submitted that the finding of an association could not be divorced from the finding that the MUCs were all part of a centrally controlled fraud. If, as he contended, there were errors in relation to the FTT's approach to the fraud issue, then those errors "necessarily infected" the FTT's findings in relation to the association between the MUCs and the organisers of the alleged fraud.

105. As re-formulated in that way, we reject this ground of appeal. In our view, for the reasons given above, the FTT was entitled to reach the findings that it did in relation to the fraudulent nature of the MUC scheme. Accordingly, there could be no cross-contamination of the separate finding that there were links between the organisers of the scheme and the MUCs.

Disposition

106. For the reasons given above:

(1) HMRC's ground of appeal succeeds, but

(2) each of the grounds of appeal put forward by the Lead Appellants is dismissed.

107. In exercise of the power conferred by s.12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007, we consider that we should set aside the decision of the FTT on the *Ablessio* issue and re-make the decision.

108. A determination that it is probable that VAT numbers will be used fraudulently can (and indeed often will) be made as a result of inferences drawn by reference to the evidence as a whole, whether or not any given person could be said to be fraudulent or dishonest.

109. The FTT found at [347] of its decision that there was "sound evidence giving objective grounds for concluding that the VAT numbers of the Lead Appellants were used for fraudulent purposes". It is clear that, if it had not gone on to consider (wrongly in our view) a need for knowledge of the directors in relation to the VAT fraud, the FTT would have held that the Lead Appellants were lawfully de-registered by HMRC.

110. The terms of the opening half of [347] of the FTT's decision largely but not wholly reflect [34] of *Ablessio*. The proper focus should, as a matter of proportionality, have been on whether it was "probable" that the VAT numbers of the Lead Appellants "will be used" fraudulently (rather than on whether the numbers "were used" in that way in the past). That is because the act of de-registration is a prospective one.

111. Plainly, in determining whether the relevant evidential standard is met in relation to that anticipated future state of affairs, evidence of what has happened in past will be relevant. In this case, there was no evidence found by the FTT that the risk of fraudulent use of VAT numbers would diminish in the future.

112.Accordingly, on the facts found by the FTT and applying the law in the way we have described above, we consider that HMRC were entitled to de-register the Lead Appellants.

MR JUSTICE RAJAH
JUDGE ANDREW SCOTT

RELEASE DATE: 17 July 2025