TC02585

Appeal number: LON/2008/0591

VAT - input tax – finding of MTIC fraud - whether appellant knew or ought to have known that its purchases were connected with VAT fraud – yes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GLOBAL CORPORATION TRADING LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL
JUDGE BARBARA MOSEDALE
RICHARD THOMAS

Sitting in public at 45 Bedford Square London 19 March - 27 March 2012

Vivien Tanchel, Counsel, instructed by Aegis Tax LLP, for the Appellant

Jonathan Kinnear QC and Ms Amy Mannion, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Decision appealed

1. This is an appeal against a decision of the Commissioners for Her Majesty's Revenue and Customs ("HMRC") contained in a letter dated 13 February 2008 to Global Corporation Trading Limited ("Global") denying Global's right to deduct input tax in the sum of £327,995.55 claimed in Value Added Tax ("VAT") in respect of the accounting period 09/06 – 11/06.

2. The Commissioners' grounds for the decision were that the input tax was incurred by Global in transactions connected with the fraudulent evasion of VAT, and that Global either knew or should have known of that fact.

3. The decision relates to two separate deals involving the purchase of Intel SL7Z9 computer processor units ("CPUs"). The first deal took place on 31 October 2006 ("deal 841") and involved Global's purchase of CPUs from Euro Plastic Components Limited ("EPC"), which were subsequently exported to a company based in Denmark. The input tax denied for this deal is in the sum of £157,106.25. The second deal took place on 22 November 2006 and involved the purchase of CPUs, again from EPC ("deal 852"), which were subsequently exported to a company based in Spain. The input tax denied in this deal is in the sum of £169,057.35. It is HMRC's case that both of these transactions can be traced back to a loss of VAT involving a missing trader; that is Missing Trader Intra Community ("MTIC") fraud.

4. By a Notice of Appeal dated 7 March 2008 brought under the Value Added Tax Act ("VATA") 1994 s 83, Global denied that it "knew or should have known" that its transactions were part of a scheme involving the fraudulent evasion of VAT and that the decision to deny its claim for repayment of input tax was wrong.

Missing Trader Intra Community (MTIC) fraud

5. Many previous tribunals and higher Courts have given a description of MTIC fraud. We rely on the descriptions given by Burton J in *R (Just Fabulous (UK) Ltd) v HMRC* [2007] EWHC 521 at paragraphs 5-7; by Lewison J in *HMRC v Livewire Telecom Ltd* [2009] EWHC 15 (Ch) at paragraph 1 and by Floyd J in *Mobilx Ltd (In Administration) v HMRC* [2009] EWHC 133 at paragraphs 2-3.

6. Simple missing trader fraud relies on a VAT free purchase by the fraudster. The fraudster then sells the goods on at a price including VAT but fraudulently fails to account to the tax authority for the VAT. A normal method of acquiring goods VAT free is to purchase them from another EU member state as the VAT rules provide that intra-EU transactions are free of VAT. This gives simple missing trader fraud the name of "acquisition fraud" as VAT legislation refers to cross border intra-EU purchases as acquisitions.

7. Although this is the simplest form of the fraud, it depends on the defaulter having a genuine buyer willing to purchase the goods and pay the price plus VAT. The profit to the defaulter is the VAT which is paid by the genuine buyer but which the defaulter

fails to account for (hence the description "defaulter"). It is possible, in order to induce a genuine buyer to buy the goods, that the defaulter enticed the buyer with a price below the market price, possibly a price below the price he paid for the goods: in such a case the "profit" of the fraud will be less than the VAT defaulted on as it will be reduced by the loss on the net sale price.

8. This "simple" fraud has a limit. It requires the identification of genuine buyers prepared to buy stock, so the need for genuine market demand limits the possible extent of this fraud. As the defaulter is dealing in a genuine market, it is also limited by the likelihood that the genuine buyer would prefer to buy from a trader known to the market, so it will have come-back if something goes wrong. And although pricing below the market price might tempt some buyers, it might also make them suspicious.

Organised missing trader fraud or carousel fraud

9. But out of this simple missing trader fraud was born a much more sophisticated fraud. This fraud dispenses with the genuine market: the defaulter creates an artificial market. Therefore, a genuine market does not limit the extent of the fraud: on the contrary the fraud can be committed as often as the fraudster desires – at least until suspicions are raised. It is a pernicious fraud as it has no natural limit other than perhaps the pockets of the governments of EU member States.

10. As it relies on an artificial market, how does the fraudster realise his profit? The fraudster realises his profit through more sophisticated means. This fraud relies not only a VAT free acquisition by the defaulter but a VAT free cross-border sale by the buyer. This person is in MTIC-speak termed the "broker". The point of the fraud is that the broker, when dealing in the goods pays his vendor *more* than he receives from his buyer. The difference is (less expenses) the profit of the defaulter. In this organised fraud the defaulter still defaults on the VAT on the sale to his buyer of course: otherwise he would be out of pocket. But what is perhaps not always appreciated is that that default, although fraudulent, is no longer the object of the fraud. The sale by the defaulter is artificially generated for the purpose of creating a chain of transactions in which the broker is induced to pay more for the goods than he receives.

11. Why would a broker pay more than he receives? This is because he makes a VAT-free cross border sale. This means the *net* VAT buying price he pays is *less* than his VAT free sale price. But once the broker has reclaimed the VAT paid to his vendor from the tax authorities, as subject to *Kittel* he is entitled to do by law, he has made a profit on the deal. This is also a VAT fraud by the defaulter because, even if the broker is unaware of the fraud, the defaulter has organised a series of transactions the purpose of which was to get the broker to pay more than he receives by relying on a VAT refund from the tax authorities.

12. In this artificial market, the goods are bought and sold but there is no real market for the goods. For this type of fraud it is not even necessary for the goods to actually exist.

Why sometimes termed 'carousel fraud'

13. The fraudster is arranging a chain of transactions in which the sale to and by the broker is essential for the fraud to work. So he has to arrange a sale to the broker and a sale by the broker. Rather than selling to and buying from the broker directly, the fraudster is likely to use other persons or companies ("buffers") who may or may not understand their role in the fraud. But to induce them to participate in the transaction chain he has to arrange for them to 'trade' at a profit. Therefore, ultimately a company controlled by the fraudster must be at both the start and end of the chain of deals to ensure these artificially generated deals take place.

14. As the fraud has no limit, it made sense for the fraudster to re-use the same goods and the same buffers and brokers and commit the fraud as often as possible sending the same goods round the same transaction chain. This gave the fraud its name of "carousel" fraud because the goods may go around in circle. But it is often a misnomer. Although the transaction chain (or at least the chain of money as the goods may not exist) must start and end with the fraudster or a company or person controlled by him, it is not necessarily the same person or company at the start and end of each chain. Further, the fraudster is likely to use a large number of buffers and brokers in lots of different chains in order to commit the fraud as often as possible. Therefore, although the same goods may circulate many times, they do not necessarily pass through the hands of the same broker more than once.

Variations on a theme

15. There are a number of variations on this fraud. The fraud as described does not depend on the broker knowing that his role is vital to a fraud. It is possible that so far as the broker is aware, he is simply buying and selling goods at a profit. Whether any particular alleged broker is aware of the fraud (if proved) is a question of fact.

16. In another version of the fraud, however, the broker is not independent of the fraudster. In such a case, the fraudster controls and funds both the defaulter and broker and the object of the fraud is quite simply the broker's VAT refund. But otherwise the fraud works as described in the previous paragraph where the broker is independent of the fraudster.

Protecting the broker

17. It will be important to the fraudster (even where the broker is entirely independent of the fraudster) that the broker recovers its input tax (or at least believes that he will) because otherwise the broker will not buy the goods. The fraudster must be supposed to want to protect the brokers he uses, as a fraud takes effort to organise and it must be easier if the same broker can be used in a transaction chain time and time again.

18. A method of protecting the broker's input tax reclaim, as mentioned above, was to introduce buffers in the chain between the defaulter and the broker so that the broker was not purchasing directly from the defaulter. Of course, the buffers themselves may not understand that their transaction was part of a series of transactions organised for the purpose of fraud.

19. A more sophisticated method of protecting the broker's reclaim is known as "contra-trading" which relies on two chains of transactions. This was not alleged in this case and we do not outline it here.

20. We move on to consider the law applicable to persons who have purchased goods in a chain of transactions involving VAT fraud.

The law

21. Article 17(1) and (2) of Council directive 77/388/EEC (the Sixth Directive) provides:

> "1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.
>
> 2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:
>
> (a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;
>
> ….."

22. Article 17 was incorporated into UK domestic legislation as sections 24, 25 and 26 VATA

> "24(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say-
>
> VAT on the supply to him of any goods or services;
>
> VAT on the acquisition by him from another member State of any goods; and
>
> VAT paid or payable by him on the importation of any goods from a place outside the member States,
>
> being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
>
> …..
>
> (6) Regulations may provide –
>
> (a) for VAT on the supply of goods or services to a taxable person, VAT on the acquisition of goods by a taxable person from other member States, and VAT paid or payable by a taxable person on the importation of goods from places outside the member states to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct. either generally or in particular cases or classes of cases;

25 (1) A taxable person shall –

(a) in respect of supplies made by him, and

(b) in respect of the acquisition by him from other member States of any goods

account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

…..

26(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period. (that is input tax on supplies, acquisitions and importations in the period), as is allowable by or under regulations as being acceptable to supplies within subsection (2) below.

….."

23. Sections 24 to 26 are in mandatory terms and a VAT registered trader therefore enjoys the right to repayment of input tax where the input tax credit due to him exceeds his output liability. However the right can be lost if the facts fall within the legal principles stated by the Court of Justice of the European Communities ("ECJ") in *Kittel v Belgium; Belgium v Recolta Recycling SPRL* (Joined cases C-439/04 and C-440/04) (*"Kittel")*.

24. In *Kittel* the ECJ held that:

"49. The question whether the VAT payable on prior or subsequent sales of the goods concerned has or has not been paid to the Treasury is irrelevant to the right of the taxable person to deduct input tax.….

51. Traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT.

….54. … 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; 373/97 *Diamantis* [2000] ECR I-1705, paragraph 33; and Case C-32/03 *Fini H* [2005] ECR I-1599, paragraph 32).

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 (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).

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 the 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.

57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions is apt to prevent them."

25. The ECJ summarized the position as follows:

"61... Where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that by his purchase, he was participating in a transaction connected with the fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."

26. In the case of C-354/03 *Optigen v HMRC* [2006] the ECJ was asked to give a ruling on issues relating to the recoverability of input tax in circumstances where the traders were innocently caught up in a chain of transactions which were fraudulent. The ECJ concluded that:

"47 Each transaction must be regarded on its own merits and the character of a particular transaction in the chain cannot be altered by earlier or subsequent events.

…..

51 Transactions which themselves are not vitiated by VAT fraud constituted supplies of goods or services, and where an economic activity within the relevant legislation, where they fulfil the objective criteria on which the definitions of those are based, regardless of the intention of the trader other than the taxable person concerned, involved in the chain of supply, and/or the possible fraudulent nature of another transaction the chain, prior or subsequent to the transaction carried out by the taxable person of which the taxable person had no knowledge and no means of knowledge.

……

55 The right to deduct input VAT by a taxable person who carries out such a transaction can be affected by the fact that in the chain of supply, of which those transactions form part, another prior or subsequent transaction is vitiated by VAT fraud, without that taxable person knowing or having means of knowing."

27. *Kittel* was considered by the Court of Appeal in the conjoined appeals of *Mobilx Ltd (in Administration) v HMRC; HMRC v Blue Sphere Global Ltd ("BSG"); Calltel Telecom Ltd and another v HMRC* [2010] EWCA Civ 517 ("*Mobilx*").

28. Moses LJ made clear that this refusal of the right to deduct does not depend on any specific UK legislation. Moses LJ stated:

> "43. 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."

29. On the meaning of "should have known" Moses LJ said:

> "50. The traders contend that mere failure to take reasonable care should not lead to the conclusion that a trader is a participant in the fraud. In particular, counsel on behalf of Mobilx contends that Floyd J and the Tribunal misconstrue § 51 of *Kittel*. Whilst traders who take every precaution reasonably required of them to ensure that their transactions are not connected with fraud cannot be deprived of their right to deduct input tax, it is contended that the converse does not follow. It does not follow, they argue, that a trader who does not take every reasonable precaution must be regarded as a participant in fraud.
>
> 51. Once it is appreciated how closely *Kittel* follows the approach the court had taken six months before in *Optigen*, it is not difficult to understand what it meant when it said that a taxable person "knew or should have known" that by his purchase he was participating in a transaction connected with fraudulent evasion of VAT In *Optigen* the Court ruled that despite the fact that another prior or subsequent transaction was vitiated by VAT fraud in the chain of supply, of which the impugned transaction formed part, the objective criteria, which determined the scope of VAT and of the right to deduct, were met. But they limited that principle to circumstances where the taxable person had "no knowledge and no means of knowledge" (§ 55). The Court must have intended *Kittel* to be a development of the principle in *Optigen*. *Kittel* is the obverse of *Optigen*. The Court must have intended the phrase "knew or should have known" which it employs in §§ 59 and 61 in *Kittel* to have the same meaning as the phrase "knowing or having any means of knowing" which it used in *Optigen* (§ 55).
>
> 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."

30. He concluded:

"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 connected to fraudulent evasion. If a trader should have known that the only reasonable explanation 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 should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel*.60. The true principle to be derived from *Kittel* does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion."

31. With regard to the burden of proof Moses LJ said:

"81. 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 that assertion. No sensible argument was advanced to the contrary.

82. But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. ….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 transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focusing on the question of due diligence is that it may deflect the 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."

32. The Court went on to say:

"84 ….circumstantial evidence …. will indicate that a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time.

85 A trader who chooses to ignore circumstances, which can only reasonably be explained by virtue of the connection between his

> transactions and fraudulent evasion of VAT participates in that fraud and, by his own choice, deprives himself of the right to deduct input tax."

33. The standard of proof was not considered by the Court of Appeal in *Mobilx* and it was accepted that the standard of proof was the normal civil standard on the balance of probabilities. And on this the latest authority is the decision of the Supreme Court in *Re S-B (Children)* [2009] UKSC 17 where Lady Hale, giving the judgment of the Court said, at [34]:

> " ... there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place. The test is the balance of probabilities, nothing more and nothing less."

The issue

34. Before and at the hearing Global accepted that there were missing traders in the deal chains; in particular it accepted, in respect of both deal chains at issue in this appeal, that there had been tax losses resulting from the fraudulent evasion of VAT, and that Global's purchase transactions were connected to those tax losses It did not challenge HMRC's identification of the participants in the deal chains.

35. Global's case is that at the time of its transactions it had no actual knowledge of the frauds and that it did not and could not have known of any such frauds and therefore, as per *Kittel,* it is entitled to be repaid its input tax.

The facts

The evidence and witnesses

36. The documentary evidence consisted evidence relating to the deal chains and the documents relating to the deals at issue in this appeal.

37. We had witness evidence from Gareth Lewis, the sole director of Global at the time of the deals, and, for the Respondent, from Angela Small, the HMRC Officer who decided that Global's claim for repayment of input tax should be denied; Dr Kevin Findlay, who provided expert evidence on the CPU market in 2006; Roderick Stone, whose statement provided generic evidence relating to HMRC's practice and policy in MTIC proceedings; Alison Banner who was the "defaulter" office for Do or Try Limted, Matthew Elms, who was the "defaulter" officer for Jafton Limited, Terence Mendes who also gave evidence about Jafton Limited and Alan Tulley who gave evidence in respect of UMBS.

38. The evidence of HMRC's witnesses except Miss Small's and Dr Findlay's was unchallenged. We heard from the remaining three witnesses.

Miss Angela Small

39. Miss Small was what is known as the "broker" officer. She was the officer who investigated Global's input tax reclaim.

40. A great many questions were directed at answers completed in respect of an aide memoire. Ms Tanchel's cross examination showed that this was not a verbatim account of a conversation with Mr Lewis. In particular Miss Small completed some of the questions herself relying on documents she had. But we read nothing into that as the aide memoire was not intended to be anything other than a tool for HMRC to decide whether or not to make the repayment. It did not purport to be a verbatim report of a conversation with Mr Lewis.

41. Overall we found Miss Small to be a reliable and accurate witness.

Dr Findlay

42. Dr Kevin Findlay has a PhD in electronic engineering and is now an independent consultant with associations with PwC. His current work includes analysing the strategy, operations and business prospects of companies in electronics, semiconductors, IT and software sectors. He has a history of working in the technical and then business side of electronic and computer engineering. We had no hesitation in accepting him as an expert qualified to give opinion evidence to this Tribunal on the grey market in CPUs in the UK in 2006. We found him to be a credible and knowledgeable witness.

43. We agree with Ms Tanchel that his evidence was not directly relevant to the question of what Mr Lewis (the alter ego of the appellant) knew or did not know in 2006. Mr Lewis did not have access to the research to which Mr Findlay referred us.

44. However we found his evidence relevant to the question of whether the fraud to which it was admitted the appellant's transactions were connected was simple acquisition fraud or orchestrated MTIC fraud.

Our findings of facts

45. From the evidence we heard and saw we find the facts to be as follows.

46. Global was incorporated on 27 April 2005. Mr Lewis was the sole director of the company. He had previously worked in banking and the financial services industry. We find the actions, and state of knowledge, of Mr Lewis should be regarded as those of Global for the purposes of this appeal. His sister, Sharon Eluned Lewis, was appointed Company Secretary on 1 November 2005.

47. Global applied to be registered for VAT on 11 November 2005. The application was signed by Mr Lewis and was accompanied by a handwritten letter from him stating that although Global had not yet begun to trade, its purchases would regularly exceed the VAT on its supplies (i.e. that it would be in a repayment position). The application was stamped as received on 25 November 2005. Mr Lewis estimated the value of the company's taxable supplies to be made in the following 12 months as £100,000, although (in apparent contradiction) he also stated that Global expected to buy and sell £150,000 to the EC in the same period.

48. On 15 December 2005 Mr Lewis supplied another handwritten note to HMRC saying that he would be trading in "…*commodities that diverse* [sic] *from gold, other metals and precious stones"*.

49. On 5 January 2006, Global's application for VAT registration was granted and it was allocated VAT number 867958054.

50. On 23 January 2006, Mr Lewis spoke to the VAT National Advice Line, advising that he "*had a general commodities business and planned to do additional activities*". On the same day, Mr Lewis sent a fax to HMRC stating he had parted company with the colleague with whom he intended to trade in precious metals. He stated that "*two experienced friends approached me last week and I have decided to employ them as I believe there is a specific niche in the market. One is experienced in electrical sales and the other in web design and services. I will potentially pursue the commodities trading but obviously wanted to notify you of a specific business change"*. This was a reference to the company's two part-time employees Mr Charles Holcombe, and Mr Adam Stanier. Mr Holcombe also worked full-time for Emerson (a multinational company specialising in the manufacture and sale of engineering and technology) and the intention was (according to Mr Lewis) that he would use Mr Holcombe's contacts for the purpose of locating potential purchasers.

51. The company parted company with Mr Stanier as they could not agree on salary. So the web-design aspect of the business did not take off.

52. On 31 January 2006 HMRC's Redhill office sent a formal 'Redhill Verification' letter to Global advising the trader to verify the VAT status of new customers and suppliers prior to entering into transactions. The letter advised on the checks that could be undertaken to help ensure the integrity of the supply chain and recommended reasonable checks to ensure the goods will be as described by the supplier. The letter also contained the warning: *"Although the Commissioners may validate VAT registration details, it does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquiries in relation to proposed transactions. It has always remained a trader's own commercial decision whether to participate in transactions or not and transactions may still fail to be verified for VAT purposes."*

53. Enclosed with the letter was 'Public Notice 726 - Joint and Several liability'. This Notice provided Global with considerable detail about the nature of MTIC fraud. Section 8.1 comments on the checks and reasonable steps that should be taken in order to make best efforts to avoid becoming involved in VAT fraud. The Notice also outlined a trader's potential liability to HMRC for unpaid VAT if they received a taxable supply from another VAT registered business of specified goods and knew or had reasonable grounds to suspect that the VAT on the supply, or any previous or subsequent supply of those goods would go unpaid to the Commissioners.

54. On 7 February 2006, Mr Lewis visited HMRC's Uxbridge office for a pre-arranged meeting to consider Global's business records. Mr Lewis advised that Global would be trading in "…*hardware and software, CPUs, Intel chips, laptops and web designing in the UK, China and Malaysia"*, with an estimated turnover in the following 12 months of £5 million. He said that the business would be funded by a

£250,000 loan from his father. Mr Lewis provided a copy lease agreement for the company's trading address which was for a three month period from 1 January 2006.

55. Global's records revealed that the company had sent letters of introduction to 21 businesses and that in each case contact had been made through IPT ("Interactive Prospect Targeting", a direct marketing and lead generation website). The importance of due diligence was explained to Mr Lewis and he was provided with a list of suggested checks that could at that time be undertaken prior to dealing with other traders.

56. We note that 14 of these 21 businesses were later identified by HMRC as suspected MTIC traders, but these concerns were not communicated to Mr Lewis, and he cannot be taken to be aware of them.

57. On 13 and 17 February Mr Lewis queried with HMRC the process of verification at Redhill VAT Office, including the time taken to verify numbers, and enquired whether he might verify traders by phone. On 21 February HMRC replied to Mr Lewis explaining that Redhill had a backlog of work, but reiterating the importance of using Redhill to verify VAT numbers. The email also stated *"An EU website is also available to check a valid VAT number."* This was a reference to 'Europa' – a European Commission facility that provided on-line VAT number validation.

58. On 21 February HMRC wrote again to Mr Lewis setting out the points, which had been discussed at the meeting of the 7 February. In the letter HMRC advised Mr Lewis "*it is imperative that you apply 'reasonable commercial checks' to all your business transactions, and you must satisfy the Commissioners that you have taken reasonable steps to ascertain the bone fides of all your customers and suppliers – please refer to section 6 of Notice 700/52. These checks should include verification of the VAT numbers of all suppliers and customers that your company intends to deal with. Those VAT numbers should be verified via out Redhill office as per previous correspondence with you*". Global was advised to check VAT registration on a transaction by transaction basis.

59. From February 2006 onwards there was a continuing exchange of correspondence between HMRC and Global as to the company's due diligence requirements and on 21 February 2006 HMRC informed Global of the problems being experienced in particular trade sectors. HMRC advised Mr Lewis to verify VAT numbers through Redhill and to keep specified information in respect of each transaction, including serial numbers of goods for identification purposes.

60. In March 2006 Mr Lewis and Mr Holcombe attended a CeBit technology exhibition (a computer and technology Trade Fair) in Hanover where, it was their evidence, they met representatives from AliBaba (a web based marketing company) and IPT and that they came back with a lot of marketing material which they then used to send out to potential suppliers and customers.

61. Using standard 'veto letters' HMRC advised Global of businesses involved in the supply of electronic goods which had been de-registered. In some instances these included companies that Global had previously tried to verify through Redhill. Global received 'veto' letters on five occasions before it carried out the deals in issue in this appeal. The first veto letter Global received was on 10 March 2006, before it had ever

carried out a trade, following Global's request for verification of the VAT number of a company which had been deregistered.

62. As at mid April 2006 Global's only trade was the sale of a small number of TFT screens on Ebay. However, on 20 April, having obtained funding on 19 April from his father, Mr Lewis undertook a wholesale deal of CPUs valued at £2.6 million. Global's supplier was Goodluck Employment Services Ltd which Global had previously attempted to verify with Redhill. Goodluck was deregistered for VAT with an effective date of 25 April 2006. On 7 August 2006, Mr Lewis contacted the National advice service stating that he had purchased goods from a trader which was now deregistered. He was informed that as long as he had carried out reasonable steps, HMRC would not seek to recover the VAT claimed as input tax.

63. On 7 June 2006 Global was reminded by letter from HMRC of the risk to the VAT system from bogus companies applying for VAT registration. The letter warned that this might lead to fraud of many millions of pounds.

64. On 1 October 2006, Global moved address to 120 Bridge Road, Chertsey. The accommodation consisted of an office room with three workstations within a serviced office building.

Deal 841

65. Table A below is a full schematic of the transaction chain of which deals 841 and 852 form part. Deal 841 was undertaken on 31 October 2006, and consisted of the supply of 11,970 Intel Pentium MHZ SL7 Z9 CPUs to Munch Marketing APS ("Munch Marketing"), registered in Denmark. The products were supplied to Global by EPC on the same day. An examination of invoices, purchase orders, freight forwarder documentation and bank transfer evidence, showed that EPC was supplied by Bluestar Trading Ltd ("Bluestar"), Bluestar was supplied by Neon Leicester UK Limited ("Neon"), and Neon was supplied by Sport Trading Ltd, ("Sport"), all on 31 October 2006.

66. The freight forwarder's records show that the goods had been released to Sport by another UK trader, Jafton Limited ("Jafton") and that Jafton was supplied with the goods by Acquired Solutions a company registered in Portugal. Jafton is the missing trader in this chain, having defaulted on its liability for VAT due to HMRC. The tax loss was £157,106.25.

67. When Jafton registered for VAT in 1994, its business activity was given as "importers, exporters, manufacturers, indenting agents of all kind of merchandise and shipbrokers". On 22 August 2006 new officials were appointed and the company changed its address. Soon after, Jafton began trading in CPUs. Verification enquiries revealed that Jafton was not in fact at, or trading from the address it had given and was deregistered for VAT. Following examination of paperwork supplied by other traders, a pattern of Jafton's undisclosed trade was built up. Jafton was assessed for tax owed and copies of the assessments were posted to all known addresses for the directors. These letters were returned stating that the addressee was unknown.

68. The tax charged by Jafton in invoices has never been returned nor paid, nor has the assessment been appealed. Jafton's deregistration has never been appealed or

challenged. We find (and it was admitted by the appellant) that Jafton's non payment of its VAT debt in this chain of transactions was fraudulent.

The Katian chain

69. On the same day as Global entered into deal 841, another company Katian Ltd, sold the same type of goods, SL7Z9s to the same acquirer, Munch Marketing. The goods also initiated with the same trader. Two alleged buffers differed from the chain involving Global but otherwise the 'Katian chain' involved the same companies.

70. Again the VAT charged by Jafton was neither put on a VAT return nor paid by Jafton and so both chains led to a tax loss. Jafton incurred a total VAT debt (which includes other deals) of £2,481,366. The assessment has never been appealed or challenged.

71. As in the Global deal 841, the Katian deal and all the chain's traders used Alpha Freight for freight forwarder services. In each case the goods remained at Alpha Freight for the sequence of trades until export, changing hands only on paper. The goods were imported from Acquired Solutions in Portugal. The stock which was later to be exported in the Katian deal was allocated a job number by Alpha of AE2303. The stock, which was later to become that in Global deal 841, was allocated a job number by Alpha of AE2304. We find on the balance of probability that the sequential order of these two job numbers combined with the identify of deal chains means that the goods were imported and received into Alpha's warehouse together.

72. The Global and Katian stock were both shipped for Munch Marketing to Intersprint Logistics in Belgium together by ferry from Dover to Calais on 2 November in the same vehicle.

73. We note in passing that there was no suggestion by HMRC and there is no finding by us that the appellant knew anything about the 'Katian chain' at the time of its own transactions. Its sole relevance to this appeal is to the question of orchestration of the fraud and we return to this below in paragraphs 83-89.

Deal 852

74. This deal was transacted on 23 November 2006. The goods were sold by Global to Agrupación Iberica de Ultramar ("Agrupación") registered in Spain and consisted of 12,915 Intel Pentium MHZ SL7 Z9 CPUs manufactured in China and the Philippines, supplied by EPC on 22 November 2006. EPC was supplied by Bluestar, Bluestar was supplied by Neon, and Neon was supplied by Sport, all on 22 November 2006. Once again, the freight forwarder's records showed that the goods had been released to Sport by another UK importer, Do Or Try Limited which had been supplied by Acquired Solutions, Portugal. Do Or Try Ltd invoiced for VAT on its transaction in this chain, and yet neither returned nor accounted for this VAT to HMRC. We find (and it was admitted by the appellant) that Do Or Try Limited's default was fraudulent.

75. Do or Try was incorporated on 10 March 2006 and registered for VAT on 1 June 2006. Its main trading activity was stated to be the "wholesale selling of accessories, toys, spot goods, exhibition products etc". Its estimated annual turnover was

£100,000. On 12 September 2006 the company advised HMRC of a new business address. In early January 2007, HMRC discovered via evidence from the freight forwarders that Do or Try was acquiring goods from the EC. Unsuccessful attempts were made to contact the trader by telephone and a visit to the company's premises revealed that they had been rented since October 2006, but were unfurnished and the directors had never been seen. As a result, Do or Try was de-registered for VAT from 9 January 2007.

Was this orchestrated MTIC fraud?

76. The appellant has admitted that its transactions were connected to fraudulent tax loss. It has not sought to challenge the evidence relating to the chains of transactions. But it has not accepted that the fraud to which its transactions were connected was necessarily MTIC fraud. We have explained above the difference between a simple acquisition fraud and an MTIC fraud. If this was simple acquisition fraud, it occurred several traders ahead of Global in the chain and Global's own transactions would have been on the open market, and it follows there is no obvious reason why Global would have known anything about the fraud. On the other hand, if the fraud was MTIC fraud, then the entire chain of transactions, including Global's own transactions, must have been organised, and therefore the question arises whether Global knew its own transactions were part of an organised fraud.

77. As the point was not admitted, we have to decide on the facts whether HMRC has proved its allegation that the appellant's transactions were part of organised MTIC fraud. And we consider a number of factors, as set out below, before reaching our conclusion.

Banking evidence

78. Ms Tanchel suggested that even if we found circularity of funds, it is irrelevant as Mr Lewis did not know, and there is no evidence to suggest he did know, of it. We agree that there is no evidence that Mr Lewis knew of the circularity of funds and we agree that therefore circularity is not directly relevant to the question of knowledge. But we find it is indirectly relevant. This is because circularity of funds, if proved, goes to show whether the fraud (which was admitted) was simple acquisition fraud or orchestrated MTIC fraud. And the type of fraud is relevant to the question of knowledge as explained above.

79. We find that HMRC have made out its case that the funds moved in a circular fashion. For both the deals at issue in this appeal we find that the funds originated and ended with a company called Strathmore Worldwide Inc. We also find that the money in the Katian chain started and ended with Strathmore Worldwide Inc.

80. Ms Tanchel argues that whilst HMRC asserts that all of Global's suppliers banked with the same institution there were only two deals, for which there was only one supplier and only two customers which is too small a sample of counterparties from which to draw any significant conclusion of contrivance. However, we find that ***all*** the parties in three transaction chains (two for Global and one for Katian) used the

same bank, UMBS. In a chain of transactions which are not orchestrated but taking place on the open market, we consider that the chances of all the parties, unknown to each other apart from their immediate trading partner, choosing to bank with the same, small offshore bank seem vanishingly small.

81. Ms Tanchel also argues that there is no cogent evidence to support HMRC's statement or assumption that because transaction payments within the UMBS accounts had sequential numbering, they necessarily took place on the same day and in extremely quick succession. Indeed, she argues, a close examination of the schedule of transactions produced by HMRC reveals that there were in fact gaps in the sequential numbering. We find that the evidence points to the transfers happening on the same day and in quick succession.

82. In conclusion, we find that putting aside the question of what Mr Lewis knew about the banking arrangements, the circularity of funds through numerous accounts all with the same small offshore bank point unerringly to the fact that the transactions were orchestrated for the purpose of fraud.

Patterns in chains

83. The chains of companies buying selling the CPUs only varies between Global's two deals in issue in that (a) the defaulter differs and (b) the buyer differs. Otherwise the deal chains mirror each other. Further there is an explanation for why, if it was organised fraud, the organiser would have substituted defaulters: by the time of the second chain, Jafton had been deregistered for VAT.

84. Even assuming that there was some commercial rationale for having long transaction chains of CPUs all traded on the same day (which we do not accept as explained below), as none of these companies had a particular role, such as authorised distributor, it would be a remarkable coincidence that the same chain of deals supposedly negotiated on the open market would occur twice. The pattern in the chains therefore suggests that the chains did not arise by chance. We set out the chains diagrammatically below:

	Deal 841 (31.10.6)	**Deal 852 (22.11.06)**
EU supplier	**Acquired Solutions (Portugal)**	
Defaulter	**Jafton**	**Do it or Try**
Buffer - 4	**Sport Trading**	
Buffer - 3	**Neon**	
Buffer - 2	**Bluestar**	
Buffer - 1	**EPC**	
Broker	**Global**	
EU Customer	**Munch**	**Agrupación**

85. The pattern in chains continues when we look at the 'Katian chain'.

	Global 841 (31.10.6)	Katian (31.10.6)	Price (where identical)	Margin (where identical)
EU supplier	**Acquired Solutions (Portugal)**			
Defaulter	**Jafton**			
Buffer - 4	**Sport Trading**		**£75.08**	
Buffer - 3	**Neon**		**£75.18**	**0.13%**
Buffer - 2	**Bluestar**	**Linbar**	**£75.30**	**0.16%**
Buffer - 1	**EPC**	**Tradestar**	**£75.40**	**0.13%**
Broker	**Global**	**Katian**	**£80.75**	**7.10%**
EU Customer	**Munch**			

86. There are two "coincidences" in the comparison of these two chains. Dealing in the same product, the chain of buyers and sellers (barring the identity of the "broker" and buffer 1 and 2) were identical, yet Mr Lewis did not know of the parallel chain. The second coincidence is the price per unit paid was the same for much of the chain, including the price paid and received by the "broker".

87. Could this happen on an open market? It might happen where there was a single transaction which for some reason of administrative convenience was split into two separate invoices, explaining the identity of unit price and traders. But we cannot accept that as the explanation here. It fails to explain why there was a different broker and different buffers 1 & 2, and it fails to explain why all the traders, having negotiated a single transaction, then found it sensible to split the invoice chain into two. In particular Mr Lewis says he knew nothing of the Katian deal, therefore this was not a single commercial deal split into two, or he would have known this.

88. Another explanation could be that the price is fixed by the market so the seller sells at the same price to lots of unconnected buyers. But that is not the explanation here: these transactions took place on the same day at a *variety* of prices throughout the chains.

89. We are unable to think of any explanation for this phenomenon on the open market. Therefore, we conclude that there is no rational explanation on the open market for this parallel chain, with small but regular increases in price but with each price identical at each stage in the two chains: our conclusion is that it is very strong

evidence that both chains were entirely contrived by someone for the purpose of fraud and did not occur on the open market.

Mark ups

90. An examination of the distribution of the margins made by the various participants in the two chains involving Global shows consistency. The alleged broker, Global, had a much higher markup than the alleged buffers, that of 7.10% in the first deal and 7.05% in the second deal. The first line buffer (EPC in Global's two deals and Tradestar in the Katian deal) and the third line buffer (Neon in all 3 chains) all made 0.13% profit. The second line buffers in all 3 deals (Bluestar in Global's and Linbar in Katian's) all made 0.16% profit.

91. The consistency continues when we look at Global's earlier CPU trades. Again the alleged broker makes a much higher profit (in those cases between 4.61% and 6.19%) and many of the alleged buffers made 0.13%.

92. Not only is there consistency but there is irrationality in the mark ups. Buffers make extremely low mark ups while brokers make mark ups many multiples higher. As an example, EPC in deal 841 made just over £1,000 gross profit while Global made over £64,000 gross profit. There is no reason on an open market for the profit made by the UK-EU dealer to be so many multiples higher than the profit made by a UK to UK dealer. But in the world of MTIC fraud it makes sense: only the broker is at risk of a non-repayment of VAT by HMRC (as the buffers are in a net *payment* position). The buffers take no risk, do little more than shift paperwork, and get little reward.

Long chains without commercial input

93. Both deal 841 and 852 are characterised by long chains of traders. None of the companies added any value to the goods: they merely bought and sold, very quickly and at a small profit, the identical quantity of CPUs. None of them were a manufacturer or authorised distributor.

94. Yet in the real world it is not possible to regularly buy and sell goods, put no input into the transaction by way of added value or combining or dividing quantity, yet keep making a profit. And for one trader after another to do this in quick succession in (so far as chains involving Global are concerned) some 10 chains of transactions, without anyone making a loss, beggars belief.

95. Further the chains themselves were irrational. The CPUs originated on the Continent and returned there a very short time afterwards having increased in price so that not only did the 6 or more UK traders involved make a profit but the cost of transport over the channel was covered too. To the extent there was a genuine demand for CPUs on the Continent, rational market forces would dictate that the chain of supply via the UK and lots of buffers would be cut out. But that did not happen.

Back to back trading

96. The chains were not only long but all the transactions took place on the same day as all the other transactions in the chain.

97. We also find from the UMBS banking evidence and release notes that the chains of transactions followed sequentially on the same day in quick succession. In deal 841 the traders all released the goods on the same day, 2 November 2006, with the exception of Jafton, which released them early on 30 October 2006 in respect of the Global deal and 31 October 2006 in respect of the Katian deal. That this should have occurred on the open market seems very unlikely.

98. While back to back trades clearly happen in a real trading environment, that so many transactions in the same chain should occur on the same day stretches coincidence.

Grey market trading

99. Global was not an authorised distributor or otherwise in a distribution chain approved by the manufacturer of the CPUs which it sold. If it traded on a genuine market, it was trading on the grey (or legitimate but unapproved) market.

100. Dr Findlay gave evidence of how the grey market in CPUs acted in 2006. His very long report can be summarised briefly as follows:

> (a) The grey market in Intel CPUs was very small in 2006. Specifically he estimated that its value was only £7.3million, and of that only £1.4m represented exports from the UK in 2006.
>
> (b) Chains would be very short (to maximise profit);
>
> (c) Margins were very small and there would be little room for a middleman in between an authorised distributor and end user
>
> (d) Chains would involve an authorised distributor or manufacturer at the top and an end user (such as an assembler or contractor) at the end;

101. Dr Findlay's evidence was that the size of the grey market was tiny. The appellant does not accept that, although they did not put forward expert evidence of their own. We accept Dr Findlay's evidence overall as he was an expert and the evidence he gave was of a market acting rationally. The appellant, in suggesting that Global's transactions were not part of an orchestrated chains of transactions, was asking us to believe that long, back to back chains with each player adding no value yet always making a profit, could arise on a genuine market. It was therefore asking us to believe in an irrational market. We preferred Dr Findlay's view of a rational market.

102. Global exported over £2,000,000 worth of Intel CPUs in the two deals at issue in this appeal. This was well over Dr Findlay's estimate of the entire export of Intel

CPUs on the grey market for that year. Even if we were to accept that Dr Findlay's estimate was conservative, unless we were to disregard it entirely it would seem that Global had entirely cornered the market. Yet (as is explained below) Mr Lewis had no real business plan or knowledge of the CPU market and waited for buyers and sellers to approach him, so it is impossible to see what Global did that could have cornered the market and driven out all competitors.

103. Dr Findlay's evidence, therefore, by itself is convincing evidence that Global's trades were not in fact on the genuine grey market. It strongly corroborates our findings based on the other evidence (in paragraphs 76-98 above) that Global's trades were orchestrated and not on a genuine market. The combination of the three types of evidence (banking, the transaction chains, expert) is overwhelming evidence, and we find, that Global did not trade on a genuine market but rather its trades were orchestrated for the purpose of fraud

Conclusion

104. The banking evidence alone, proving as it does circularity of funds, we find proves that the transactions did not take place on the open market but were part of an organised MTIC fraud.

105. The rest of the evidence to which we have referred above also proves the same. There is no other explanation for the long, irrational deal chains through the UK for goods originating and ending on the Continent; no other explanation for the repetitive patterns in the chains and the small consistent and repetitive profit margins for the buffers. On this evidence alone, irrespective of the banking evidence, we would find the two deals at issue in this appeal were predetermined to facilitate fraud and did not take place on the open market. The orchestration is also evidenced by the virtually identical Katian chain. That such an identical chain could have arisen *by chance* defies reason and is strong evidence that Global's chains were orchestrated and did not arise by chance. We find the Katian chain was also orchestrated for MTIC fraud and clearly masterminded by the same fraudster as masterminded the two chains at issue in this appeal.

106. Dr Findlay's evidence on the genuine grey market corroborates what is already apparent from our findings on the other evidence about these specific deal chains, which is that they were orchestrated for the purpose of fraud and did not take place on an open market.

107. We also find that Global's earlier transactions in CPUs were connected to fraud and characterised by consistent profit margins and long irrational chains. Bearing in mind that Mr Lewis did not suggest that these transactions had come about in any different manner to those deals at issue in this appeal, and indeed as they to some extent involved the same trading partners for Global, we find they too, on the balance of probability, were orchestrated for the purpose of MTIC fraud.

108. We do not know whose was the guiding hand which organised this fraud. But we are not asked to identify the fraudster. The question for this Tribunal is whether

the appellant knew or ought to have known that its purchases and sales were connected to fraud and we move on to consider this.

Knowledge or Means of knowledge?

Appellant's case

109. Global's case is that it had no actual knowledge of the frauds and that it did not and could not have known of any such frauds or that its transactions were connected to the fraudulent evasion of input tax. Global asserts that HMRC are unable to show that the company knew or should have known of the connection between its own transactions and fraud.

110. Ms Tanchel on behalf of Global submits that HMRC's case relies on facts which were not known and could not have been known to Global at the time of the transactions. She says that HMRC did not make any decision to deny the input tax claimed until mid-December 2008 by which time its enquiries had lasted more than 14 months. She says that the case against Global has been constructed entirely with the benefit of hindsight and with the benefit of substantial resources not available to Global. She submits that extreme care must be exercised in ensuring that the admitted fact of the existence of a fraudulent scheme is not taken as amounting to proof of knowledge or assumed knowledge. The relevant knowledge or means of knowledge must be shown to have existed at the time of the transactions.

111. We agree that in assessing Global's knowledge or means of knowledge we should only consider facts which were known to Mr Lewis at the time of the transactions, and this is what we do below. We agree that Global's admission at the hearing that its transactions have been proved by HMRC to be connected to fraud is no guide to what it knew at the time of the transactions.

112. Ms Tanchel points out that HMRC do not contend there is direct evidence of Global's knowledge of or involvement in fraud and therefore HMRC is asking the Tribunal to arrive at conclusions on the basis of inferences to be drawn from circumstantial evidence. The chain of inferences becomes weaker as it becomes longer. We agree that in our findings below we rely on circumstantial evidence: but we find in this case that all circumstantial evidence combined is very strong, as explained below.

113. Ms Tanchel submits that Global never traded with a company whose registration had been suspended or withdrawn at the time of trading. This is true. But it tells us very little: it is consistent with either genuine trading on the open market or with an orchestrated fraud (because the fraud would not work if the traders in the chain were not validly registered). As we discuss below, a trader seeking to protect its own commercial position would seek to know a good deal more about its trading partners than merely that they were properly VAT registered.

121. Ms Tanchel asserts that HMRC have not produced any evidence to show that Global had knowledge of other banking transactions in the deal chain at the time it

was trading and that it is unclear what steps Global could have taken to ascertain the payment arrangements between other companies in the chain with which it had no commercial relationship and the existence of which Global was unaware. We agree that there is no evidence that Global knew, or could have discovered, anything about the banking transactions entered into by other traders, other than knowing that its trading partners used the same off-shore bank as itself.

122. Ms Tanchel also argues that, unlike many missing trader fraud cases, in this case the striking feature is that Global did not need third a third-party source to fund its transactions. It had been accepted by HMRC that the source of Global's £250,000 start up capital was perfectly legitimate. We find that that means nothing. We explained how MTIC fraud words above. There is no requirement for MTIC fraud to work for the fraudster to fund the broker (ie the company in Global's position in the chain). The fraud works where the broker uses its own capital and that is what happened here. Global has admitted that its transactions were connected to fraud and we have found that that fraud was orchestrated MTIC fraud. That Global used its own funds tells us nothing about whether it knew at the time it was participating in fraud. Using its own funds is as consistence with knowledge as with innocence and vice versa.

123. In evidence Mr Lewis accepted that his company banked with FCIB and then with UMBS, as did Global's supplier and customers. He also acknowledges that both banks have now been closed down and investigated for criminal activity. Ms Tanchel argues that nothing can be read into this and we agree in so far as these two facts are concerned. We also agree that Ms Small confirmed in evidence that no information, records, or other documentation had been found linking Global to the other entities named in the banking evidence apart from its supplier and two customers. We go on to consider Global's relationship with UMBS in paragraph 125-130 below and the conclusions which can properly be drawn from it.

124. Although UMBS itself had been convicted of fraudulent trading and money laundering in March 2011 and, although the directors of the bank had been arrested in November 2007 (some 12 months after the disputed deals), they were both acquitted. Ms Tanchel says that if the very directors of UMBS were acquitted, that is to say they neither knew nor suspected that the funds passing through the bank were the proceeds of crime, it is difficult to see how Mr Lewis, unaware of the other entities in the deal chain, could have been any the wiser. We do not know what the directors of UMBS knew or did not know: all we consider below is what Mr Lewis and Global knew and we make our findings about knowledge based on that.

The witness - Mr Gareth Lewis

114. The only witness for the appellant was Mr Garath Lewis. Before considering his evidence of why Global did as it did, and whether it had actual knowledge of the fraud or ought to have known of the fraud, we first consider the reliability of Mr Lewis' evidence.

115. Mr Lewis took a degree course in economics which he discontinued due to illness in 1994. Thereafter he worked in various multinational banks such as Deutsche Bank, Merrill Lynch, and Morgan Stanley. In August 2004 he set up a

company called Global Gateway Investments with a partner which traded in shares. He split with the partner and in April 2005 decided to set up his own company (the appellant). He said he decided to move to tangible commodities rather than trading in shares.

116. We find his evidence was of concern in many areas and we outline some of these below.

117. Terms and conditions: Mr Lewis was asked to provide terms of trading on several occasions during the course of the HMRC's verification. They were not provided to HMRC until February 2009, more than two years after the deals were completed. His first witness statement says:

> "The HMRC assertion that there were no written contracts with regard to the transactions in question is incorrect, since I have a signed supplier declaration form. Furthermore, there are invoices….In addition, Global CTL in fact had its own written terms and conditions, and that I understand that those documents constitute a legal contract."

But in his third witness statement, he said the terms and conditions:

> "were created in that form in or about late 2006/early 2007"

And in examination in chief, he says the terms and conditions were not created until after a meeting with HMRC officers in April 2007. Yet his original witness statement at the least implied they existed at the time of the transactions in issue which both occurred in late 2006. It was put to him in cross examination that his witness statement was misleading which he denied. We find it was misleading.

118. Mr Holcombe's involvement with the trades in issue: In examination in chief, Mr Lewis' evidence was that his friend and Global's part-time employee, Mr Holcombe had contacts in computer chips, was responsible for sales and marketing and would make contact with people on behalf of Global whereas Mr Lewis' job was to deal with Global's website and banking. They both attended the CeBit conference in March 2006. However, in cross-examination he agreed that Mr Holcombe had no experience in CPUs and provided no contacts for trading in CPUs. He also agreed that it was himself who put together the two deals at issue in the appeal despite Mr Holcombe being employed for sales and marketing. It seems Mr Holcombe was paid a salary plus 30% commission on sales, but Mr Holcombe was *not* paid commission on CPU sales. We find that Mr Lewis tried to give the impression Mr Holcombe was more involved in the CPU side of the business than he actually was.

119. Foreign travel: Another aspect of Mr Lewis' evidence we found indicated unreliability was what he said over foreign travel. He paid visits to his UK suppliers but not to his European purchasers, although they were based only in Spain and Denmark. Yet (were this a genuine market) Global's real exposure was on the sales side as the goods were shipped before payment. Yet Mr Lewis described making a visit to his purchasers' premises as "very expensive". Yet we find that both he and

Mr Holcombe travelled to the Cebit conference in Germany to find trading partners and Mr Lewis also agreed that he had travelled abroad on numerous occasions in his life. We consider that the cost of travelling to Spain and Denmark was insignificant compared to the value of these two deals (over £2,000,000) and we do not accept that expense was the reason Mr Lewis did not undertake these journeys.

120. Price negotiation: Mr Lewis was asked whether he negotiated the prices of the CPUs. He said he negotiated prices and was adamant he did not have the deals dictated to him. He says he negotiated his buy and sell price to get the best profit margin and knew what the price should be from consulting trading boards on the internet. He gave the Tribunal no more detail than this: this was vague in the extreme and we are very far from convinced that looking at a trading board enabled Mr Lewis to negotiate CPU prices.

121. Further, we find it is inherently improbable that Global, an inexperienced newcomer, operating in the open market would be able to negotiate prices always to its advantage without taking any risk or adding any value. But even putting that aside, it is a finding of fact in this case that the purchases and sales by Global did not take place on the open market. They were transactions orchestrated by a fraudster. More than that, in the first of the two deals in issue, Global's purchase and sale price (and therefore gross profit margin) was identical to that of Katian's. The Katian deal was unknown to Global but we have found with the benefit of hindsight that it was organised on the same day by the same fraudster with largely the same companies. It is very unlikely that Katian's and Global's deals, if they had been individually negotiated, happened to be at the same prices *by chance*. Indeed, Global's purchase price had to be exactly the figure it was to give its seller its 0.13% margin and that 0.13% margin was clearly no mere coincidence as it appeared repetitively in the chains. Again, in the second of its deal Global's purchase price had to be exactly the figure it was to give EPC its 0.13% profit margin, which as we have said appeared repeatedly in chains involving Global. And Global's profit margin (7.05%) was very similar to its earlier profit margin (7.1%).

122. Bearing in mind that we have found that the two deals in issue in this appeal were orchestrated for the purpose of fraud, it seems extremely unlikely that these similarities in price arose in negotiations. We also note that Mr Lewis accepted that the buyer and seller both approached him: bearing in mind the context of this is that of orchestrated fraud it seems highly unlikely that when they approached him with the orchestrated deal, the buyer and seller would have then *negotiated* with him on price. It seems considerably more probable that the buy and sell price was dictated to Global. Global may well have known nothing about Katian and nothing about EPC's profit margin, but, we find, it did not negotiate its own buy and sell prices. The prices must have been dictated to Global: Mr Lewis must have been told what price he would buy at and what price he would sell at. Mr Lewis denied this in the hearing but we are unable to accept his denial as reliable.

123. Credit checks and risk: Mr Lewis' evidence was not always internally consistent. Miss Small's witness statement said Global was at risk so it was odd that Mr Lewis chose not to check out the financial status of its trading partners. Mr

Lewis' response (oft repeated) was that he did not do credit checks as Global was not giving credit and Global wasn't at risk because it did not pay for the goods until it was paid. Later in the same witness statement, in answer to the accusation that Mr Lewis should have been suspicious because Global was able to make so much money for doing very little and taking no real risk, his answer was that Global was at risk because the buyer might renege on the deal.

124. Trade references: Another example of contradiction is Mr Lewis' position on trade references. At one point in cross examination he seemed to say he could not remember if Global took up trade references; at another point he said he accepted he could be open to criticism for not taking up trade references but said he had not been advised to do so; yet it was also his case that Global did everything HMRC advised it to do in Notice 726 but then he accepted in cross examination that Notice 726 did advise traders to take up trade references. Most glaring of all, in its own suppliers' declarations Global required its suppliers to certify they took up trade references on their suppliers, yet Global did not take up trade references on its suppliers. He did not give any satisfactory explanation of the inconsistency in his position on trade references: the only explanation for it we find, is that in 2006 Global had no interest in carrying out effective due diligence on its suppliers but wished to be seen as doing so.

125. UMBS: We found Mr Lewis' evidence over the banks used by Global to be very telling on the overall reliability of it. Originally he banked with FCIB. By the time of these deals he had switched to UMBS. He was asked why. In examination in chief, he said that it was recommended by traders in the industry for the benefit of faster payments.

126. However, in August and September 2006 his funds had been frozen in FCIB and it had been difficult to retrieve them. It was put to him odd that he should chose to bank with a second offshore bank having been burnt by his experience with FCIB. He denied that it was odd and said that he was acting on recommendations and was no expert in bank accounts (despite being a banker). In his witness statement he described UMBS as "reputable".

127. For the two deals at issue in this appeal we find that his buyer paid the money into his UMBS account. Global then used this money, together with a transfer of the balance of the price from Global's Co-op account, to pay his seller. He was asked to explain why he kept his funds in the Co-op bank in the UK, as well as using UMBS, he said:

> "I wasn't going to put – after the experiences I had with FCIB, I wasn't going to deposit funds – further funds – funds were kept in the Co-op account…".

It was put to him he was wary of UMBS to which he replied:

> "…It wasn't wary. I just wasn't going to deposit funds in the account"

He denied that he was told to bank with UMBS in order to facilitate the deals.

128. We take into account that, despite saying UMBS was preferred for faster payments and having the same account as his trading partners, in fact Global paid the balance due to EPC from Global's Co-op account, not into EPC's UMBS account but into EPC's account with Lloyds. So speed of transfer and identity of banks with his supplier were *not* a motivating factor for Mr Lewis' choice of banks

129. We take into account that these were transactions orchestrated for the purpose of fraud by some unknown fraudster and that every participant in the chain banked with UMBS. As we have already said, in both chains the funds started and ended with an entity called Strathmore Worldwide Inc. We find that Strathmore was controlled by the fraudsters and funds which moved in a circle "belonged" to the fraudsters. Therefore, it seems more likely than not that the fraudsters desired the monies moving in a circle to stay within the same bank (a bank that was itself convicted of fraud) to keep more control over it.

130. Taking into account the factors in the above two paragraphs and that, despite his denial, Mr Lewis clearly did not trust the UMBS with Global's funds, yet decided to have an account with UMBS, we are therefore unable to accept Mr Lewis' denial that he was told to have an UMBS account to facilitate his transactions. It is the only explanation for his conduct in opening an account with a bank he did not trust.

131. Conclusion: Overall our assessment of Mr Lewis' evidence was that it could not be relied on. On a number of occasions it was put to him that his answers were not correct, which he denied, but we do not accept his denials.

132. We go on to consider what Mr Lewis, as the alter ego of Global, knew at the time of the transactions in questions. Firstly we consider his overall awareness of MTIC fraud and secondly what Global did to protect itself (a) from that fraud but (b) more generally from ordinary commercial risks. Then we reach our conclusion.

Appellant's awareness of MTIC fraud

133. As referred to above, Global was registered for VAT as a trader in commodities, including precious stones on 5 January 2006. On 23 January 2006, only 18 days after obtaining a VAT registration, Global indicated an intention to diversify into "electrical sales" and only three days later, Mr Lewis contacted HMRC's Contact Centre seeking to verify the VAT number of A-Z Mobiles Limited.

134. It is of note that Mr Lewis' verification of A-Z Mobiles took place *before* he had been advised by HMRC of the need to verify the VAT status of trading partners when trading in commodities at risk of MTIC fraud. We agree with HMRC that this means Mr Lewis had some awareness of MTIC fraud risk in mobile phone wholesaling from the outset.

135. As at the date of Mr Lewis' meeting with HMRC, Global had not begun to trade and had not arranged any deals. Despite this, Mr Lewis said that he anticipated turnover to be £5 million.

136. Ms Tanchel says that much of the evidence adduced by HMRC about fraud in the industry and Global's exposure to companies involved in fraud was only made available to Mr Lewis long after the disputed deals had been conducted. We agree that so far as the specific traders with whom Global traded, HMRC did not communicate to the appellant their suspected/known involvement in fraud until long after the event: however, that is not the point. The point is what Mr Lewis actually knew about the risk of MTIC fraud at the time.

137. Ms Tanchel says that although Mr Lewis does not dispute that he was aware of MTIC fraud he maintains that he was totally unaware of its scale and scope. We find from the warnings and information provided to Mr Lewis (see paragraphs 52-63 above) that he was well aware of the risks of becoming involved in MTIC fraud if he traded in CPUs. Indeed at a meeting with HMRC officers on 5 January 2007 investigating the deals made as part of the 11/06 return, we find Mr Lewis confirmed that he had been aware of problems within the industry from the media and from contact with HMRC soon after Global was incorporated. We find he had seen a Panorama documentary about MTIC fraud broadcast on 16 July 2006. He was able to describe the basic mechanics of the fraud to officers.

138. Further, by the time the deals involved in this appeal took place, Global had been advised that one supplier it had traded with previously, Goodluck Employment Services, had been deregistered for VAT. It was deregistered for VAT with an effective date of 25 April 2006 and Global were told this on 7 August 2006. We find that this information would have made any trader in the Appellant's trade sector, with the knowledge that Mr Lewis had of the risks of MTIC fraud, very concerned.

139. Global had earlier received a "veto" letter on 10 March 2006 informing it that another of the traders which it had sought to verify had been deregistered. This was not a company with which they ever traded but, as Mr Lewis agreed that he had probably found out about this company on one of the websites Global used to resource leads, it should have caused him concern.

140. We find at the time of the two trades in issue Mr Lewis understood MTIC fraud risk very well and was well aware that it could directly affect the industry in which his company traded.

Global's response to the known risk and Global's commercial checks

141. Much of Mr Lewis' witness statement is about whether Global complied with HMRC's recommended checks. What it does not really seem to consider is whether Global was acting to protect its position with respect to ordinary commercial risks. Yet Global's response to commercial risks is highly relevant because a company which thought it was trading on the open market would seek to protect itself from commercial risks such as defaulting buyers, but a company which knows its

transactions are orchestrated is likely to much less concerned with commercial risks as it knows it is not trading on the open market.

142. For instance, Mr Lewis points out that a bad credit check on a trading partner would not necessarily indicate that the trading partner was involved in MTIC fraud (which is true), but the Tribunal asks itself why would Global chose to sell to a company until it was satisfied that company was able to pay for what it was buying? So we consider how Global traded and what this tells us.

Due diligence generally

68. The 726 Notice sent to Global on 31 January 2006 provided Mr Lewis with a great deal of detail about the nature of MTIC fraud, the indicating factors and the reasonable steps that should be taken in order to make best efforts to avoid becoming involved. The Notice at paragraph 8.1 provided 3 main examples of the type of reasonable commercial checks that could be carried out:

> (a) checking the legitimacy of customers and suppliers, including whether normal arrangements were in place for the financing of the goods and whether they were adequately insured.
>
> (b) checks to ensure the commercial viability of a transaction, including ensuring that there is a market for the goods, and being satisfied that it is commercially viable for the price of the goods to increase within the short duration of the supply chain.
>
> (c) checks to ensure the goods will be as described by the supplier, including establishing that the goods exist, ensuring that they have not previously been supplied and that they are in good condition. Paragraph 8.2 also provides guidance on the type of checks to be carried out on existing businesses. These include credit checks, making visits to business premises, obtaining bank details and in the case of imports, checking that the supplier and their bank share the same country of origin.

Global's supplier and customers

143. <u>*Due diligence on Euro Plastics Components:*</u> Global's supplier in each of the deals in the appeal was EPC. EPC was registered for VAT in 1998. In April 2005 its business activity was 'making plastic moulding and heels for ladies shoes'. However, from April 2006, it diversified into trading in mobile phones and CPUs.

144. Contact with EPC came about when Global employee Mr Holcomb was offered phones by EPC. Global held an introductory pack which had been faxed to it by EPC on 19 May 2006. The pack comprised (inter alia):

> (a) An undated letter of introduction from EPC. The letter claims EPC's success and experience in the mobile telephones and computer peripherals trade sector (falsely, given that it had entered this arena only in the previous month). The letter also contained many spelling

and grammatical errors, which would suggest the company was more likely to be a small-scale operation.

(b) A copy of EPC's VAT certificate. This certificate includes a trade class 'Other Service not elsewhere classified'. This is in contrast to the letter of introduction, which claims EPC as "a premier distributor of mobile telephones and computer peripherals in the UK, Europe and the Globe".

(c) EPC's bank details, setting out accounts with Lloyds TSB and FCIB.

145. Following Mr Lewis's reply to EPC and at Global's request, EPC sent out details of two trade referees (IH Technologies and Exhibit Enterprises). However, we find that Global did not take up either of EPC's trade references.

146. Mr Lewis claimed to have met the director of EPC, and visited its principle place of business. His evidence was that he went there to assure himself that the business physically existed and to meet the director. We find he did not use the meeting to discuss with EPC its systems and what checks it carried out on its suppliers, freight forwarders and goods, including whether databases of traded stock are kept, and what action taken if duplicates are found, nor their financial standing. When asked what impression he formed he said "no impression at all". Later under cross-examination he agreed he got no meaningful information from the visit.

147. The 'due diligence' retained for EPC shows that little or no commercial checks were carried out in respect of the company. No credit checks were carried out. While the appellant points out that credit checks can result in false positives (as a credit check of Global would have done), nevertheless, as we have said, this is no explanation of why Mr Lewis would not have done them. Certainly it is no explanation of why Mr Lewis did not attempt to check out Global's trading partners' financial position prior to trading with them in very large sums of money. It could have, for instance, but did not, ask for a banker's reference.

148. We also agree with HMRC that EPC's willingness to trade with Global, giving Global very favourable terms despite being a fledgling business, should itself have made Global's management wary.

149. On 13 September 2006 Global received a fax from MM Leicester asking for a trade reference for EPC. Global responded on 21 September describing a 'strong' relationship with EPC with whom it had traded many times. In fact, at that stage Global had only previously traded with EPC once, in May 2006.

150. *Due diligence on Munch Marketing:* Munch Marketing was the customer in deal 841. Mr Lewis told HMRC that the contact with Munch had come about via www.cputrade.cc in May 2006.

151. Global had retained a copy of a fax to Munch dated 24 May 2006 headed "Re Company Introduction" [sic]. It thanked Munch for making contact via CPUTRADE.CC, and attached Global's introduction pack, asking that the trade

application form be completed and faxed back *"with your company details for my due diligence"*.

152. Munch's trade application form provided an FCIB bank account and two trade references. Global obtained Europa VAT validation responses for Munch Marketing dated 26 May 2006 and 31 October 2006.81. Global also held a translation of a 'Compiled Summary' on Munch Marketing from the Danish Commerce and Companies Agency, dated 24 February 2006. It showed that Munch had registered on 25 January 2005. The company's activities were listed as "*primarily to carry out consultancy work in the fields of marketing, financial products and property renovation. Also the Company undertakes consultancy work on other business areas, including property management. Furthermore the Company provides light contractor's work, including ventilation"*. We consider that this would have given an honest trader, contemplating a wholesale deal in CPUs with a company it had never traded with before, serious cause for concern.

153. Global also held an undated 'Company Details' sheet for Munch. These listed a bank account with UMBS and two trade references. One was Katian Limited and the other was Global Corporation Trading, of 120 Bridge Road, Chertsey. Mr Lewis subsequently asserted that this document was received at the time of initial contact in May 2006. However, the 120 Bridge Street address is the one Global moved to on 1 October 2006. Therefore we agree with HMRC and find Mr Lewis' evidence on this unreliable. We find Global did not hold this sheet at the time it initiated trade with Munch.

154. We find Global did not carry out any credit checks on Munch, despite the fact that it was to ship goods out of the country before Munch paid for them. Neither did Global seek trade references. Mr Lewis told HMRC on 30 April 2007 that he had never met with anyone from the company, nor had he ever visited the business. In the same statement Mr Lewis claimed that Munch was based in the Netherlands, information which we find contradicted the due diligence he obtained at the time, and in fact, serves to undermine it.

155. <u>*Due diligence on Agrupación*</u>: Agrupación was the customer in deal 852. Global had never dealt with them before. Mr Lewis told HMRC that the initial contact with Agrupación had come about via www.cputrade.cc, but could not indicate when contact had been made. From a letter held on Global's files, we find Global sent its introductory pack to Agrupación on 20 November 2006, which was two days before deal 852 took place. The letter requested that Agrupación fill in the 'trade application form' as soon as possible. On 21 November Global received a fax from Agrupación including (inter alia) the following details

(a) An undated and unaddressed 'Company Profile'. The profile lists areas of trade specialisation; it did not include trade in CPUs or electronics.

(b) a VAT certificate

(c) A document annotated, 'Director Utility Bill' (which the Tribunal noted appeared to be a pension plan notification for Antonio Garcia Ovies (Ovies)),

(d) A telephone bill for Agrupación for €19.24 – (which we find was not suggestive of a large company)

(e) A copy of an identification card for Ovies

(f) A sheet of blank headed paper with no address or contact other details.

156. Mr Lewis did not meet with anyone from the Agrupación, nor visit the business. He did not carry out any credit checks, despite the fact that Global was to ship valuable goods abroad before it was paid. On 23 November 2006, after deal 852 was completed, Agrupación returned a completed trade application form including bank details for La Caixa Bank, Madrid, and trade references from Urban Styles and Bristol Cash and Carry. The references were not taken up.

157. *Due diligence on the Freight Forwarder*: Global verified Alpha International Freight Forwarders through Redhill on 8 and 21 September 2006 but did not request further verification of Alpha after September 2006. It also made no other checks on the company, despite the fact that it was to be custodian to Global's high value goods. We find had Mr Lewis or Global undertaken any credit checks on Alpha it would have discovered that it was a maximum risk company, for which all credit transactions had to be supported by a director's guarantee and that a County Court Judgment had existed against it since July 2005.

158. Mr Lewis on 30 April 2007 told officers that he did not know whether Alpha was a member of BIFA (British International Freight Association, the UK trade association for international freight forwarding, imports and exports), and that he had not seen a copy of Alpha's standard terms and conditions. He also believed (wrongly) that when the goods were in storage they were insured by Alpha, despite the fact that Alpha's invoices are clear that this was not the case. We find he failed to undertake even the most basic checks on Global's freight forwarder, which is difficult to understand unless Mr Lewis knew that the object of the transaction was fraud rather than a genuine sale of goods.

Appellant's submissions on due diligence

159. Global maintains that it took such reasonable and proportionate steps as were appropriate to verify the legitimacy of its trading partners. Its due diligence complied as far as was practically possible with the suggested steps set out in Public Notice 726. Global says that its due diligence included obtaining copies of certificates of incorporation from both suppliers and customers, the VAT registration certificate of both EPC and Agrupación as well as utility bills from BT and confirmation of the identity of the directors of the business by obtaining copies of passports.

160. We consider its due diligence wholly inadequate. Not only was the appellant advised to undertake due diligence to ensure it was not involved in fraudulent

transactions, it could be expected to wish to protect itself from ordinary commercial risks. We find that Global shipped abroad the goods (for which it had agreed to pay albeit it had not yet paid) *before* Global itself was paid. Ordinary business prudence should have meant that it would have wanted to ensure the identity of the business with whom it was trading, that it was reputable and that it would be able to pay the very large sums due. But we find it did not carry out credit checks or request trade references. It did not visit its buyers and even its visit to its supplier appeared to be for the sake of form and not with the objective of actually finding out anything useful about the company. Mr Lewis was content to trade with companies, and to ship goods to their order prior to payment, without any independent view on the financial standing of its trading partners. If he genuinely thought he was trading on the open market, we do not think he would have acted in this fashion in a deal where so much money was at stake.

161. Ms. Tanchel submits that any additional steps would not have revealed the fact that deals were conducted for fraudulent purposes by others in the deal chain. We agree with this as far as it goes: checks may have given Global cause for concern (eg Alpha's lack of credit standing) but they would not have proved a connection to fraud. But the relevance to this Tribunal is *why* Global chose not to inform itself of its trading partner's financial standing. We reach a conclusion on this below.

162. Ms Tanchel says that Public Notice 726 requires traders only to take "reasonable steps" to establish the integrity of its customers and suppliers, which Global submits means immediate customer and immediate supplier. The relevant version of Public Notice 726 at the time of deals 841 and 852 states "you are not necessarily expected to know your suppliers' supplier". She argues that it cannot reasonably have been expected for Global to go further than one step up or down the deal chain. It is argued that the "value-added "of each trader in the chain is their knowledge of where to find a product to sell and who to sell it on to. Commercial logic dictates that it would be unreasonable to expect them to reveal this information, as that would expose them to the likelihood of being cut out of future deals.

163. We agree with this as far as it goes: a trader would not expect to be able to identify, let alone carry out due diligence on, his supplier's supplier or his customer's customer. However, the criticisms of Global's due diligence made by HMRC and which we have found justified as set out above are not concerned with a lack of checks on Global's supplier's supplier or its customer's customers: the criticisms are centred on the lack of checks on Global's customers and suppliers themselves.

164. Ms Tanchel argues that a realistic overview of the steps actually taken by the trader to avoid involvement in fraud has to be taken rather than an excessive focus on exhaustive due diligence.

165. Again we agree with this and we consider many other matters below, and do not decide this case on Global's due diligence (or rather its lack of effective due diligence) alone.

166. Ms Tanchel says that when considering whether or not due diligence supports a negative inference, it is necessary to ascertain whether or not certain steps, if taken would have been alerted the company to the connection between its own transactions and the fraud. If not, the fact that they were not taken is irrelevant. Ms Tanchel referred to the observations of Lewison J. in *HMRC v Livewire Telecom Ltd [2009] EWHC 15:*

> "The taking of every reasonable precaution has sometimes been referred to as a positive duty. This I think is potentially misleading the taxable person does not have a duty to take precautions… The taking of all reasonable precautions (and acting on the basis of what he discovers as a result of taking of precautions) provides him with an impenetrable shield against an attack by HMRC."

167. We were also referred to paragraph 75 of Lord Justice Moses decision in *Mobilx*:

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

168. Ms Tanchel says that although Mr Lewis accepts that he had not undertaken credit checks when carrying out due diligence, the weakness of credit checks is exposed when it is considered that a check carried out against Global in May 2007 would not have revealed its precarious financial position.

169. We agree with Ms Tanchel that when one is considering *means of knowledge* due diligence is only relevant to the extent that (a) actual answers were received which should have alerted the trader to a problem and (b) where obvious enquiries should have been made and if they had been made would have revealed problems or at least led to more questions. However, when one is considering *actual knowledge* the position is different. A failure to ask obvious questions or carry out obvious due diligence, irrespective of what answers might have been received, leads the Tribunal to consider *why* the question was not asked or the due diligence not undertaken.

170. *Conclusions on due diligence:* Mr Lewis conceded that after having learnt that Goodluck had been deregistered, nothing was done to improve or bolster the due diligence procedures of the company and the later due diligence undertaken by Mr Lewis was almost identical in quantity and quality to that done before.

171. We find Mr Lewis did not carry out credit checks (or any other checks into Global's trading partners' financial reliability; he did not take up trade references or carry out any other independent check; he did not ask ***any*** questions in respect of features of obvious concern such as why a business was trading in goods which were not its usual trading commodity but was trading in goods known to Mr Lewis to be used in MTIC fraud.

172. So far as credit checks are concerned it is Mr Lewis' case that they were unreliable and Global was not at risk. However, as he was shipping very valuable goods to its customers without payment or security, Global was very much at risk. While credit checks might give false positives, they were better than no check at all on a trading partner's financial position. Yet we find Mr Lewis was content to trade with no independent reassurance that his buyer could actually pay for the goods.

173. He visited his supplier but admitted the visit gleaned nothing useful; he did not even bother to visit his buyers and, as we have said, we do not accept the reason he gave that such a visit was too expensive. So despite the high value of the deals he did not visit his trading partners, or on the occasion he did, did not use the visit for due diligence. This begs the question of why he carried out the visit at all.

174. We find Mr Lewis appeared to carry out due diligence (eg asking for trade packs and his visit to EPC) but at the same time failed utterly to carry out effective due diligence, yet Mr Lewis was a rational man who we find (from previous employment) had some understanding of how the commercial world operates. We find that Global's carrying out ineffective due diligence was window dressing. Mr Lewis carried it out because he knew HMRC expected it but he did not carry it out because he wanted any kind of reassurance of the probity and financial reliability of his trading partners. This suggests to us he knew that the transactions would take place and Global would be paid in any event. How could he have known this unless he knew it was all part of an orchestrated fraud?

Redhill verifications

175. Global obtained a Europa VAT validation response relating to EPC on 19 May 2006 and again prior to the date of deal 841 (31 October), but not for the date of deal 852 (26 November). Global attempted to verify EPC with the Redhill VAT office on 21 May 2006 and 30 May 2006. On 31 May HMRC replied, requesting a copy of the invoice/purchase order between Global and EPC. On 2 June a further attempt to verify was made and again, on 8 September Global received a response from HMRC stating "*we are awaiting further verification for [EPC]. Please resubmit your application after 10 working days*". Following that, Global made no further attempts to seek verification with Redhill of EPC before the 31 October or 22 November deals.

176. Global had a Europa VAT validation response dated 20 November 2006 for Agrupación. We find he did not attempt to verify Agrupación with Redhill. Mr Lewis' explanation for this is that he had been relying on the e-mail from Redhill), which he says supported his belief that a Europa check was sufficient. He also said he did not realise that Redhill would do a check on non-UK companies.

177. Therefore, we find Global traded with EPC, Munch and Agrupación without a Redhill verification on any of them.

178. We also find that in Global's earlier wholesale CPU trading, which deals did trace back to tax loss but which are not at issue in this appeal, its customer Universal Traders UK, and its supplier was Goodluck. Global attempted to verify the VAT

numbers of both of these traders on 20 April, but the trades were carried out before the responses were received (and in any event the response received for Goodluck was negative).

179. Ms Tanchel says that neither of the two customers or suppliers relevant to the deals 841 and 852 had been deregistered for VAT at the time of the transactions. She says that repeated requests were made of Redhill for verification of suppliers and confirmation of VAT registration but that Mr Lewis encountered numerous difficulties in obtaining a timeous response. Because of this Global conducted Europa checks and did so on the not unreasonable understanding that these checks were of the same standing as those done with Redhill.

180. We find that Mr Lewis had been told on many occasions the importance of a Redhill verification and that he knew that it was not the same as a Europea VAT number check because he knew he had to (and he did) send an information pack about the deal and his trading partners to Redhill with each verification request. We do not accept he thought that a Redhill verification was the same as a Europa VAT number check, which required him to do no more than enter a VAT number into a website.

181. Nevertheless, he was clearly prepared to trade without a Redhill verification, as he did so.

125. Ms Tanchel said that Global transacted with only a limited number of suppliers and customers which indicated a prudent business practice of dealing only with those in whom Global had commercial confidence. We do not accept this: it had only dealt with Munch once before and with Agrupación not at all. They were not well known to the appellant.

126. Overall we conclude that Mr Lewis showed a disregard for HMRC's advice. Having been told to verify his trading partners, he did not do so. While with EPC this might be explained away on he basis HMRC took so long to respond, it does not explain why he did not check whether he could verify his customers, or why he did not wait for the response in earlier deals.

182. We consider that by itself this lack of regard for HMRC's advice tells us little as Global did carry out Europa checks. And while Mr Lewis must have appreciated the checks were not the same, it was not made clear to him what the difference actually was. It is possible Mr Lewis would have acted in the manner he did with respect to Redhill verifications whether or not he thought the deals were on the open market.

183. Having considered Global's response to the known risk of MTIC fraud and also what it did (and did not do) to protect its commercial position, we now consider the appellant's overall actions and what this tells us.

Business plan

184. In cross examination, Mr Lewis was asked what was his business plan – what did he know of CPU market? Apart from desire to talk about other aspects of the business such as an IT platform, which failed, his answer was that they did research on the internet and at CeBit and were optimistic.

185. He said he knew the different names but not functions of CPUs and he said he knew the prices. He admitted he did not look at Intel's website (on which prices were published) nor speak direct to Intel nor any of its authorised distributors. He agreed he did not know who the authorised distributors were nor their role in the market. He did not approach assemblers or manufacturers to offer CPUs for sale.

186. As we have commented before, he said he looked at trading boards on websites. But all he ever claimed to get from these was the knowledge that the quantities Global traded in and the prices it paid/charged were "in line with similar quantities and prices that were being traded at that point in time." This could not have given Mr Lewis any detailed knowledge of the market. In any event he did not need to research the market, as on his own evidence buyers and sellers approached him with deals.

187. We agree with Mr Kinnear for HMRC that Mr Lewis did virtually no effective research on the CPU market. He merely satisfied himself from these websites that big deals appeared regularly to take place.

188. Mr Lewis said he believed his buyers and sellers were wholesalers. He was asked to explain, therefore, why he thought there would be 3 wholesalers in a chain. He could not explain this to the Tribunal. He accepts he knew that goods from outside UK were traded through at least two UK companies before being sold to European buyers. In his witness statement, he says he does not know why his European buyers would buy from him rather than direct from country of manufacture. He could not explain to our satisfaction why, knowing the structure of MTIC fraud was that goods would be imported to UK sold through chain and exported back to continent, he nonetheless chose to participate in a chain which had the same structure.

189. His only explanation, as it was for a number of oddities, was that he thought it was okay as he had done it before and been repaid by HMRC. We reject this as an explanation as explained below in paragraphs 210-213.

190. Therefore, we find he had no kind of rational explanation of how the market in which he said he thought he was trading worked.

The appellant's amazing success

191. We find it odd (were the deals negotiated on an open market) that Mr Lewis, with no wholesale trading experience whatsoever, let alone in the specialist market in CPUs, should have been able to source a new customer, a new supplier, and the necessary supporting trade relationships and resources (for example, a suitable freight forwarder and warehouse facilities), in order to arrange deals of significant volume within a day of securing the necessary funds from Mr Lewis' father. The value of its

very first wholesale trade was £2,673,227. These were sales of Intel Pentium 4 SL7Z9 CPUs and as referred to above were subsequently traced to a significant tax loss. In fact, as we have found, all of its wholesale CPU trading (some 11 deals) traced back to tax loss.

192. We find that Global's trade was achieved on a low resource base and with minimal expenditure on advertising and promotion. It was also achieved without any previous experience trading in CPUs. Global had managed to carry out 11 deals in seven months in relation to CPUs to a total value of £11.5 million. In evidence Mr Lewis said his suppliers approached him by phone or fax. He gave no explanation why they should single him out, or importantly, why they did not simply advertise on the same websites he was using and cut him out of the chain. In cross-examination, Mr Lewis' evidence in relation to this aspect was confused and lacked clarity. The general thrust of his evidence was that EPC, Munch and Agrupación (and also Goodluck and Universal) had all contacted him, but that it was his own choice who he bought from and who he sold to. He offered no satisfactory explanation as to why they had all contacted him.

193. Mr Lewis denied that his exponential increase in business from selling 3 TFT screens on ebay to sales of CPUs worth well over £2m was amazing. He considered it was due to his research on the internet. We have already said that his research on the internet appeared to amount to very little other than comparing the size of transactions in CPUs and so we find he failed to give any kind of a credible explanation for how Global could be so successful. Bearing in mind this was not a credible explanation and that we have found him to be an unreliable witness but one with a background in business, we do not accept he truly believed his success was down to his research.

194. It was put to him that it was odd that it just so happened someone called him wanting to sell £2.6m of CPUs and someone else called him coincidentally wanting to buy that same quantify of CPUs. His witness statement described it as "fortunate". We find he failed to give any explanation of why a company with no experience or track record could suddenly start trading in those quantities at a profit. In fact he said "I don't know". It was put to him that it was a sure thing which he denied, but we do not accept the denial. It was put to him that it was lucky that he was offered goods to buy and almost immediately got a customer wanting to buy that exact quantity at a profitable price. He said this did not give him pause for thought because it had happened before and HMRC had repaid him. We reject this as an explanation as set out below in paragraphs 210-213. In summary, we do not believe he thought Global's ability to enter into these trades was due to good fortune.

Trading risk

195. We have mentioned this above in eth context of Global's purported due diligence. Although Mr Lewis was not consistent in his evidence over whether Global took any risk in these trades, we find, were they trades on the open market which Mr Lewis said at the time he thought they were, it would have been at risk. It bought goods and transported them out of the country before the buyer had accepted

them and paid for them. At the very least Global would be at risk if the buyer reneged on the deal.

196. In cross examination, Mr Lewis said that he had not considered the risk of the buyer reneging. Mr Lewis then seemed to suggest his contract with his supplier was conditional, but there is no evidence of this, and if so it is odd it was not mentioned before. He then agreed that Global would be in difficulties if the buyer reneged as Global did not have the funds to pay the supplier. We find his evidence shows how little concerned he was at the time with the possibility of things going wrong: it is clear to us he didn't consider it a real risk at the time and we find the reason for that was that he knew the purchase would go ahead as it was all arranged and not happening on the open market.

Benign trading environment

197. Assuming these transactions were on the open market, which Mr Lewis said he thought they were, Global's supplier (EPC) was prepared to allow Global to put it at very significant risk of loss. It permitted its buyer (Global) to ship the goods to Global's customer before Global had paid. Indeed it did not require payment from Global until Global had been paid.. Yet we find there were no contracts in which EPC even attempted to retain title. They certainly did not require payment (or a deposit) in advance. Despite having no reputation in the field, Global was therefore able to arrange payment with its suppliers and customers on terms which were extremely generous to it.

198. We find that this was an uncommercially benign trading situation and that Mr Lewis, a man of at least average intelligence with a background in banking, must (and did) know this. He knew it was too good to be true. He offered no rational explanation of why he traded in such circumstances.

Terms and conditions of trading

199. We have already commented on the inconsistency in Mr Lewis' evidence over the terms of trading. We find that Global had no written terms and conditions at the time of the deals in question, despite their very high value and despite the fact it shipped goods abroad before it was paid. There was nothing else apart from invoices and a supplier's declaration. There was nothing about, for instance, retention of title or damage to the goods.

200. Ms Tanchel says if there are inadequacies with the contractual paperwork, this tells the Tribunal nothing because all Global's deals (not just the two in this appeal) were on the same basis and in any event HMRC had not adduced any evidence relating to standard business practice in CPU trade by small traders in the grey market.

201. In other words, Ms Tanchel's case is that she considers that the Tribunal cannot draw adverse inferences from the lack of written contracts. We do not agree. We do not consider that the lack of terms & conditions in Global's trading tell us anything

about normal trading as, so far as wholesale trades are concerned they have all been traced to fraud and were therefore *not* normal trading (irrespective of what Global knew at the time) and, secondly, the rest of its trading was on a much smaller scale and cannot be a guide. Further, we do not consider that HMRC need to introduce evidence of standard trading practices. This case does not turn upon the niceties of exactly what are the normal conditions of trade on wholesale CPU exports: it turns upon why Mr Lewis acted as he did. The Tribunal is entitled to ask why a trader would enter into a transaction which puts it at a large financial risk without imposing even a retention of title clause or indeed any express terms and conditions

202. We also find that Mr Lewis was well aware that it is not normal business practice to trade without terms and conditions because otherwise he would not have been misleading over it in his evidence. Again it seems to us that the reason Mr Lewis was not concerned with the lack of a contract at the time of the deals was that he knew that it was not necessary as the deals were pre-ordained and not taking place on the open market.

Box numbers

203. We find Mr Lewis, despite advice from HMRC, did not compile or retain a database of box and lot numbers (the purpose of which is to avoid trading in the same goods twice). He did not utilise the freight forwarder's knowledge to undertake any further checks on the goods.

Inspection of the goods

204. Mr Lewis' evidence from his witness statement is that his supplier would ask the freight forwarders to inspect the goods, but Global would pay for this inspection. Global would be given the inspection report *by the supplier*. Global would then provide the inspection report to the buyer with its invoice.

205. We find many inconsistencies in this evidence. It seems very odd that Global would be content with an inspection report provided by its supplier – who in the commercial world must be the one person who might not provide an unbiased report. Further, there is no evidence that Global did pay for the report: Alpha did not invoice for an inspection. The inspection report in any event did not deal with the condition of the stock, just quantity and type. And indeed Mr Lewis himself said that the inspections were only done so that he could verify that the goods physically existed and it was a requirement of his customer. Yet he also said the buyer had the goods inspected on arrival on the Continent and before they paid for them, so we do not accept that the buyer would have insisted on an earlier inspection.

206. Mr Lewis' case is that he had no reason to think there was a problem with the inspection reports because HMRC had not queried them on earlier deals. We reject this as an explanation in paragraph 210-213 below.

207. In any event it is not for HMRC to tell a trader how to protect itself commercially. And we find Global did not protect itself commercially: despite

knowing its buyer would inspect the goods, we find Global had no interest in the condition of the goods, only whether they physically existed. Such a lack of concern indicates that he knew that the buyer would buy the goods whatever the condition of them and such knowledge is only consistent with knowledge that the transactions were pre-ordained rather than genuine commercial transactions happening on the open market.

Insurance

208. Global's stock was not insured whilst it was held at the freight forwarder. Mr Lewis' evidence is that he thought he was insured by Alpha, but this was wrong and Mr Lewis had clearly not investigated the possibility. By contrast, Global then took on the cost of insuring the goods during and after transit.

209. So we find that Global held an insurance policy but at the same time did not take steps to ensure that the goods were fully insured during the whole time that Global was at risk. This again appears to indicate a concern with appearances rather than reality and again suggests that Mr Lewis knew Global was not acting in a genuine commercial environment.

Location of goods

127. Ms Tanchel said that, although HMRC had made much of the fact that Global had been asked to deliver goods to Belgium and the Netherlands, despite its customers being based in Denmark and Spain, which HMRC asserted should have been a warning sign that the deals were connected to fraud, Dr Findlay's research shows that Belgium and the Netherlands assemble more computers than Denmark and Spain and in that context it cannot be said that a request to ship goods to a country which was not the country of origin of the buyer could be said to have been unusual or suspicious.

128. We agree with Ms Tanchel that nothing can be read into the location of the warehouses.

HMRC endorsed trading practices?

210. We have noted a number of occasions where Mr Lewis' explanation for an oddity in his trading model was that he had traded like that before and it had not been queried by HMRC.

211. Firstly we do not accept that HMRC made any representation that Global's trading was not involved in MTIC fraud. At best HMRC's earlier repayment to Global could be taken as reassurance that HMRC would repay despite any concerns.

212. Secondly, we do not accept in any event that Mr Lewis did rely on representations made by HMRC. On the contrary it is clear that Mr Lewis disregarded HMRC's opinion on a number of occasions: he ignored the recommendations in Notice 726 (eg to undertake credit checks and take up trade references); he ignored the recommendation to undertake a Redhill check.

213. Thirdly, and more importantly, if Mr Lewis *knew* that his transactions were connected to fraud, to the extent HMRC made any representation by its repayment, it would be irrelevant. In so far as it is a question of *ought to have known*, then that requires the appellant to have acted reasonably. It would not be reasonable to rely on HMRC's repayment unless Mr Lewis knew that HMRC had the same information that he had. Mr Lewis knew many things about the transactions which HMRC did not know. We have found he knew, for instance, that buyers and sellers approached him with a done deal. But he knew HMRC did not know this: it would not have been reasonable for him to rely on the repayment as a representation that trading in such circumstances was okay.

Conclusions

214. Mr Lewis was clearly aware of the high incidence of MTIC fraud in the type of trade in which Global was operating. His background was in banking and financial services and he therefore possessed a degree of commercial acumen. He would have been aware of the need for caution, particularly given the substantial amounts of money involved. However his evidence to the Tribunal was unsatisfactory in terms of his inability to explain the lack of due diligence and almost total absence of contractual documentation with identifiable terms and conditions, which could be relied upon in the event of any legal or other disputes arising from the transactions. There were no real attempts at inspecting the condition of the goods and very little interest in the creditworthiness and bona fides of its supplier and customers.

215. Global had a dramatic surge in turnover immediately after Mr Lewis secured loan facilities from his father; and was able to sell entire consignments of stock which it had bought without any negotiations or difficulty. Both buyers and sellers approached Global offering the transactions to it despite its novice position in the market and despite Mr Lewis, the alter ego of Global, knowing very little about the market or the product, and certainly without Global adding any value. Mr Lewis could not offer a satisfactory explanation of why he was not suspicious of such an unrealistically benign trading environment.

216. The deals were described by Mr Lewis as "zero risk" and it is clear that although (on paper at least) there was a risk of the buyer reneging on the purchase after the goods had been shipped leaving Global with goods it could not pay for stranded on the Continent, Mr Lewis acted as if there was no such risk in that he did nothing to protect Global's position.

217. All of Global's 11 CPU deals, which includes the two at issue in this appeal, traced back to fraud. This is of course the explanation for why it was so easy for a novice to quickly undertake transactions of such high value. Did Mr Lewis understand that at the time? We think he did. He gave us no convincing explanation of why he was not suspicious at the time yet he was clearly a rational man with business experience. The fact he went ahead in these suspicious circumstances must mean, and we find it does mean, that he knew he was being offered an opportunity to make easy money by participating in transactions engineered for the purpose of fraud.

218. Mr Lewis' actions in 2006 are only consistent with knowledge that the deals were connected to fraud. This explains his lack of interest in effective due diligence, his lack of interest in the financial standing of his trading partners, his lack of interest in visiting them, his lack of interest in understanding the real CPU market, his lack of interest in ensuring the goods were properly insured at all times Global was at risk, and his failure to require proper terms and conditions of trading. He knew he did not need to be concerned because these deals would take place in any event. They were orchestrated and he knew that.

219. Moreover, we find Mr Lewis had an interest in appearing to do things properly. The goods were insured albeit only for part of the time Global was at risk; he carried out some due diligence albeit without finding out anything useful, he visited EPC albeit again without using the opportunity to vet them. He had the goods inspected but was not interested in their condition. We find he was merely going through the motions and generating some paperwork in a poorly organised attempt at window dressing.

220. Further, Mr Lewis knew the buyer and seller approached him with a done deal. He knew he did not negotiate the deals (we have rejected his evidence to the contrary). He was unable to explain why he, a novice in this area, should have been presented on numerous occasions with the opportunity to make a risk free profit, without his having to do anything other than undertake some administrative work to earn it.

221. We note he chose to bank with UMBS, a bank which it is clear from his evidence he did not trust with a deposit of Global's money, and we have found using this bank was dictated to him for the reasons given above.

222. We also take into account that his evidence to this Tribunal was not reliable. We think that this was because he had something to hide.

223. We take into account that the scheme required each participant to play its part. If Global had sold elsewhere, to the wrong person, the scheme would immediately have broken down. The scheme required each participant, including the Global, to play a preordained role in order to make it successful. We do not accept that Mr Lewis was a "dupe" in either of these two deals. And we note he took a significant percentage of the VAT at stake in the two chains.

224. Taking all these matters into account, we are more than satisfied that Global, through its alter ego Mr Lewis, knew that its transactions were connected to fraud.

225. As Global knew its transactions were connected to fraud, it is irrelevant that HMRC repaid VAT on its earlier wholesale export.

226. As we have found Mr Lewis, and therefore Global, knew at the time of the connection of its transactions to fraud, we do not need to consider the second limb of the *Kittel* test which is whether they did not, but ought to have, known of the connection to fraud. However, had we been called upon to consider this, we would find that Global (and Mr Lewis its alter ego) ought to have known of the connection

to fraud as they chose to ignore the obvious inferences from the facts and circumstances in which Global was trading.

227. In particular, it failed to draw the obvious inference from the facts:

- Why should Global, which was a small new company which had previously only succeeded in trading a few FTF screens on ebay, be approached with offers to buy and sell very substantial quantities of CPUs, generating large profits for doing very little? It knew it did not negotiate its prices yet would receive a substantial profit.

- It is unlikely that any trader, let alone one without track record, would be offered large quantities of CPU and then be contacted by a buyer looking for exactly that quantity at a price which enabled it to make a substantial profit

- Mr Lewis was well aware of the trading boards, so he should have asked himself why would the buyer and seller not use the trading boards to locate each other and cut the unnecessary link (Global) out of the chain and trade with each other direct

- It knew that the goods were imported into the UK and swiftly sold out of the UK again. It knew there were at least three wholesalers in the chains. This was obviously an irrational supply chain.

- It should have known, from undertaking a credit check of Alpha, that it was a high risk company with which to deal, yet its supplier chose to use this company.

228. As we have said it should not have drawn any comfort from HMRC's earlier repayments as it knew matters about its own trades which were not known to HMRC at the time and therefore without such full disclosure it was not reasonable to treat HMRC's repayment as a representation there was no connection to fraud.

229. We also take into account that at the same time Mr Lewis was very well aware about the risk of fraud, which combined with the above factors means Global most certainly ought to have realised that it was entering into transactions with all the hallmarks of MTIC fraud. It should have known its transactions were connected to fraud. Indeed, we have found that Mr Lewis and Global did know this at the time.

230. The appeal is dismissed.

Costs

231. By a direction dated 9 August 2010 made with the agreement of the parties, the Tribunal directed that Rule 29 of the VAT Tribunal Rules 1986 would apply to these proceedings. Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 is therefore disapplied giving the Tribunal a general costs discretion. HMRC asked for its costs if successful. We therefore award costs to HMRC on the standard basis to be assessed by a tax judge if not agreed.

Full decision and appeal rights

232. 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.

MICHAEL S CONNELL

TRIBUNAL JUDGE

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 6 March 2013