



[2019] UKFTT 519 (TC)

VAT – input tax denial – MTIC – whether tax losses connected with fraud - whether appellant knew or should have known that transactions were connected with fraud

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TC07315

Appeal number: TC/2017/4623

BETWEEN

REVIVE CORPORATION LIMITED

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE PETER KEMPSTER
MR TERENCE BAYLISS**

Sitting in public at Centre City Tower, Birmingham on 26 March to 4 April 2019

Tim Brown of counsel, instructed by UHY Hacker Young, for the Appellant

Joanna Vicary of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. By a decision notice dated 18 January 2017 (upheld on formal internal review on 12 May 2017) the Respondents (“**HMRC**”) denied a VAT repayment claimed by the Appellant (“**the Company**”) in its VAT returns for the period March 2015 to January 2016. The aggregate amount denied is £1,012,500.90. The denial is in respect of input tax claimed on twenty purchases of goods by the Company from a supplier Product Placement Sales and Marketing Consultants Limited (“**PPSM**”) (“**the Challenged Deals**”). Details of the Challenged Deals are set out in Appendix One to this decision notice.

2. HMRC contend that the Challenged Deals are involved in missing trader intra-community (“**MTIC**”) fraud. The features of MTIC fraud have been described in various decision of this Tribunal and the courts, and we respectfully adopt the explanation given by Christopher Clarke J in *Red 12 Trading Ltd v RCC* [2010] STC 589 at [1-10] – set out in Appendix Two to this decision notice. Using the terminology in that case, HMRC contend that the Company is a “broker”; 16 of the Challenged Deals (deal 2-5 and 9-20) are “contra-trading” frauds (which we shall call “**the contra deals**”); and the other Challenged Deals (deals 1 and 6-8) are “plain vanilla” frauds (which we shall call “**the direct deals**”).

LAW

3. It is well established that “Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively ... It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends ...” per the CJEU in *Kittel v Belgium* [2008] STC 1537 (at [55]). Moreover, this refusal extends beyond the obvious fraudster (the “defaulter”, in *Red 12* terminology), per *Kittel*:

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

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

4. That extension was examined by the Court of Appeal in *Mobilx Ltd v RCC* [2010] STC 1436, as explained by Proudman J in *GSM Export (UK) Ltd v RCC* [2014] UKUT 529 (TCC) at [16]:

“In *Mobilx*, Moses LJ said at [59] that the test in *Kittel*'s case was “simple and should not be over-refined”. Three key points were mentioned as to the required state of mind of the taxpayer:

- a. “Should have known” means “knowing or having any means of knowing”; at [51];
- b. The taxpayer should have known (or the taxpayer had the means of knowing) that the transaction was connected with fraudulent evasion of VAT; it is not sufficient to know or to have the means of knowing that there was a risk that the transaction might have been so connected (at [56]) or that it was “more likely that not” that the transaction was so connected; at [59]; and

c. A taxpayer can be regarded as being in a position where he should have known that the transaction was connected with fraudulent evasion of VAT where he should have known that “the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud”; at [59] and [60].”

THE DISPUTE

5. As part of pre-trial case management the Tribunal endorsed “*Fairford* directions” agreed between the parties. Compliance with those directions has reduced and clarified the matters in dispute in these proceedings, and the Tribunal is grateful to the parties for their co-operation in this regard.
6. The Company accepts that all the Challenged Deals have resulted in a VAT loss to HM Treasury.
7. On deals 1-8 and 14-20 the Company accepts that the VAT loss resulted from fraudulent evasion (by a person other than the Company) and that those deals are connected with that evasion. The Company does not accept those matters in respect of deals 9-13 – for clarity, these are five of the deals where HMRC contend that the defaulter is Shark Partners Ltd.
8. On all the Challenged Deals, the Company disputes that it knew or should have known that the deals were connected to fraud.
9. Therefore the matters for determination by the Tribunal are:
 - (1) Whether the VAT loss resulting from deals 9-13 resulted from fraudulent evasion, and whether those deals were connected with that evasion.
 - (2) For all the Challenged Deals, whether the Company knew or should have known that the deals were connected to fraud.
10. It is agreed that on the disputed points the burden of proof, to the standard of balance of probabilities, lies with HMRC (see *Mobilx* at [81]).

EVIDENCE

11. The Tribunal approved the taking of a transcription of the proceedings, with copies thereof made available to both parties and the Tribunal.
12. We had documentary evidence contained in 29 volumes, and a bundle of authorities. There was a number of unchallenged witness statements from HMRC officers responsible for the VAT affairs of certain traders in the transaction chains for the Challenged Deals.
13. We took oral evidence from the following witnesses:
 - (1) For HMRC:
 - (a) Mr Gavin Stock is the officer responsible for the VAT affairs of the Company. He adopted and confirmed two formal witness statements dated 26 February 2018 and 23 May 2018.
 - (b) Ms Susan Hirons is the officer responsible for the VAT affairs of PPSM. She adopted and confirmed a formal witness statement dated 26 February 2018.
 - (c) Mr Martyn Guest is the officer responsible for the VAT affairs of Shark Partners Limited. He adopted and confirmed a formal witness statement dated 28 February 2018.
 - (2) For the Company:

(a) Mr Adrian Inglis is a director and shareholder of the Company. He adopted and confirmed two formal witness statements dated 20 April 2018 and 13 June 2018.

(b) Mr Graham Munro is a director and shareholder of the Company. He adopted and confirmed a formal witness statement dated 20 April 2018.

(c) Mr Michael Pappalardo is an employee of the Company. He adopted and confirmed a formal witness statement dated 20 April 2018. Mr Pappalardo's oral evidence was given on the afternoon of Friday 29 March and the morning of Monday 1 April; at the conclusion of 29 March the Judge administered the usual warning to the witness not to discuss his evidence during the recess; at the commencement of proceedings on 1 April Mr Brown informed the Tribunal that he had been informed by those instructing him that Mr Pappalardo had contacted Mr Inglis over the weekend by email attaching certain documents; Mr Inglis had not read the documents sent to him by Mr Pappalardo and had alerted the Company's representatives to what had happened. Mr Pappalardo stated to the Tribunal that he had not understood that his actions constituted a discussion of his evidence, and he apologised. The Tribunal admonished Mr Pappalardo but decided to take no further action.

(d) Mrs Samantha Brown is an employee of the Company. She adopted and confirmed a formal witness statement dated 20 April 2018.

14. Both parties were permitted to submit after the hearing written representations on certain matters (relating to Shark Partners Ltd) and we have taken those points into account in our consideration of the appeal.

HMRC Witnesses

15. **Mr Stock's evidence** included the following:

(1) He has been dealing with VAT matters within HMRC (and its predecessor HMCE) since 1996, and since 2009 has been assigned to MTIC investigations. Since December 2015 he has been the case officer (with his colleague Ms Dunne) for the Company.

(2) The Company was registered for VAT in January 2005. In March 2005 the Company requested to move to monthly VAT returns. There had been several breaches of the conditions for the concession of monthly returns, resulting in reversion to quarterly returns, but broadly the Company had been on monthly returns since May 2008.

(3) In December 2015 HMRC had concerns with one of the Company's suppliers, PPSM. HMRC requested from the Company evidence of its due diligence checks on PPSM. On 21 December HMRC sent a warning letter to the Company stating:

"I am writing to warn you that as a result of our enquiries into fraud within the wholesale of computers, computer peripheral equipment and software sector, a significant number of your purchases appear to be connected to fraud with the supply chains commencing with a defaulting trader in the UK. ... [One of the suppliers in question was PPSM] ... Once the full amount of unpaid VAT has been established, a tax loss letter will be issued to Revive scheduling all transactions which have been traced back to a fraudulent evasion of VAT."

(4) On 13 January 2016 he and Ms Dunne visited the Company and met with Mr Inglis, Mr Munro and Mrs Brown. Mr Inglis said the Company had ceased trading with PPSM, following the warning letter. Later in January Mrs Brown asked HMRC if there was any further news concerning PPSM, and if HMRC could push matters along.

(5) On 5 February 2016 he sent a number of tax loss letters to the Company; most informed the Company of possible involvement in several contra-trading chains of transactions; one related to direct tax losses and stated, "as a result of our enquiries in respect of your transactions involving supplies of electronic related products we now know that 7 transactions commenced with a defaulting trader, resulting in a loss to the public revenue that exceeds £115,606.72." Of these seven transactions six traced back to PPSM.

(6) On 9 February 2016 Mr Inglis wrote:

"Gavin - regarding PPSM, I spoke at length with Peter the Director of PPSM ... He is still adamant that his supplier is a large reputable supplier and there will be no doubt once your investigation is complete that the stock highlighted in your 5-letter email has not originated from a tax loss. His HMRC contact has suggested to him that the issue is with Revive rather than with PPSM. Peter has pushed for a meeting with his HMRC contact next Wednesday to help get this resolved for you. I am hoping that the necessary information that is gathered will be swiftly with you. As mentioned I have put on hold all business that we have been doing with PPSM since last week, cancelling 3 p.o.s that we had received until you tell us that everything with them checks out. Of course if it doesn't, we will as we have done in the past be ceasing to trade permanently with this supplier. My worry is that not only is the hold up on the January return going to start causing us an issue with cashflow, but I am also worried that pausing the business with PPSM, if it is deemed that everything is fine with his supply chain may affect future business with them, so I really ask you to please try and resolve this as quickly as possible".

(7) On the same day Mr Stock replied:

"I can only reiterate what I verbally told you and in writing in the direct tax loss and contra tax loss letters, that all enquires that I have undertaken so far have identified VAT losses in relation to goods purchased from PPSM Ltd. It is your commercial decision as to whether you continue to buy from your chosen suppliers, but you must be aware that any input tax that you claim that is traced back to a direct or indirect tax loss may be subject to denial. The legal [vires] in regard to the denial of the right to deduct input tax is within the Kittel judgement".

(8) During February Mr Inglis wrote stating that he was keen to recommence trading with PPSM, and expressing his confusion that HMRC were telling him that there were tax losses in the deal chains, while Mr Wildman (director of PPSM) was telling him that PPSM's VAT officer had given it a clean bill of health. Mr Stock gave the same reply as before.

(9) Further tax loss letters were sent to the Company on 22 & 29 February 2016. The Company was informed that its repayment returns were subject to extended verification procedures.

(10) Further tax loss letters were sent to the Company on 1 & 7 March 2016.

(11) He had requested extensive documentation from the Company, all of which had been provided by Mrs Brown.

(12) On 30 March 2016 he and Ms Dunne visited the Company and met with Mr Inglis, Mr Munro, Mrs Brown and Mr Pappalardo. Mr Inglis explained the structure of the transactions with PPSM and Mr Pappalardo provided an email from Mr Wildman dated 16 March 2015 which stated:

“If you and Revive are happy in concept to do this trading then I will share with you my customer who to clarify will pre-pay for any ordered stock. This whole deal is at no risk what-so-ever to Revive. The only reason I cannot do this directly is that PPSM Ltd do not have the funds to fund the VAT element of the deal. This kind of order could be on a weekly/fortnightly basis depending upon the stock I have allocated from my supplier. This product initially won't be available to anyone else as the stock is all required by my customer.

I am able to offer you 2% on the price of my invoice to you for your trouble which could equate to £5-£6K per transaction.

All transportation costs will be covered and the stock can go from either the warehouse of PPSM Ltd or Revive depending upon which you would prefer.

The name of my customer is GECX in Greece and I will give you all the relevant paperwork and contact details as soon as you confirm your interest in this trading opportunity. They are a very big trading group and my relationship with them is key to this working.

Please see the below details for the offer below. This would be the first transaction and is ready to go asap.”

(13) Mr Stock referred the Company representatives to HMRC Notice 726. Mr Pappalardo stated that they had no intention of doing any further business with PPSM.

(14) On 12 May and 10 June 2016 HMRC released VAT repayments to the Company, on a without prejudice basis.

(15) A further tax loss letter was sent to the Company on 19 May 2016.

(16) A further meeting with the Company was held on 15 June 2016 (same personnel as the 30 March meeting). The Company was again referred to Notice 726.

(17) On 11 July 2016 Mr Pappalardo asked Mr Stock whether it was now OK to resume trading with PPSM. Mr Stock gave the same reply as before.

(18) A further meeting with the Company was held on 19 September 2016 (same personnel as the 30 March meeting). The Company was again referred to Notice 726.

(19) On 3 October 2016 Mr Pappalardo asked Mr Stock whether it was now OK to resume trading with PPSM, and asked why PPSM were still trading and whether the Company was the only one being “targeted”. Mr Stock gave the same reply as before.

(20) A revised tax loss letter was sent to the Company on 13 October 2016. On 2 December 2016 HMRC released a VAT repayment to the Company, on a without prejudice basis.

(21) A further meeting with the Company was held on 14 December 2016 (same personnel as the 30 March meeting).

(22) On 18 January 2017 he issued a denial letter refusing repayment of VAT totalling £1,012,506.15 on stated transactions. The letter explained:

“In the making of this decision the Commissioners have taken into account the features of trade evident from reviewing the transactions and activities of Revive Corporation Limited including:

- The transactions under consideration have been traced back to an identified fraudulent tax loss, some via a contra trader, in the appropriate VAT periods.

- Starting in January 2010, when Revive received its first letter from HMRC regarding the risk of MTIC fraud, Revive can be shown to have an extensive knowledge of the risks of MTIC fraud prior to undertaking these deals. Revive received multiple tax loss letters, explaining that tax losses have occurred in its transaction chains; it received multiple visits where MTIC fraud was explained, it was sent letters explaining the importance of due diligence checks; it was put on Continuous monitoring in September 2011; It was sent Public Notice 726 which explained how to avoid becoming involved with the fraud. Given this awareness of the fraud, and history of tax losses, we would have expected Revive to act with reasonable diligence prior to undertaking new deals.
- The deals were prearranged by Revive's supplier (PPSM). PPSM told Revive the profit margin that they would receive and who the customer was. This begs the question as to why PPSM did not contract directly with Revive's customers in order to maximise its profits. Revive was told that the deals would be on a "no risk" basis. Given Revive's awareness of MTIC and previous involvement in deals connected with tax losses it is astounding that it went ahead with deals like this, unless it was knowingly involved with facilitating the fraud.
- The deals were undertaken on a back to back basis over a short time period where the same amount of goods were sold that were bought in. Revive did not need to hold on to additional goods or source these goods from other suppliers. Back to back deals are another indicator that these deals were "MTIC deals".
- For 80% of the deals under consideration Revive did not pay its supplier until it had received payment from its customer. It is extraordinary that, given its inadequate due diligence, Revive appears to have trusted the counterparties to the transactions to honour their obligations. The conclusion to be drawn from Revive's approach is that it knew perfectly well that its supplier and customer would not let it down because the transaction had been pre-arranged.
- Some of the invoices show that Revive had sold the goods under consideration before they had even entered the UK and passed along the supply chain.
- Other aspects of these transactions were different to how it normally operates such as the fact that Revive did not inspect these goods or get an inspection report for these goods. This is something that it usually does with other transactions. This is a point that Revive was previously warned about as important following earlier visits from HMRC officers.
- The due diligence checks that Revive undertook on its supplier in these transactions highlighted considerable concerns and seems to have just been ignored. For example the checks conclude that the supplier is of "maximum risk" regarding extending credit, yet Revive simply carried on with the deals. Furthermore, the VAT certificate shows a completely different business activity to the supplies being undertaken. At best Revive's behaviour was reckless, alternatively, it suggests that Revive did not care about the results of the checks as it knew that the deals were part of fraudulent scheme.

This letter acts as a notification of assessment. If adjustments to the VAT return are needed I will write to you separately about this.”

(23) On 23 January 2017 he sent to the Company warning letters relating to GECX Greece and GECX Czech Republic.

(24) On 14 February 2017 the Company's accountants (UHY Hacker Young) requested a reconsideration of the denial decision. On 8 March Mr Stock confirmed his decision. On 29 March the accountants requested a formal internal review. On 12 May the decision was upheld (Ms Champion).

(25) The twenty transactions on which VAT was denied, and the relevant deal chains, are as set out in Appendix One to this decision notice.

(26) He considered that there were anomalies in the dates of the documentation for most of the deals; parties were not in a position to fund their purchases unless they had already been paid by their customer; parties appeared to be selling goods before they had title to them; he concluded that there was evidence of collusion amongst the parties to the transactions. He had received extensive information from his colleagues involved in investigating other traders in the chains.

(27) In March 2016 he submitted an Intra-EU enquiry (a SCAC request) to the Greek tax authorities concerning GECX Greece; the company was VAT registered and functioning and up to date with its VAT returns; the transactions with the Company were included in its VAT returns; Mr Totolis was a director as well as a Mr Patel in Leicester; the relevant goods were sold on to two purchasers in Poland.

(28) In March 2016 he submitted an Intra-EU enquiry (a SCAC request) to the Czech tax authorities concerning GECX Czech Republic; the company was late in filing VAT returns and did not co-operate with the authorities; the director was a Hungarian national (Mr Semeniuk); the company appeared to have no premises; in view of this, it was not possible for the authorities to provide detailed information; there were bank payments of around €1.5 million to the Company.

(29) He had seen no evidence that the Company received any inspection reports relating to the goods traded, despite the fact that it did not have possession of the goods for most of the disputed transactions.

(30) The goods were high value and being transported internationally but the insurance certificate produced covered only up to £200,000 – which was less than the individual transaction values.

(31) For most of the disputed transactions the goods were never in the possession of a UK trader, other than the Company (in deals 14-20).

(32) The Company had repeatedly been made aware of their obligations to complete reasonable commercial checks on the companies they were trading with, in line with Notice 726.

(a) The Company started trading with PPSM on 23 February 2015 and ceased (after deal 20) on 22 January 2016. The VAT validation checks were carried out on 15 September 2015, after trading had been going on for seven months. Warning letters concerning deals with PPSM were sent to the Company on 5 February, 22 February, 29 February, 1 March, 7 March and 19 May 2016.

(b) The Company started trading with GECX Greece on 9 April 2015 and ceased on 2 February 2016. The Company did not obtain credit checks or trade references, nor visit the customer prior to initiating trade.

(c) The Company started trading with GECX Czech Republic on 10 June 2015 and ceased on 8 July 2015. The Company did not obtain credit checks or trade references, nor visit the customer prior to initiating trade.

(d) Between 1 January 2015 and 2 February 2016 the Company made no contact with Bootle to confirm validity of the VAT numbers of the two EU companies it traded with in that time. From previous contact, it was clear that the Company was aware of the availability of the checking facility.

(33) The Company had repeatedly been made aware of the risks of MTIC fraud in its chosen area of business. The matter was covered at visits by HMRC on 3 March 2005, 9 June 2005, 31 January 2008, 25 January 2010, 15 September 2010, 20 April 2011, 30 January 2012, 2 April 2012, 16 May 2012, 28 June 2012, 25 July 2012, 12 September 2012, 26 September 2012, 11 August 2015, 29 September 2015 and 29 March 2017. At the 26 September 2012 meeting Mr Inglis stated, per HMRC's notes, that "he never does a deal with a new customer without meeting them and seeing the stock ... No money is paid out until the goods are seen".

(34) The January 2010 visit concerned an export of consoles to San Marino; the vehicle purportedly carrying the goods had been examined by UK Border Force and found to be empty. The January 2012 visit was to add the Company to the MTIC monitoring project, and conduct verification of the repayment returns. The Company was removed from the monitoring project in October 2012 but re-entered in September 2015.

(35) It was not correct that he had confirmed in a telephone call to Mr Inglis on 19 January 2016 that HMRC had no concerns relating to stock supplied by PPSM to GECX as the deal chains traced back to source. He had stated that he did have concerns with the supply chain but was awaiting information from his colleague dealing with PPSM; if Mr Inglis had evidence of his supply chain going back to source then there would be no objection to the Company purchasing that stock from PPSM.

(36) In reply to questions in cross-examination:

(a) Of the tax loss letters sent to the Company, seven were sent before the Challenged Deals, and the last of these was in 2012.

(b) There was a number of transactions between the Company and PPSM that had not been challenged by HMRC; these all preceded the twenty Challenged Deals.

(c) He accepted that under the contract between PPSM and the Company, PPSM had responsibility for insuring the goods (clause 10.2). He had not seen the insurance certificate produced by Mr Inglis until the hearing; he was unclear to what it related. On the later deals the goods were in the Company's warehouse for six to seven weeks.

(d) When the Company did check the VAT number of PPSM it took HMRC six days to give confirmation.

(e) The Company had been making Europa checks in 2012. A Europa check was made on GECX Greece in February 2015.

(f) At the 11 August 2015 visit Mr Inglis had been very surprised by the level of tax losses involving Global FSX transactions.

(g) He accepted the 2005 visits had been assurance visits, not relating to MTIC risk. However, the 2010 visits were related to suspected MTIC activity, as was

clear from the visit notes. At the April 2011 visit there is a reference to copies of Notices having been provided at the September 2010 visit; the next reference to Notice 726 is in relation to the 26 September 2012 visit. Copies of Notice 726 and the leaflet were enclosed with each extended verification letter.

(h) He accepted that the Company had made a credit insurance check on PPSM in February 2015.

(i) He had looked at the website of the Al Rahji Group and could see no mention of GECX. The GECX website does mention Al Rahji.

(j) No inspection reports had been produced but there was a packing list, which he considered to be a different type of document. There was a proper inspection report for the earlier unchallenged transaction with PPSM but no similar document for the twenty Challenged Deals.

(k) He understood that PPSM had continued trading with GECX after the Company ceased to be involved.

16. **Ms Hirons's evidence** included the following:

(1) She has been an HMRC (formerly HMCE) officer since 1978, and since 2017 has been the case officer for PPSM.

(2) PPSM registered for VAT in 2007. In April 2010 PPSM wrote to HMRC that it was now exporting products, was in a VAT repayment position, and wished to move to monthly returns, stating "Cash flow is the devil of all businesses and this would help me to continue to trade if I was able to claim my outstanding tax on a monthly basis."

(3) In late 2012 HMRC had several contacts with PPSM's director Mr Wildman in relation to the trader's repayment claims; these included an explanation of MTIC fraud, reference to Notice 726, and instruction to conduct verification through Europa.

(4) In February 2014 HMRC issued further MTIC awareness information to Mr Wildman.

(5) On 8 December 2015 HMRC visited PPSM and met with Mr Wildman. HMRC's note of the meeting includes:

"On 9 December 2015, Officers Stephen Dunckley and Eddie Moloney visited [address] and met with APW [ie Mr Wildman]. The reason for the visit was to extract transaction details in respect to trade undertaken with Revive. APW explained how the deals with Revive take place as well as identifying who the suppliers were. APW did not have the business records available for the Officers. Despite his experience in the sector APW was not aware of the term "Carousel fraud". In describing the transactions with Revive, APW stated that he never sees or inspects the goods, does not record serial numbers, has no insurance in place for the goods "that he hadn't seen", APW stated that he regularly received emails from Revive "touting for business" and when PPSM received an offer of consoles APW offered them to Revive. The Officers then gave APW the "How to spot Missing trader fraud" leaflet and Notice 726 with APW's attention being drawn to section 6 in respect of due diligence. Officer Dunckley stated he would contact APW again with details of the documents he required once he had returned to the office."

(6) On 17 February 2016 there was a further visit, also with reference to the transactions with the Company. Throughout 2016 and 2017 there was a series of tax loss letters and warning letters issued to PPSM regarding a number of suppliers and

customers, including Global SFX Ltd. There was also a further visit on 6 June 2017. In November 2016 PPSM reverted to quarterly VAT returns.

(7) She had formed the view that:

(a) PPSM was familiar with the concept of completing and declaring VAT returns showing the company to be in a repayment situation. In the Challenged Deals PPSM had moved back a step and become the supplier to the trader in the broker position and subject to VAT return verification. As a result PPSM was no longer subject to this in-depth scrutiny and the withholding of the repayment.

(b) Despite numerous meetings with HMRC, explanations given as to due diligence, indicators PPSM should consider before commencing trading in these products and tax loss letters, both PPSM and Mr Wildman turned a blind eye and continued to trade in deal chains that led back to either direct tax losses or a contra trader.

(c) Throughout its trading activities PPSM's transactions were connected to fraud with the issuing of tax loss and deregistration letters to traders other than Revive.

(8) In reply to questions in cross-examination:

(a) During the 2016 visit the deals between PPSM and the Company had specifically been discussed.

(b) She could not comment on the due diligence checks undertaken by PPSM.

(c) The deals discussed at the 2017 visit were still under investigation. PPSM was subject to extended verification procedures but had not been denied any VAT repayments; she did not know why. PPSM had used different suppliers since 2017. The last deal with GECX of which she was aware was in January 2016.

17. **Mr Guest's evidence** included the following:

(1) He has been a VAT officer since 2013, and since April 2016 has been assigned to MTIC investigations. He is the case officer for Shark Partners Limited ("**Shark Partners**").

(2) Shark Partners was incorporated in August 2014 and registered for VAT the same month, with location in Essex and a business description of "general store with predominant sale of food, beverages or tobacco products (unlicensed) (retail)". On 7 November 2014 the original shareholder and director resigned and was replaced by, and transferred his shares to, Mr Satheesan. The business address notified to HMRC was changed to 18 Parker Street B16; the registered office notified to Companies House was changed to 92 Vyse Street B18.

(3) HMRC had noted that Shark Partners appeared in a transaction chain involving the purchase of SD memory cards, and on 13 July 2015 visited the premises at 18 Parker Street. There was no reply at this residential address, and HMRC left a standard 7 day deregistration warning letter.

(4) On 15 July 2015 Mr Satheesan informed HMRC that the new address was 92 Vyse Street, and a visit was agreed for 20 July 2015. At the visit Mr Satheesan stated:

(a) He had bought the company from a friend because he wanted one already registered for VAT.

- (b) He originally planned to deal in mobile phones and accessories but had decided to trade in memory cards.
 - (c) His main supplier was Fast Away Services Ltd and his main customer was Askos Wolt LLP. He had met the proprietors of both through mutual friends. Askos Wolt had also introduced him to Presence Networks Ltd who were now a customer. He had visited the premises of all three.
 - (d) The company banked with a Latvian bank, whose name he could not remember, because UK banks would not open an account for him.
 - (e) The premises were leased on a one year lease.
 - (f) The payment details on Fast Away's invoices were for Elite Top Trading Ltd, Hong Kong, which Mr Satheesan described as an alternative banking platform.
 - (g) Goods were handled by a freight forwarder Global Freight Systems Ltd.
- (5) Mr Satheesan was given advice concerning MTIC fraud, the necessity of due diligence, and a copy of Notice 726.
- (6) The purchase invoices from Fast Away were found to carry an invalid VAT registration number; Fast Away was compulsorily deregistered with effect from 28 July 2015, and Shark Partners was informed of this on 31 July 2015.
- (7) On 6 August 2015 Shark Partners was told that it had been put on HMRC's trader monitoring programme. On 18 August HMRC made an unannounced visit but there was no one present and a 7 day letter was left. After no response the company was deregistered with effect from 25 August, and the company was informed of this. On 1 September Mr Satheesan contacted HMRC and said he had had no contact from HMRC.
- (8) On 8 September 2015 HMRC made an arranged visit, and the visit report included:
- (a) The office was a small room with little furniture and no external telephone.
 - (b) Mr Satheesan stated he had not received the documents left by HMRC on the previous visit. Mr Satheesan stated he had been off work sick.
 - (c) Mr Satheesan explained the current trading was in wholesale SD cards but he planned to move into sales of PlayStations as there was a good profit in that line. All stock was held in a warehouse.
 - (d) The Latvian bank had been recommended by friends.
 - (e) The one current supplier was Grove Trading Ltd. Mr Satheesan had found them on the internet and had entered into a 90 day contract with them. Mr Satheesan had ceased to trade with his previous supplier Fast Away when they could not obtain enough supplies to meet demand. When asked how he found Fast Away, Mr Satheesan advised that it was through friends and the internet. Mr Satheesan met the directors of Fast Away at a meeting at a warehouse in Heathrow but he had no evidence of this meeting. In a two month period Shark Partners had 15 orders with Fast Away. At the warehouse Fast Away had shown Mr Satheesan their stock but no evidence of ownership. Mr Satheesan had not checked the boxes for their contents. Shark Partners had also dealt with Askos Wolt LLP and the contact was a friend called Suliman who was based in Kettering. Mr Satheesan stated that he had visited Kettering, but was unable to provide evidence to support this.

- (f) The officers explained that the due diligence performed was inadequate, and that a basket of evidence should be compiled for each supplier. They gave Mr Satheesan copies of the MTIC factsheets and Notice 726.
 - (g) Mr Satheesan confirmed he had no firm intention to carry on trading. The last invoice dated from August 2015.
 - (h) The missing VAT returns would be completed within one week.
 - (i) Mr Satheesan agreed to send to HMRC documentation requested on the transactions undertaken by Shark Partners.
 - (j) The officers informed Mr Satheesan that Shark Partners had been put under the trade monitoring procedures by HMRC and that monthly visits would be arranged if trading was recommenced.
- (9) All VAT returns were still outstanding. Mr Guest had not traced any receipt of these promised documents. Thus Shark Partners had never filed any VAT returns, nor made any VAT payments.
- (10) On 19 April 2016 HMRC issued a final period VAT assessment for £161,018, based on discovered sales to a company SD 2013 Ltd. On 30 November and 20 December 2016 further assessments for a total of around £940,000 were issued, based on discovered sales to Askos Wolt. Askos Wolt used the same Latvian bank as Shark Partners. All assessments remain unpaid.
- (11) Shark Partners was wound up by court proceedings on 27 February 2017.
- (12) He had concluded that Shark Partners was fraudulent in relation to its accounting for VAT and that it entered into such transactions intending to defraud the revenue by failing to declare and pay the VAT due to HMRC, for the following reasons:
- (a) The company was VAT registered with a description of business activities as "retail sale of food, beverages and tobacco predominating", but Mr Satheesan bought the company with the intention of trading mobile phones and accessories. He paid several thousand pounds to buy the company and his stated reason was to save the time and trouble of setting up his own company and getting it VAT registered.
 - (b) Mr Satheesan eventually used the company to trade in memory cards and did not advise HMRC of the change in the company's activities until concerns were raised and an unannounced visit was conducted.
 - (c) No VAT returns were ever submitted by the company, despite Mr Satheesan advising that his accountants were completing returns.
 - (d) No VAT was ever accounted for by the company.
 - (e) The company used a Latvian bank, which was also used by both its customer Askos Wolt LLP and by Askos's supplier Borough Brothers.
 - (f) The company entered into back-to-back deals for large amounts of money but with little due diligence on its suppliers and customers.
 - (g) No documentation was ever produced to evidence transactions entered into by the company, despite requests from HMRC.
 - (h) In previous transactions the company had dealt with another missing trader, Fast Away Services Limited.

(13) In reply to questions in cross-examination:

(a) He accepted that Shark Partners had supplied some papers, such as the invoices from Fast Away with the invalid VAT registration numbers. Also, that the visit report for September 2015 referred to certain records being uplifted.

(b) He accepted that there had been attempts to contact the original owner rather than Mr Satheesan. Also, that Mr Satheesan had attended the meeting when arranged.

(c) The assessments were based on undeclared output VAT, with no allowance for any input tax.

Appellant's Witnesses

18. **Mr Inglis's evidence** included the following:

(1) He has worked in the games industry since 1995. He worked at Prism Leisure Corporation Limited, rising to sales manager, to 2004. Prism was one of the largest companies in the entertainment distribution sector.

(2) In January 2005 he formed the Company with two other former Prism employees, Mr Munro and Mr Barnard. He originally owned 75% of the equity. The main business was games, consoles and accessories, but also included electronic items and toys. He thought Prism had made a mistake by buying and holding large amounts of stock, especially as the goods were frequently modified by the makers; the business model for Revive was to be based on back-to-back deals, where stock was acquired only to satisfy specific customer orders. The Company's customer base was originally mainly ex-Prism customers in Europe and the Middle and Far East. Each of the three directors dealt mainly with his own group of customers.

(3) At first the Company had limited working capital, but had engaged professional accountants throughout. The Company employed an in-house bookkeeper from November 2006 but unfortunately the person proved unsatisfactory and was replaced in summer 2007. By 2009 the Company had added four salespeople, three warehouse staff and two administrators; it had annual turnover of almost £30 million. During 2010 the Company lost £1 million on bad debts from overseas customers. In 2011 the Company had to sue Mr Barnard for secretly competing with it, and obtained a court injunction against him; he was dismissed and several relatives of his who also worked for the Company left.

(4) During his time at Prism he had not experienced VAT fraud or MTIC fraud. He did not recall MTIC being discussed at the 2005 meeting with HMRC. He did not recall receiving Notice 726 after the 2010 HMRC visits; the visits were mainly to discuss involvement with Dream Distribution. In July 2011 HMRC withheld a repayment because they had identified transactions going back (by a number of stages) to Link Distribution and connected to a fraudulent VAT loss; this placed great strain on the cashflow in the leadup to Christmas that year, and a number of deal opportunities were lost as a result. By January 2012 the withheld VAT totalled nearly £2 million and the Company's bank was unwilling to help beyond offering invoice factoring. The problem nearly forced the Company into administration. Fortunately HMRC released repayments from February 2012. At this time the bookkeeper was unwell and she was replaced by Samantha Brown, who cleaned up the accounting system and updated the due diligence procedures on suppliers and customers. The Company restructured and made three staff redundant. In September 2012 HMRC, to his relief, confirmed that all outstanding VAT

repayments would be released; HMRC also agreed to pay almost £36,000 because of their delays.

(5) The Company's due diligence was in-depth and there were often instances where suppliers/customers queried why such detailed information was required, and even refused to provide documentation such as copies of directors' passports. He did not recall saying (in the September 2012 HMRC meeting) that he always saw new customers; with a customer database of around 700 that was impossible. All new suppliers were checked, as console suppliers were identified as high-risk from a VAT fraud point of view, and UK suppliers would be visited; a supplier who did not pass the criteria would be dropped (eg RSA Enterprises in October 2015).

(6) In 2014 the Company started using Euler Hermes as worldwide credit insurance agent, and stopped reliance on trade references for creditworthiness; this gave the Company a vital insight into the size of any potential new business. The Company also started using Experian for credit ratings on UK companies; the checks also provided other useful information. There had been a process of continuous improvement of the systems used. The Company had experienced several frauds over the years but these were commercial frauds, not tax frauds.

(7) In February 2015 he was approached by Peter Wildman of PPSM saying he would like to sell consoles and games to the Company. He knew Mr Wildman briefly while at Prism, and was aware of his reputation in the industry as a highly respected and well-connected businessman. Mr Wildman had previously been with Sony and Centresoft (the largest UK distributor), before Prism, and had set up PPSM in September 2006. Due diligence on PPSM included an Experian credit check that rated the company as "high risk". He did not consider that unusual for small companies in the industry, and indeed large UK games distributors may also have reportedly poor credit ratings. Further checks were carried out, and the Company insisted on a goods inspection report and a visit to PPSM's premises. Checks were also made on PPSM's freight agent, DL Freight. The Company obtained a trade application form, certificate of incorporation, VAT certificate, and company headed notepaper.

(8) In March 2015 he and Mr Pappalardo met with Mr Wildman at Revive's offices, to discuss a business opportunity. Mr Wildman explained that he received stock requests from an extremely large international distributor with purchasing headquarters in Greece and its parent company in the Middle East; Mr Wildman had met the customer at the IFA Electronics trade show. However, the transactions were too large for PPSM to fund the VAT element as it would need to buy most of the goods from UK suppliers who would charge VAT, and the exports to Greece would not carry VAT and thus there would be refunds of VAT. Mr Wildman wanted Revive to help export the goods by contracting with the Greek customer; purchase orders would then be sent by the Company to PPSM, who would source the goods; the customer would pay in advance; PPSM generally made around 4% margin, which it would split equally with the Company. Mr Wildman intended to take the trading back into PPSM when it could fund the VAT. Mr Wildman stated that all PPSM's suppliers were large organisations, including official distributors of the products. Mr Wildman gave Mr Inglis the choice of having the goods delivered to the Company's warehouse, or instead being delivered to the customer by PPSM's freight company, ON Logistics; Mr Inglis chose the latter route as more efficient.

(9) The Company obtained a trade application form completed by GECX Greece, and a Chamber of Commerce certificate. He asked his staff to conduct further checks on GECX, because of the size of the deals that were being transacted. Mr Pappalardo

phoned the UK office and made contact. Euler Hermes checks were conducted on GECX's Swiss, Czech and UK offices – no credit was available on Greek traders at that time – and the credit offered on the Swiss company was £100,000, and £50,000 on the UK office, which gave great assurance that GECX was a legitimate company of good standing with huge financials. HMRC were completely wrong to allege that the checks were not correctly carried out, or were performed insincerely.

(10) In April 2015 Mr Wildman assured him that PPSM performed due diligence on its supplier who “only deals with good, well-established suppliers of consoles, mostly direct from Sony”.

(11) At this time he had been satisfied that there was no risk of fraud because:

(a) While goods such as iPhones or gaming consoles might be at risk of carousel fraud, these deals were for other goods.

(b) The due diligence research on GECX convinced him that it was a major international company, and so unlikely to be implicated in VAT fraud.

(c) The margins in this industry were thin and he was not surprised that PPSM found it difficult to fund the VAT cashflow on exports; it was credible that PPSM would look to Revive to help with financing in return for a share of the margin on the deals.

(d) Mr Wildman had great experience in the industry, and had worked in top positions in two of the industry's most important companies: Sony and CentreSoft.

(12) In summer 2015 HMRC told the Company that transactions traced back to Global SFX had resulted in large tax losses. The Company ceased trading with Global immediately. At the August 2015 meeting with HMRC the scale of the losses was made clear and an officer told Mr Inglis “if Revive are involved again in VAT fraud, [Revive] will be staring down the barrel of a gun.” Checks were further strengthened; a product serial number database was started, and Bootle VAT number verifications were recommended. This was the first occasion he remembered seeing the “How to spot missing trader fraud” leaflet; Mrs Brown had sent the leaflet to all sales staff.

(13) The Company had provided voluminous information to HMRC as requested, including lists of suppliers and freight companies, all in a format directed by HMRC.

(14) On 12 August 2015 he had a three hour meeting with Mr Wildman, with Mr Pappalardo and Mrs Brown also present. He stressed that he wanted more details of PPSM's suppliers. Mr Wildman guaranteed that there was absolutely no risk of there being any problem's with PPSM's suppliers, that they were all very large reputable companies, most likely already dealing with Revive. It was agreed that a formal contract would be put in place, and that goods on future transactions would be transported via the Company's warehouse. The Company obtained a copy of Mr Wildman's driver's licence, and a Euler Hermes check on PPSM (agreed at £10,000).

(15) On 22 September 2015 he had a further meeting with Mr Wildman, with Mr Pappalardo and Mrs Brown also present. The contract was signed. He again asked for details of PPSM's suppliers; Mr Wildman again gave reassurances and said he would give this information only if the Company agreed to a non-compete provision, to prevent poaching of contacts.

(16) After discussion with Mr Munro it was decided that a non-compete agreement would be too complicated, as the Company already had many contacts who might also be supplying PPSM.

- (17) When goods were received at the Company's warehouse the pallets were all unwrapped, inspected and re-wrapped.
- (18) Insurance was maintained on shipments.
- (19) When HMRC warned the Company about suppliers or customers (eg balance of probabilities letters) then the Company ceased trading with those parties until HMRC confirmed it was OK to continue.
- (20) On 19 January 2016 he had a long telephone conversation with Mr Stock when he was told that HMRC had no concerns relating specifically to stock supplied from PPSM to GECX as the deal chains all traced back to source. On 3 February 2016 Mr Stock telephoned to state that the majority of PPSM purchases go back to a missing trader. On 22 February Mr Stock stated that the deals were involved in "contra losses", which phrase Mr Inglis did not understand. The Company ceased trading with PPSM.
- (21) On 9 & 19 February 2016 Mr Wildman assured him that HMRC had no problem with PPSM. In March he continued to correspond with Mr Wildman to try to establish what and where was the problem concerning HMRC.
- (22) On 3 & 7 March 2016 HMRC informed the Company that VAT repayments were being withheld.
- (23) On 21 March 2016 Mr Wildman threatened to put future GECX deals through another distributor if the Company could not perform.
- (24) On 30 March 2016 there was a further visit from HMRC and yet more, detailed information was produced by the Company as requested.
- (25) On 18 May 2016 Mr Wildman telephoned to say that he had during an HMRC visit been assured by HMRC that there was no problem with PPSM's supply chain. Mr Inglis said that trading with PPSM would not recommence until the Company had written confirmation from HMRC.
- (26) On 15 June 2016 there was another HMRC visit and yet more information was provided by the Company. Mr Stock stated he was compiling a formal report, and gave an explanation of contra-trading. Mr Inglis told HMRC that PPSM was still trading using another distributor.
- (27) On 11 July 2016 Mr Wildman telephoned to say that he had again during an HMRC visit been assured by HMRC that there was no problem with PPSM's supply chain. Mr Pappalardo tried to check this with HMRC but was told that losses had been traced to goods purchased from PPSM. On 3 October 2016 Mr Wildman telephoned to say that he was still supplying GECX with stock procured through his usual supply chain. Mr Pappalardo tried to check this with HMRC but was told that it was the Company's commercial decision whether to continue to buy from PPSM.
- (28) On 14 December 2016 there was a lengthy meeting with HMRC, at which HMRC stated that around £1 million repayments were to be denied to the Company. HMRC acknowledged that this related to only 20 invoices, which was a tiny percentage of the Company's total trading. Yet further information was requested and provided to HMRC.
- (29) In January 2017 HMRC confirmed that the VAT was to be pursued. He instructed Hacker Young and a detailed rebuttal (55 pages) was sent to HMRC. He considered that HMRC had ignored these representations. An independent review was requested but this supported the original decision.
- (30) In reply to questions in cross-examination:

- (a) He was aware of Notice 726 once it was highlighted at the August 2015 meeting with HMRC. He still kept the Notice on his desk. He accepted that there was reference to Notice 726 (and in particular paragraph 6) in several letters from HMRC predating that meeting.
- (b) He would not expect to receive goods inspection reports if there was a history of trading with a particular supplier.
- (c) The tax loss letters would have been received and dealt with by Mrs Brown as management accountant; he did not recall seeing these. He accepted that seven or eight of these were received by the Company prior to the Challenged Deals. In 2010-11 the Company had been in turmoil because of the withholding of VAT and Mr Barnard leaving in very bad circumstances; Mr Inglis had his attention on many problems, but he took the VAT matters seriously. The withheld VAT had eventually been repaid by HMRC after a long delay, when nothing had been found wrong with Revive.
- (d) He accepted that information concerning checking VAT numbers was first given in September 2010 (then, Wigan) in a letter addressed to him; he could not explain why no checks were performed until October 2011, and then not again until September 2015. He accepted that by the time a Bootle check was made on PPSM, there had already been 13 deals undertaken.
- (e) He accepted that a number of the Company's VAT returns had been selected for extended verification by HMRC, dating back to 01/07 period. He accepted that he knew of this from early 2010. The Company had worked to improve continually its due diligence procedures over the last 13-14 years. In September 2012 he had travelled to Italy to see goods being loaded for transport on a particularly valuable deal; he could not recall the name of the supplier or the freight agent.
- (f) Mr Wildman had worked at Prism at the same time as Mr Inglis, at a higher level than Mr Inglis. He knew him to say hello. He had not been in contact with Mr Wildman since leaving Prism, although he thought Mr Munro may have been contacted. Mr Wildman had held a senior position at CentreSoft, which was a major distributor with annual turnover in excess of £350 million. Mr Wildman had over 30 years experience in the industry. Mr Wildman had repeatedly assured him that his supply chain was secure, and had offered to give the names of his suppliers if the Company signed a non-compete undertaking.
- (g) PPSM had a poor credit rating, but that supported Mr Wildman's explanation that he could not pursue the GECX deals because of lack of cashflow; Mr Wildman had made it clear that he would take back the deals into PPSM when cashflow permitted. Mr Wildman claimed turnover in excess of £1 million but that was not necessarily the same as financial success. He had not requested a copy of PPSM's accounts but did ask for further checks to be performed. Trade references had not been taken up because the referee CentreSoft did not provide references; the provision of the name gave confidence. He accepted that no address had been provided for the other referee; also that no copy passport or utility bill had been supplied by the time of the first deal with PPSM.
- (h) The first console deal with PPSM had completed successfully and then Mr Wildman put forward the proposition which was discussed at the meeting in March 2015. Because of Mr Wildman's reputation in the industry, it was completely feasible that he had contacts at large corporations and could source large transactions. It was feasible that PPSM did not have the cashflow to fund the VAT

on these large deals; it was a one-man company whereas Revive had around 16-20 people at this time; Mr Wildman intended to take back the business once cashflow permitted. If he had not trusted Mr Wildman then he would not have agreed to pay forward before delivery of the goods. After the August 2015 meeting with HMRC a new credit check was made on PPSM and gave a £10,000 limit; that figure was irrelevant to the size of the deals undertaken with PPSM as it was not a customer; it was correct that the Experian credit report on PPSM had worsened but that was probably because an annual return had been filed.

(i) He had understood from Mr Wildman that GECX was a large international group that Mr Wildman had met at a major trade fair. He had checked GECX's website and seen it was a part of the huge Al Riaji group. It was true that the trade application by GECX Greece gave only PPSM as a reference, but many companies did not even complete this section; he had not seen this form. Euler Hermes did not offer cover for Greek companies, so he did checks on the Swiss, Czech and UK entities; cover for the Czech company was refused because it was not up to date with accounts filings; he had requested £100,000 cover for the Swiss company, to make sure it was substantial, and that was granted; also, £50,000 for the UK company; he accepted that the Company did not trade with the Swiss or UK entities. The large amount of cover available overall satisfied him that GECX was a substantial trading operation.

(j) He accepted that some of the bullet points in paragraph 6 of Notice 726 could apply to the Challenged Deals, but he and his colleagues had run checks that were satisfactory and Mr Wildman had an established reputation in the industry. The Notice was clear that these were just "indicators", not definite. He was not aware of Notice 726 until August 2015.

(k) He did not accept that the Company did not maintain adequate goods insurance. Goods were rarely at the Company's warehouse outside working hours, and specific insurance had been obtained on a deal where the goods were held overnight. The first 13 Challenged Deals did not go through the warehouse; for the remainder of the deals the goods were checked and a packing list prepared.

(l) He did not accept that the Challenged Deals were unrepresentatively large compared to the Company's other trading; there were deals with suppliers other than PPSM for similar values. Annual turnover was up to £30 million.

(m) The 2% margin on the Challenged Deals was not out of line with other deals, especially given the large size. Mr Pappalardo was responsible for completing the paperwork and calculating the 2%, so Mr Inglis assumed that simple task had been done correctly.

(n) He did not accept that any details of the Challenged Deals had been withheld from HMRC. The meetings with HMRC (especially the August 2015 visit) had concentrated on other matters of concern to HMRC, particularly console deals. All requested information had been provided to HMRC. Procedures had been tightened considerably after the August 2015 meeting.

(o) The Challenged Deals represented only 13-20 invoices out of an annual total of 2500 for the Company.

(p) When HMRC expressed concern about a supplier then trading with them was suspended until HMRC gave the all clear; that happened twice with PPSM.

(q) The contract with PPSM was to protect the Company's position by making it clear that the Company was only acting as agent for PPSM, so that if there were any problems then GECX would go after PPSM, not the Company.

(r) His recollection of his telephone conversation with Mr Stock in 2015 was as stated in his own witness statements. He would not have restarted trading with PPSM unless Mr Stock had indicated it was OK to deal with PPSM.

19. **Mr Munro's evidence** included the following:

(1) He has known Mr Inglis for over 20 years and in 2005 they started the Company together with Mr Barnard, who left in 2011. He owns 19% of the Company. The Company contains two businesses; one is run from home by Mr Munro and the other by Mr Inglis from his home. The two directors live about 120 miles apart and meet every two weeks (except over summer) at Mr Inglis's home. The Company has a warehouse and the warehouse manager reports to Mr Munro. The two businesses effectively run as separate profit centres. He was aware of the PPSM deals but has no knowledge of the specifics of Mr Inglis's deals. Mr Pappalardo is in Mr Inglis's team. Mr Munro concentrated on business development and left the day-to-day business to his sales manager.

(2) In 2010 the Company was placed on VAT monitoring by HMRC with over £1 million being withheld. This had a serious effect on cashflow and the Company had to be restructured with several staff redundancies; the directors had feared that the Company might have to be placed in liquidation but it had survived. The Company had always taken contact with HMRC seriously; as soon as warning letters about tax losses had been received, the Company had ceased to trade with the companies named by HMRC until HMRC gave them the all-clear.

(3) He was not present at the August 2015 meeting with HMRC but after the meeting the Company instituted new systems and procedures, including more thorough checks on suppliers and customers, EU VAT validations, a supplier database of due diligence information received, and a record of serial numbers of consoles bought/sold.

(4) First contact with PPSM was in 2012 but no business took place until October 2014, with the first trade being in February 2015 – a purchase of 495 PlayStation consoles. On the day that payment was due a colleague attended PPSM's offices; paperwork was obtained including certificate of incorporation, VAT certificate and a trade application form used by the Company. On payment the goods were released to the Company by PPSM's freight forwarder DL Freight. He could not remember the customer but it was not GECX. There had been several similar console deals with PPSM that he was involved in. These were all on terms different from the 20 Challenged Deals.

(5) He had never met Mr Wildman; he knew Mr Wildman through Mr Inglis but Mr Wildman was well known within the games industry, having worked at major companies such as Sony, Centresoft and Prism.

(6) In 2016 and early 2017 he had attended some (but not all) meetings with HMRC. He could not recall specific topics discussed but there was mention of MTIC fraud, the reverse charge, missing traders, chains, broker (which was the first time he had heard this term), conduit trader (ditto); contra trading (ditto); and parallel trading (ditto). Mr Stock had explained that HMRC could deny VAT if deals were suspected of being involved, that certain countries were particularly used, and that high value electronic items such as games consoles were often used; an explanation of contra-trading had been given but Mr Munro did not really follow the details.

(7) He had had no involvement in the transactions with PPSM. In September 2015 he discussed with Mr Inglis the latter's meeting with Mr Wildman, and was told that Mr Wildman had required a formal contract forbidding competition before he would disclose the identities of PPSM's main suppliers. In January 2016 Mr Inglis informed him that HMRC (Mr Stock) had confirmed that PPSM's supply chain went back to source, and they agreed that it was OK to resume trading with PPSM (trading having been suspended after the December 2015 tax loss letter received from HMRC).

(8) In reply to questions in cross-examination:

(a) He had not seen Mr Wildman's email dated 16 March 2015 until it was shown to him at the hearing. The console deals he had done with PPSM had been on a completely different basis. He did not understand what Mr Wildman meant by "no risk".

(b) He had not seen the credit check on PPSM until it was shown to him at the hearing. He did not get involved in these aspects and Mr Inglis would have requested the check.

(c) He was familiar with the Company's trade application form but not the particular form completed by PPSM. He did not get involved in this area. Trade references might not be taken up because it was a cut-throat industry where traders were unwilling to reveal who they did business with in case competitors stole their customers or suppliers.

(d) On the console deals in which he had been involved the goods were shipped to the Company's premises. He did not generally see inspection reports. He did not know who paid for the reports. He assumed the Company would not pay for any goods that were damaged.

(e) He was not sure if he had seen HMRC's 21 December 2015 warning letter mentioning PPSM.

20. **Mr Pappalardo's evidence** included the following:

(1) He has worked in the games industry since 1998 and joined the Company in 2012, where he is now sales manager. He has known Mr Inglis and Mr Munro for over 15 years when they all worked at Prism. He worked with Mr Inglis from Mr Inglis's home, with Mrs Inglis and three or four part-time staff; at the Company's warehouse there was Mrs Brown and a staff of three or four, mainly working on Mr Munro's deals; he did not know if anyone else worked with Mr Munro at Mr Munro's house.

(2) He has known Mr Wildman since the early 2000s, having previously worked with him at Prism. He had never had any reason to doubt or distrust Mr Wildman, who had always been forthright and honest in their dealings.

(3) From February 2015 the Company bought PS4 consoles from PPSM. The early deals were handled by a colleague (Mr Brewer) but then Mr Pappalardo took over the relationship. These early deals involved stock held by freight agents who provided an inspection report, and then delivered to the Company.

(4) In March 2015 he met Mr Wildman with Mr Inglis to discuss a business proposal. Mr Wildman explained he had a customer who wanted large amounts of stock. The customer was a large multinational with its parent company in the Middle East, with turnover in excess of \$1 billion. However, PPSM could not fund the VAT element of the deals, as it was only a one-man operation. The proposal was that he would offer the Company 2% of the deal value if the Company exported the goods to the customer's

multiple locations in Europe. As soon as PPSM could fund the VAT element itself, then it would take back the business. Mr Wildman stated that his suppliers were the direct distributor for the products in question, and they had accepted Mr Wildman's explanation because of his background and reputation in the industry.

(5) The customer was GECX, which is a multinational trading company dealing primarily in commodities, owned by the Al Rajhi Group. He contacted Mr Vassilis Totolis at GECX and requested the new customer information. He could not obtain a credit insurance report for the Greek company (because no credit insurance was offered on Greek traders) but he obtained them for the UK office and the Swiss head office. He also confirmed the telephone details provided for the London office.

(6) PPSM would agree a deal with GECX direct. PPSM would send a proforma invoice to the Company; Mr Pappalardo would issue a proforma invoice to GECX, adding on the 2%. GECX would pay the Company and a full invoice would be issued by the Company. The Company would pay PPSM (net of the 2%). PPSM would deliver the goods to GECX, using ON Logistics; after August 2015 the goods were instead delivered by PPSM to the Company's warehouse and then forwarded to GECX.

(7) There were various goods; several deals included bespoke SD cards with GECX branding on them, which he took to be items that would be used by GECX as promotional giveaways to their customers; these items could not be easily retraded; he had seen a photograph of these cards but did not know who did the branding.

(8) In August 2015 Mr Inglis decided that business with PPSM should be suspended. Mr Pappalardo informed Mr Totolis and this involved having to return some funds already received from GECX, as well as refusing to progress other outstanding orders.

(9) On 13 August 2015 he met Mr Wildman with Mr Inglis and Mrs Brown. Mr Pappalardo's note of the meeting includes:

"Discussion about Transparency of supply chain

Peter is happy to disclose his contacts if we agree not to contact except for due diligence purposes. He may be open to allowing other business with his suppliers but we would need to ask for his permission. Adrian and Samantha think it may be better to trust Peter's word on the supply chain as once we sign the no contact agreement Peter wants us to sign we cannot contact those suppliers without his permission while the contract is in place. Adrian and Graham need to discuss this whether or not to have disclosure or not.

Discussion on VAT Fraud

Peter believes there is no VAT fraud with GECX or his supply chain this will be borne out by disclosure of his supply chain.

HMRC Monitoring

Based on our recent experience with HMRC Peter is expecting a visit from HMRC and is prepared to be inspected and fully expects to pass any scrutiny from HMRC.

Where are GECX selling their Stock

GECX are selling their stock B2B and all orders placed are on stock already being sold to their customers."

(10) In August 2015 he liaised with the Company's solicitors to draft a commercial contract between the Company and PPSM, setting out their terms of business. The

lawyers also recommended that future invoices to GECX should include the following wording:

“We are an agent of [PPSM] in connection with the invoicing and delivery of the products listed in this invoice to you. Your contract for the supply of the products listed in this invoice is with PPSM, not us. If you have any claims, complaints, after-sales enquiries and/or any other issues in connection with the supply of the products listed in this invoice you should contact PPSM immediately on [telephone number]. If you incur any losses, liabilities, costs, damages and/or expenses in connection with the supply of the products listed in this invoice to you, such claims must be directed to and brought against PPSM. We accept no liability or responsibility in connection with the supply of the products.”

(11) In September 2015 Mr Inglis told him that business could recommence with PPSM. In January 2016 Mr Inglis told him that dealing with PPSM was again suspended, but on 20 January emailed to say that HMRC were now happy with PPSM and GECX, so trading could recommence. On 3 February 2016 trading was again suspended and he had to return funds to GECX.

(12) During many conversations with Mr Wildman he was assured that PPSM had no issues with its supply chain, and this had been confirmed by HMRC during visits to PPSM.

(13) In reply to questions in cross-examination:

(a) His remuneration from the Company was a basic salary plus commission of 10% on sales over £3,000.

(b) Until he was told of the problems with PPSM in August 2015 he was unaware of MTIC fraud. He did not recall having seen Notice 726; he received thousands of emails; he had a bad memory. He did not recall Notice 726 being mentioned at meetings with HMRC. He was now aware of MTIC fraud, after discussions with Mr Inglis and Mrs Brown; he found it very confusing, and was unsure how the Company could be at risk

(c) He understood the purpose of due diligence was to check that he was dealing with a reputable and honest company. He requested all the information required by the trade application form, and then forwarded that to the accounts department. He was not concerned by the credit reports because no credit terms were being offered as it was cash in advance. He believed all the deals that had been done were honourable. He had stopped dealing when instructed by Mr Inglis (because HMRC had concerns) and took the instruction to recommence trading as confirmation that everything was fine with PPSM and GECX. The Company no longer did pre-arranged deals like the Challenged Deals.

(d) He had previous experience with the sort of goods contained in the PPSM deals; also with the size of deals with other parties. The Company received a fixed mark-up because it was acting as a broker or middleman; PPSM could not afford to fund the VAT, but intended to take matters back when it could fund them. Nothing seemed unusual at the time; no alarm bells rang. He thought it was a good source of ongoing business for the Company.

21. **Mrs Brown's evidence** included the following:

(1) She had worked in finance since 1982 and joined the Company in 2012. Her predecessor at the Company had suffered ill-health and there was a major tidying up

exercise to be performed; also, the Company had been denied VAT repayments by HMRC, which was a situation she had not encountered before, and this resulted in cash flow problems. She had several meetings with HMRC in 2012 to resolve the issue of the Company being under monitoring arrangements; eventually the situation was resolved (in October 2012) but not before restructuring had been undertaken and three staff made redundant; the Company was refused a repayment supplement but received some compensation from HMRC for the delays.

(2) HMRC had suggested various improvements to the Company's record keeping procedures. In May 2013 improved due diligence procedures were introduced including a new trade account application form, requiring stated information from a potential supplier/customer. In 2014 the Company started using credit insurance (Euler Hermes) and credit checking (Experian).

(3) On 11 August 2015 she met HMRC with Mr Inglis concerning certain deal chains being investigated by HMRC. They were handed a VAT Notice 726 and were asked to pay attention to paragraph 6.1 (what checks to undertake to help ensure the integrity of a supply chain), and VAT Notice 703. The Company registered to use the Bootle VAT number check facility. The Company provided to HMRC requested copies of the supplier and customer lists, together with other detailed information.

(4) She discussed with Mr Inglis further improvements to the Company's systems, including a supplier database to check that all requested information had been received, and a database of serial numbers of consoles passing through the Company's warehouse. She sent to the directors and sales staff copies of VAT Notices 703 and 726, and explained the importance of the checks described.

(5) From September 2015 the Company supplied to HMRC monthly deal lists for consoles and GoPro cameras – these included details of suppliers and customers, goods, dates and amounts

(6) In 2016 there were several meetings with HMRC where further information was requested on various transactions and traders including PPSM and GECX; the Company provided all information requested by HMRC. In June 2016 Mr Stock explained that he needed to submit a lengthy report on PPSM, and in December 2016 he advised that his colleagues were considering his report, and that it was possible that the VAT on the PPSM transactions could be denied, but a decision could take up to two years. He said that other traders had also been exporting goods to GECX supplied by PPSM.

(7) The Company had provided to HMRC all the extensive information requested and she felt there was a good working relation with HMRC and Mr Stock in particular. She had joked to Mr Inglis and Mr Munro that there were so many information demands that she almost felt she was working for HMRC rather than the Company.

(8) The first deals with PPSM had been Mr Munro's console deals in February/March 2015. After a few deals responsibility passed to Mr Pappalardo, who was selling to GECX. She would be asked to check for arrival of funds from GECX and then instructed to pay PPSM; this was normal procedure and she received similar instructions from all the sales personnel.

(9) She had met Mr Wildman twice.

(a) First, on 19 August 2015 with Mr Inglis. They discussed the information provided by HMRC and stated that goods should come to the Company's warehouse so that they could be inspected before being forwarded to GECX. They asked for details of PPSM's suppliers but Mr Wildman was reluctant to provide

this commercially sensitive information; he stated that his suppliers were all legitimate and were probably also suppliers to the Company. Mr Wildman did not want the Company to supply GECX direct. Mr Inglis felt the Company was exposed if PPSM was let down by its suppliers, having already been paid by the Company; it was agreed that a contract should be put in place between the Company and PPSM setting out the business terms.

(b) Second, on 22 September 2015 with Mr Inglis and Mr Pappalardo. The contract was signed. Again they asked for information on PPSM's suppliers and Mr Wildman said he would only provide details if the Company formally agreed not to compete for those traders; he said that when the identities were revealed then the Company would be pleasantly surprised, and there was no risk of VAT fraud.

(10) The Company had carried out thorough due diligence on PPSM and GECX, and had implemented everything suggested by HMRC. It was normal practice in their industry for customers to pay upfront for goods before receiving them.

(11) In reply to questions in cross-examination:

(a) She co-ordinated the collection of due diligence on new traders. Some large companies were reluctant to provide all the information. Also, copies of passports were often refused. She could not visit every new supplier and customer.

(b) She agreed that the copies of PPSM's trade application form in the bundle showed discrepancies, which she could not explain. The forms were filed on a central database and may have been updated at some point. She was not sure if she had seen the credit report on PPSM (at that time Mr Inglis held the account and so the replies would have gone to his email); she would not have been concerned because many suppliers in the industry had high credit risk; the Company was not granting credit to suppliers; the report confirmed directors' details and was an extra check on the trader's bona fides. Mr Wildman had been known to Mr Inglis for years, and there was no reason to doubt Mr Wildman. The two companies given by PPSM as trade references were large companies and from previous experience Mrs Brown knew that those companies did not respond to requests for trade references, so she did not follow-up with Centresoft although she may have asked Creative Distribution. Mr Wildman refused to supply a copy of his passport but did supply a copy of his driving licence. She was not sure if a copy of a utilities bill had been provided; she was not aware that the trading premises were shared with another company.

(c) She had not seen Mr Wildman's email dated 16 March 2015 until it was shown to her at the hearing. She did see the basis of the deals when she processed the invoices prepared by the sales team and handled the payments, so she was aware of the 2% mark-up arrangement. She was not at first aware that the goods were going straight from PPSM to GECX.

(d) She agreed that the disputed transactions were different from the earlier console deals with PPSM but it was Mr Inglis's decision. The replies to the due diligence questions had not rung any warning bells. The decision to have a formal contract drafted was by Mr Inglis. She was not remunerated on a commission basis.

(e) The due diligence on GECX would have been performed by Mr Pappalardo. It was difficult to get full details on non-UK companies. Credit insurance reports were available on the Greek company but not the Czech company; these customers were paying for the goods up front. The only trade reference named was PPSM.

(f) She did not know why the basis of the PPSM deals was not explained to HMRC at the meeting on 11 August 2015.

RESPONDENTS' CASE

22. Ms Vicary submitted as follows for HMRC.

23. All the Challenged Deals were connected with a fraudulent VAT loss, including those disputed by the Company in deals 9-13. On all the Challenged Deals the Company knew that they were so connected; alternatively, on all the Challenged Deals the Company should have known that they were so connected.

Deals 9-13

24. Shark Partners was clearly a fraudulent defaulter.

25. Its original VAT trade classification was as a general store and food retailer, which may have been perceived as a low profile business for HMRC. That had never been amended to reveal its true business – trading in memory cards, which were clearly MTIC high risk goods.

26. It had never filed a VAT return. At the 8 September 2015 visit Mr Satheesan had promised to file returns within one week, but failed.

27. The purchase invoices from Fast Away Services Limited showed large amounts of purported input tax – a legitimate trader would have reclaimed this input VAT by filing a return as soon as permitted. In fact the VAT registration details on those invoices were invalid.

28. From counterparty documents HMRC had identified several high value trades with SD 2013 Ltd and Askos Wolt LLP (the latter used the same Latvian bank as Shark Partners). HMRC had issued three assessments in 2016 for £161,000, £332,000 and £611,000. Those assessments made no allowance for any input tax deductions, and so a legitimate trader would have immediately filed outstanding returns and/or protested against the assessments, using the professional accountants that Mr Satheesan claimed were acting. In fact no action had been taken, and none of the assessments had been paid. Shark Partners had been wound up in February 2017.

29. HMRC's interpretation of events was that as a fraudulent trader Shark Partners needed to maintain its VAT registration number as long as possible so as to be able to continue to participate in fraudulent transaction chains – that was why Mr Satheesan attended a couple of meetings with HMRC. He had been vague about his business – he had no evidence of proper due diligence and could not even remember the name of his Latvian bank (used because he had failed to secure a bank account with a UK bank). He did not respond to the notice left after an unannounced visit in August 2015 – in fact he denied having seen it – and responded only when he realised Shark Partners was losing its VAT registration number. When HMRC started issuing assessments Mr Satheesan realised the game was up, and there was no further contact with HMRC.

30. In terms of contact with HMRC, the position of Shark Partners was similar to that of Presence Networks, which the Company had accepted was a fraudulent trader – with Presence Networks there had been around five meetings (mostly attended by at least one director) and numerous telephone calls and emails.

31. In a separate appeal by another taxpayer the Tribunal had considered the matter of whether Shark Partners was a fraudulent defaulter in relation to certain transactions: *Beigebell Limited v HMRC* [2019] UKFTT 335 (TC). On the evidence available to it the Tribunal had concluded (at [162]) that Shark Partners was a fraudulent defaulter, despite arguments to the

contrary by the taxpayer that were substantially similar to those advanced by the Company in the current appeal.

Knowledge

32. The Company, and Mr Inglis, was well aware of the “red flag” indicators of MTIC trading. On the Challenged Deals there were several commonalities: the same supplier (PPSM), the same customers (GECX Greece and GECX Czech Republic), the same commission deal structure, all involving goods that were different from those normally traded by the Company.

33. The Company was set up in 2005 by three individuals each of whom had around ten years previous experience in the computer games industry: Mr Inglis, Mr Munro and Mr Barnard. Mr Barnard left but Mr Inglis now owned 81% and Mr Munro 19%. In 2015 the deals undertaken by the Company were mostly games consoles, controllers and GoPro cameras; these were the types of goods that the Company had experience in dealing and were markedly different from the goods involved in the Challenged Deals (SD cards, security software, hard drives and SSDs, ink cartridges, and headphones).

34. HMRC Notice 726 had been provided to the Company on numerous occasions and was an important document. HMRC could not dictate to traders what business they could conduct, or what checks to carry out on potential counterparties. The Notice warns traders of the dangers of MTIC trading (including potential joint and several liability for unpaid VAT of another trader), and suggests what to look out for.

35. Paragraph 6.1 of Notice 726 (version extant at relevant time) sets out what HMRC consider to be red flag indicators of risk of MTIC fraud.

“6.1 What checks can I undertake to help make sure the integrity of my supply chain

The following are examples of indicators that could alert you to the risk that VAT would go unpaid:

1) Legitimacy of customers or suppliers. For example:

- what is your customer’s/supplier’s history in the trade?
- has a buyer and seller contacted you within a short space of time with offers to buy/sell goods of same specifications and quantity?
- has your supplier referred you to a customer who is willing to buy goods of the same quantity and specifications being offered by the supplier?
- does your supplier offer deals that carry no commercial risk for you – eg, no requirement to pay for goods until payment received from customer?
- do deals with your customer/supplier involve consistent or predetermined profit margins, irrespective of the date, quantities or specifications of the specified goods traded?
- does your supplier (or another business in the transaction chain) require you to make 3rd party payments or payments to an offshore bank account?
- are the goods adequately insured?
- are they high value deals offered with no formal contractual arrangements?

- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc?
- can a brand new business obtain specified goods cheaper than a long established one?
- has HMRC specifically notified you that previous deals involving your supplier had been traced to a VAT loss or had involved carousel movements of goods?
- has HMRC specifically notified you that HMRC date stamps have been present on goods offered for sale by your supplier, or that there is evidence of HMRC date stamps being removed from packaging. This would strongly suggest that the goods had been subject to carousel movement, which should alert you to a significant risk that the transactions entered into with that supplier may be connected with the non-payment of VAT
- has HMRC specifically notified you that other MTIC VAT fraud characteristics (such as third party payments) have occurred in transaction chains involving your supplier?

2) Commercial viability of the transaction. For example:

- Is there a market for this type of goods, such as superseded or outdated mobile phone models or non-UK specific models?
- What research have you done to test whether these goods are available as described and in the quantities being offered?
- Is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- Have normal commercial practices been adopted in negotiating prices?
- Is there a commercial reason for any third party payments?
- Are normal commercial arrangements in place for the financing of the goods?

3) Viability of the goods as described by your supplier. For example:

- Do the goods exist?
- Have they been previously supplied to you?
- Are they in good condition and not damaged?
- Do the quantities of the goods concerned appear credible?
- Do the goods have UK specifications yet are to be exported?
- Is your supplier unwilling to provide IMEI or other serial numbers?
- What recourse is there if the goods are not as described?

HMRC recommends that sufficient checks be carried out in each of the above categories to ensure that you are not caught in a fraudulent supply chain.”

36. The Company had a huge amount of contact with HMRC before the denial assessment was issued in January 2017.

37. In September 2010 the Company had been warned about tax losses of almost £10,000 traced to a transaction involving the Company. The Company was specifically referred to

paragraph 6 of Notice 726 and a copy of the Notice was provided. A similar warning was given in July 2011 (tax losses around £32,000) and a further copy of Notice 726 provided, with emphasis directed to paragraph 6. There were in total 18 tax loss letters sent by HMRC, each accompanied by a copy of Notice 726. Seven of these tax loss letters were sent before the first of the Challenged Deals:

- (1) 6 July 2011 re Dream Distribution Ltd.
- (2) 15 July 2011 re Link Distribution Ltd.
- (3) 21 October 2011 re Link Distribution Ltd.
- (4) 24 November 2011 re Dream Distribution Ltd.
- (5) 13 September 2012 two letters re Dream Distribution Ltd.
- (6) 13 September 2012 re RLR Distribution Ltd.

38. The Company received at least 16 visits from HMRC, all but two of which were from the MTIC team. At the meeting on 26 September 2012 a copy of Notice 726 was handed over. At the meeting on 11 August 2015, by when deals 1-13 had taken place, no mention was made by the Company of the deals with PPSM. The officers were told that “when the stock is handled by a freight forwarder the company will receive an inspection report. Then inspection report is retained by the company and a copy is given to the customer.” In fact on deals 1-13 there were no inspection reports even though freight forwarders handled the goods and the Company never took possession.

39. The Company had twice been included in HMRC’s continuous monitoring project: from 30 January 2012 to 9 October 2012, and from 29 September 2015 to 29 March 2017. The Company had been subject to HMRC’s extended verification procedures on 15 occasions.

40. Paragraph 6.2 of Notice 726 (version extant at relevant time) gave examples of due diligence that could be performed on new customer or suppliers.

“6.2 Checks carried out by existing businesses

The following are examples of specific checks carried out by businesses that took part in the consultation exercise in 2003 when these rules were introduced. These may also help you to decide what checks you should carry out, but this list is not exhaustive and you should decide what checks you need to carry out before dealing with a supplier or customer:

- obtain copies of Certificates of incorporation and VAT registration certificates;
- verify VAT registration details with HMRC;
- obtain signed letters of introduction on headed paper;
- obtain some form of written and signed trade references;
- obtain credit checks or other background checks from an independent third party;
- insist on personal contact with a senior officer of the prospective supplier, making an initial visit to their premises whenever possible;
- obtain the prospective supplier’s bank details, to check whether:
 - payments would be made to a third party; and
 - that in the case of an import, the supplier and their bank shared the same country of residence.

- check details provided against other sources, eg website, letterheads, BT landline records

Paperwork in addition to invoices may be received in relation to the supplies you buy and sell. This documentation should be kept to support your view of a transaction's legitimacy. The following are examples of additional paperwork that some businesses retain:

- purchase orders;
- pro-forma invoices;
- delivery notes
- CMRs (Convention Merchandises Routiers) or airway bills;
- allocation notification;
- inspection reports.

This is not an exhaustive list, but does show some of the more common subsidiary documentation.”

41. At the visit on 17 September 2010 the Company told the officers that it carried out due diligence for all new suppliers and customers, including a credit check questionnaire and obtaining trade references. At the visit on 26 September 2012 Mr Inglis told the officers that “he never does a deal with a new customer without meeting them and seeing the stock ... No money is paid out until the goods are seen.”

42. The Company made a credit check on PPSM in February 2015 – before what HMRC interpreted as being a “test deal” in consoles before undertaking the Challenged Deals – and this showed a high risk rating with £500 credit recommendation. A second check was made after the HMRC visit in August 2015 (after deal 13) which showed a maximum risk rating, but the Company proceeded to conclude deals 14-20 with PPSM. Credit insurance of £100,000 was requested on PPSM but only £10,000 granted. HMRC contended that the Company was just “box ticking” by obtaining credit reports but then ignoring the information received, and this rendered this aspect of the due diligence meaningless. Similarly, PPSM’s trade application to the Company gave two trade references but apparently neither was ever taken up – for one referee an address had not even been provided for action. There were also other missing documents that were requested by the form but not pursued.

43. On the GECX customers, no credit insurance was available at all on GECX Greece. On GECX Czech Republic £100,000 cover was requested but nil was given. Despite this the deals still went ahead, despite an absence of any comfort from these checks. Credit insurance was available on other GECX companies (Group and Holdings) but no trading was undertaken with those companies. Again, the due diligence was meaningless.

44. The terms of the Challenged Deals were set out in Mr Wildman’s email dated 16 March 2015 (see [15(12)] above). Comparing these to the red flag items in paragraph 6.1 of Notice 726:

- (1) Buyer and seller were both provided to the Company for the same goods.
- (2) The customer was referred by the supplier.
- (3) The supplier offered deals with no commercial risk, including no requirement to pay for the goods until payment was received from the customer.
- (4) The deals involved a consistent, pre-determined margin (2% of the transaction value).

- (5) There was no evidence that the goods were adequately insured.
 - (6) They were high value deals with no formal contractual arrangements – at least until the contract between PPSM and the Company was signed just before the last few Challenged Deals.
45. HMRC considered that the following factors showed that the Company and its directors knew that the Challenged Deals were connected with VAT fraud:
- (1) Numerous red flags were ignored by the Company despite its detailed knowledge and previous experience of MTIC fraud. A reading of Mr Wildman’s email should in itself have been sufficient warning. Yet Mr Inglis decided to go ahead and conclude twenty high value deals on the highly questionable basis set out in the email. The final three Challenged Deals had been conducted after HMRC had served a balance-of-probability letter on the Company specifically referring to PPSM
 - (2) The due diligence performed was not in accordance with explanations given to HMRC at visits specifically to discuss due diligence. When adverse information was received – eg the maximum risk credit report ratings, or the refusal of credit insurance, or missing identity check documents – then that was regarded as inconvenient and ignored, and the twenty high value deals were progressed regardless.
 - (3) The Company chose not to reveal the Challenged Deals to HMRC at the August 2015 visit. That made the answers given at that meeting effectively misleading; the Challenged Deals did not have the typical 5-8% mark-up as explained to the officers, nor were the goods received at the Company’s principal place of business as explained to the officers, nor was it explained that adverse information had been received on due diligence performed on the supplier and both customers. HMRC contend that Mr Inglis deliberately kept quiet about all of this because he was fully aware that the Challenged Deals were connected with VAT fraud.
 - (4) The type of goods in the Challenged Deals was different from the Company’s normal trading, and of substantially larger deal size than its normal trading. Normally the Company traded on its own account, while on the Challenged Deals it was acting as a middleman, as evidenced by the formal contract that was belatedly put in place.
 - (5) Freight forwarders were used who (apart from deal 14) were nominated by PPSM or GECX. No due diligence on the forwarders had been evidenced. No meaningful checks were performed on the goods, which totalled several million pounds in value; there were no inspection reports from the forwarders, and only one or two “packing lists” which were uninformative. This was all in contrast to the Company’s genuine transactions involving consoles, where goods were carefully checked and formal inspection reports filed by the forwarder appointed by the Company.
46. HMRC submitted that all four witnesses for the Company were unreliable. Two were self-interested in the outcome; Mr Inglis owned 81% of the Company, and Mr Pappalardo worked on a sales commission basis. Mr Pappalardo had ignored a clear warning by the Judge not to discuss his evidence in the proceedings.
47. Alternatively, the Company should have been aware of the connection to fraud of the Challenged Deals, for the same reasons as above and also:
- (1) It was inadequate for Mr Inglis as a director of the Company to claim that he never considered any of the Notices 726 that were sent to the Company over several years prior to the August 2015 meeting with HMRC – he should have been keenly aware of the contents of those documents. Mr Pappalardo - who was the main contact with PPSM

and GECX, and had been present at several meetings with HMRC - denied having any knowledge of how MTIC fraud works, or having considered Notice 726.

(2) The Company, and Mr Inglis and Mr Pappalardo in particular, seem to have relied almost entirely on Mr Wildman's purported high reputation in the industry. However, this was at odds with his story that after seven years trading PPSM could still not fund the VAT cashflow disadvantage of buying goods with VAT attached and exporting free of VAT. Mr Inglis and Mr Pappalardo seem to have accepted this without question or checking, and saw nothing odd in the juxtaposition of an allegedly successful and experienced businessman with a fundamental business shortcoming. Instead, Mr Inglis was happy to put the Company in the position of itself having to fund the VAT on the deals.

APPELLANT'S CASE

48. Mr Brown submitted as follows for the Company.

49. Deals 9-13 involved Shark Partners as the alleged defaulter; therefore HMRC had to prove that Shark Partners (or the persons controlling it) fraudulently evaded VAT. The Company denied that it knew or should have known that any of the Challenged Deals was connected to fraudulent evasion of VAT.

Deals 9-13

50. Shark Partners was unknown to the Company, and so the only information available was Mr Guest's evidence concerning HMRC's interactions with Shark Partners. For the rule in *Kittel* to be applicable to deals 9-13 HMRC must prove that Shark Partners (or the persons controlling it) fraudulently evaded VAT – ie it was done dishonestly.

51. The test is, was Shark Partners' behaviour dishonest according to normally accepted standards of behaviour (*N'Diaye v HMRC* [2015] UKFTT 380 (TC) at [49])? The Tribunal should consider, insofar as it can do so, what Shark Partners actually knew at the time, not what a reasonable person in its position would have known or appreciated.

52. The Company asserted that HMRC had not proven that Shark Partners was dishonest.

(1) There had been *unannounced* visits by HMRC, so the absence of the proprietor on those occasions was unremarkable. For at least one visit it appeared that HMRC had been trying to contact the previous owner of the company, who had sold the shares to Mr Satheesan some time earlier.

(2) Mr Satheesan had twice attended meetings with HMRC (on 20 July and 8 September 2015), where he had explained the company's business.

(3) If Shark Partners had been a fraudster then it would have disappeared as soon as HMRC started taking an interest in it, which was not the case. Mr Satheesan had contacted HMRC to inform them of a change of address, and to arrange the two meetings. Meeting twice with HMRC and divulging details of Askos Wolt were not the actions of a dishonest participant. On the contrary, it appears he was trying to sort out Shark Partners' VAT affairs.

(4) Although the VAT number on the Fast Away invoices was invalid, HMRC still had a discretion to allow the input tax; no one had asked Mr Satheesan about those invoices or the supplier's VAT registration; Mr Satheesan may have believed he held genuine valid VAT purchase invoices.

(5) The assessments raised on Shark Partners gave no credit for input VAT; the VAT liability should have been on the (relatively slim) margin earned by Shark Partners, not the full sales price. Receiving assessments for in excess of £1 million - which as output tax only assessments were hugely inflated - must have been a huge shock to Mr Satheesan, which may have accounted for his disappearance. However, that was not tantamount to dishonest evasion of the assessed amounts. If Shark Partners did not have sufficient funds to pay the assessments then failure to pay did not amount to dishonesty.

53. The findings by the Tribunal in *Beigebell* would not be challenged by the taxpayer on appeal, because the Tribunal had decided the appeal in favour of the appellant despite the finding that Shark Partners was a fraudulent defaulter.

Knowledge

54. The Company strongly denied being knowingly involved in the VAT frauds uncovered by HMRC. Further, the circumstances surrounding the Challenged Deals were not sufficient to show that the Company should have known of the connection to VAT fraud.

55. The Company was an experienced trader in electronic goods, trading since 2005. At the relevant time it employed 15-20 people. The 20 Challenged Deals should be contrasted with the 1700 transactions in the relevant period; these included ten other deals involving PPSM that HMRC had not challenged. The Challenged Deals were a tiny proportion of the Company's total trading profile.

56. The Company was contacted by Mr Wildman, whom Mr Inglis knew from previously working at the same company. The Company did carry out checks on PPSM. The Company stopped trading with PPSM when HMRC gave a warning about transactions in the chains; further checks were then performed and a formal contract signed before trading was resumed.

57. Of the 18 tax loss letters cited by HMRC, only seven of these were issued prior to the Company entering into the Challenged Deals, and the last of those was in 2012 – so there was no tax loss letter received by the Company between 2012 and the commencement of trading with PPSM.

58. The Company had been under the continuous monitoring programme during 2012 but was out of the programme from then until after the Challenged Deals had commenced.

59. Prior to the Challenged Deals the Company had received seven tax loss letters – three of which were sent on the same day – but no action had been taken by HMRC to deny the VAT on any of these.

60. The Company had been on the continuous monitoring programme, during which extensive information had been provided to HMRC, especially by Mrs Brown. There had been extended verification letters for VAT reclaims totalling around £1.9 million. The Company knew it was under the spotlight and it was inconceivable that in those circumstances it would have knowingly got involved with VAT fraud. The Company twice stopped trading with PPSM when HMRC had expressed some concerns. HMRC had accepted that Mr Inglis had been visibly shaken when informed of the potential extent of the Company's involvement in transaction chains leading to VAT losses.

61. Mr Inglis had insisted that PPSM enter into a formal agency contract, which was drafted by professional lawyers.

62. The August 2015 visit had clearly been for the purpose of discussing the Global deals relating to games consoles – for example maintaining a register of console numbers. There was no call to discuss other transactions, such as those with PPSM.

63. Mr Inglis had clearly explained the checks he and his colleagues had carried out before deciding to take on the deals outlined by Mr Wildman. He had decided that it was safe to undertake those transactions. Mr Wildman had been clear and open about the structure of the proposed transactions, and the reason for that structure – that PPSM could not afford to fund the VAT before reclaiming it. Mrs Hirons had confirmed that HMRC had no suspicion of MTIC involvement by PPSM; also that PPSM was still trading in 2016 and still selling to GECX.

64. On the deals where the goods had been received into the Company's warehouse (deals 14-20) there had been adequate insurance for the goods, and there were packing lists which, although brief, showed that the goods did exist.

65. The length of the deal chains was, of course, unknown to the Company, which saw only its immediate counterparties. Similarly, the identities of the other persons in the deal chains was unknown to the Company, as was the speed of execution of those other links in the chain.

66. It was not the correct picture that the Company was sitting on a stack of Notices 726. Prior to the Challenged Deals being commenced in March 2015, the last time a copy of the Notice had been provided was in September 2012.

67. The purpose of the due diligence was to gain confidence in whom the Company was dealing with; Mr Inglis was confident that he was dealing with Mr Wildman, who was a respected industry figure whom he considered reputable and correct. The checks made at the time had not raised any suspicions. HMRC were, of course, arguing from an after-the-event position, but it was notable that, for example, the enquiries subsequently made of the Greek authorities concerning GECX Greece showed that it held a chamber of commerce certificate, that its records included all the transactions undertaken with the Company, and VAT returns had been filed.

68. Some of the goods sold to GECX were specially branded SD cards – the sort of goods that could not be easily retraded (as would be expected for goods in an MTIC chain).

69. It was not correct that the Company did not carry out other non-PPSM transactions of similar value to those in the Challenged Deals – that was clear from the deal listings attached to the VAT returns.

CONSIDERATION AND CONCLUSIONS

70. As stated at [9] above, the matters for determination by the Tribunal are:

- (1) Whether the VAT losses resulting from deals 9-13 resulted from fraudulent evasion, and whether those deals were connected with that evasion.
- (2) For all the Challenged Deals, whether the Company knew or should have known that the deals were connected to fraud.

71. On the disputed points the burden of proof, to the standard of balance of probabilities, lies with HMRC (see *Mobilx* at [81]).

Connection with fraudulent evasion

72. The Tribunal had detailed deal sheets and transaction chains for all the 20 Challenged Deals, which we studied carefully with Ms Vicary's assistance. As 16 of the Challenged Deals are contra-trading deals, it is worth spelling out who HMRC allege is the defaulter in relation to each Challenged Deal. The alleged defaulter on each of the Challenged Deals was as follows:

- (1) deals 1-8 Presence Networks Limited (on deals 2-5 Shark Partners was also involved but HMRC rely on Presence as the defaulter for *Kittel* purposes);
- (2) deals 9-13 Shark Partners (this is disputed by the Company);
- (3) deals 14-16 AFTX Systems Limited; and
- (4) deals 17-20 Fair Services Limited.

73. As the Company accepts that there was fraudulent evasion connected with each of the Challenged Deals except deals 9-13, we will not refer to the undisputed deals in any detail except to note that having studied the deal chains we are satisfied that HMRC have (in those undisputed deals) correctly identified a tax loss which resulted from fraudulent evasion by the named defaulter, and that the relevant deals were connected with that evasion.

74. On deals 9-13 we are satisfied that those deals were connected with the tax loss occasioned by Shark Partners not paying the VAT it was liable to account for. The Company accepts that Shark Partners was a defaulter, in that it did not pay to HMRC its VAT liabilities, but does not accept that Shark Partners was *fraudulent* in not paying the VAT due.

75. In examining the conduct of Shark Partners we have applied the test for dishonesty set out by Lord Hughes in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2018] 2 All ER 406 (at [74]):

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

76. Mr Brown for the Company put forward a number of factors as suggestive that Shark Partners was not fraudulent, which may be summarised as follows:

- (1) No emphasis should be placed on the fact that officers could not gain entry on a couple of visits, as those were *unannounced* visits.
- (2) Mr Satheesan attended two meetings with HMRC, which he pre-arranged with HMRC. He had discussed the company's business with the officers and answered questions posed. He had freely discussed the involvement with Askos Wolt and Fast Away.
- (3) Some documents had been provided to HMRC at the meetings, and emailed afterwards.
- (4) Mr Satheesan may have believed the Fast Away invoices bore a genuine VAT number.
- (5) The assessments raised gave no credit for input tax and, therefore, were for enormous amounts, out of proportion to what Mr Satheesan may have been expecting, given the modest mark-ups he seemed to be enjoying. Facing such liabilities he may have abandoned the business out of fear rather than fraud.

77. We have carefully considered those factors but they must be viewed in the context of Mr Satheesan's overall behaviour. We conclude that on balance they are outweighed by other

factors that, taken together, are probative of dishonest conduct by Mr Satheesan. He bought a company already registered for VAT as a general store but did not notify HMRC when the company instead traded in memory cards (which are goods susceptible to MTIC fraud). UK banks had refused him banking facilities and he instead operated through a Latvian bank that was also used by Askos Wolt (and one of Askos Wolt's suppliers). No VAT returns were ever filed, despite a specific promise by Mr Satheesan that these would be delivered (within one week) by a firm of professional accountants who he said were instructed. There was no evidence of credible due diligence procedures – for example, Fast Away's VAT number on its invoices was not identified as false. The VAT assessments were not challenged, despite Mr Satheesan's statement that a firm of professional accountants acted for the company, and no payment of VAT (with or without deduction of purported input tax) has ever been made.

78. Accordingly, we find that Shark Partners was a fraudulent defaulter, as contended by HMRC. We note that the same conclusion was reached by this Tribunal in *Beigebell*, on the evidence presented in that case.

Knew or should have known ...

79. HMRC contend (and the Company denies) that the Company knew or should have known that the Challenged Deals were connected with the fraudulent evasion of VAT.

80. It was stated in *Red 12* (at [111]) (approved in *Mobilx* by the Court of Appeal, at [83]):

“... in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them.”

Should have known

81. We consider first the question whether the Company *should have known* of the connection with VAT fraud. We have followed the explanation by Proudman J in *GSM Export* quoted at [4] above:

- (1) “Should have known” means “knowing or having any means of knowing”.
- (2) It is not sufficient to know or to have the means of knowing that there was a risk that the transaction might have been so connected, or that it was “more likely that not” that the transaction was so connected.
- (3) A taxpayer can be regarded as being in a position where he should have known that the transaction was connected with fraudulent evasion of VAT where he should have known that “the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud”.

82. We do not accept the statements of the Company's witnesses that they were naive or unaware of the risks of MTIC fraud in their industry.

- (1) All of Mr Inglis, Mr Munro and Mr Pappalardo had years (indeed, decades) of experience in the electronic games industry. As stated in Notice 726 (paragraph 1.4):

“the types of goods that are used to perpetrate [MTIC] fraud ... include electronic equipment made ... for the purposes of leisure, amusement or entertainment and any other equipment made or adapted for use in connection with any such electronic equipment. This ... includes items such as digital cameras, camcorders and other portable electronic devices for playing music

and games such as iPods, hand-held or portable DVD players, Playstation Portables (PSP's). ... this includes parts, accessories and software ...”

(2) Even if they had not carried over that industry knowledge from their previous jobs, they would have learned it from the information provided by HMRC at and after the many visits to the Company where MTIC risk was specifically discussed (see the list of visits described by Mr Stock at [15(33)] above) and, not least, the copies of Notice 726 which HMRC supplied on numerous occasions (including one with every tax loss letter, of which there were seven before the Challenged Deals were undertaken) and which Mrs Brown circulated to the directors and sales teams in August 2015 (before deals 14-20).

(3) All of Mr Inglis, Mr Munro and Mrs Brown explained that in 2010-11 the Company came near to ceasing trading, and had to make several staff redundant, because of the cashflow consequences of HMRC delaying a VAT repayment in relation to a suspected fraudulent VAT loss connected with transactions undertaken by the Company. Directors and senior staff who have come close to losing their jobs and capital because of involvement in an MTIC fraud would have their eyes wide open to any future risk of a repeat of such a disaster.

(4) The Company was in the continuous monitoring project during most of 2012 and from September 2015 (before deals 14-20). This involved continuous provision of transaction information to HMRC – Mrs Brown explained that she had joked to Mr Inglis and Mr Munro that there were so many information demands that she almost felt she was working for HMRC rather than the Company. The effort being expended by HMRC and required from (and delivered by) the Company must have highlighted that the Company was in a business with high risk of involvement in transactions connected with VAT fraud.

(5) The Company's VAT returns had been subject to extended verification on around 15 occasions. Again, this must have highlighted to the Company that it was in a business with high risk of involvement in transactions connected with VAT fraud.

83. Paragraph 2.3 of Notice 726 explains in easily understood terms how MTIC fraud operates, and warns “This type of fraud relies heavily on the ability of fraudulent businesses to sell goods or services to other businesses that are complicit in the fraud, prepared to turn a blind eye, or not sufficiently circumspect about their trading connections. Such action fuels the growth of the fraud.”

84. The Company seems to have not appreciated the difference between normal commercial due diligence (for example, whether a business should extend trade credit terms to a new customer, or whether a new supplier could supply goods in a merchantable condition), and the MTIC red flag due diligence recommended by HMRC in Notice 726. An example is Mr Pappalardo's insistence that the result of a credit check on a supplier was irrelevant because the Company did not offer credit terms to its suppliers; that is a fair answer in relation to normal commercial due diligence, but completely misses the point that it is just part of the additional checks that traders in a high risk area such as the business of the Company can usefully perform “to help ensure the integrity of [the] supply chain” (per Notice 726). Even Mrs Brown, who seemed to have a good grasp of the purpose and importance of the enhanced due diligence checks, stated that she would not bother taking up trade references on new suppliers or customers if she thought the referee was unlikely to respond, and would not require the new supplier/customer to nominate a replacement referee.

85. Any responsible businessperson reading Mr Wildman's March 2015 email and comparing it to Notice 726 would have noted the number of red flags triggered:

NOTICE 726	MR WILDMAN'S EMAIL
Has your supplier referred you to a customer who is willing to buy goods of the same quantity and specifications being offered by the supplier?	<p>“... I will share with you my customer who to clarify will pre-pay for any ordered stock.”</p> <p>“This product initially won't be available to anyone else as the stock is all required by my customer.”</p> <p>“This kind of order could be on a weekly/fortnightly basis depending upon the stock I have allocated from my supplier.”</p> <p>“The name of my customer is GECX in Greece and I will give you all the relevant paperwork and contact details as soon as you confirm your interest in this trading opportunity.”</p>
Does your supplier offer deals that carry no commercial risk for you – eg, no requirement to pay for goods until payment received from customer?	<p>“This whole deal is at no risk what-so-ever to Revive.”</p> <p>“... I will share with you my customer who to clarify will pre-pay for any ordered stock.”</p> <p>“All transportation costs will be covered and the stock can go from either the warehouse of PPSM Ltd or Revive depending upon which you would prefer.”</p>
Do deals with your customer/supplier involve consistent or predetermined profit margins, irrespective of the date, quantities or specifications of the specified goods traded?	<p>“I am able to offer you 2% on the price of my invoice to you for your trouble which could equate to £5-£6K per transaction.”</p> <p>“All transportation costs will be covered ...”</p>

86. We conclude that it was not merely more likely than not that the PPSM transactions were connected with fraud; rather, the only reasonable explanation for the Challenged Deals was that they were connected with fraud.

87. Taking together all the above and applying the stated legal tests, we find that the Company should have known that the Challenged Deals were connected with VAT fraud.

Actual knowledge?

88. Our finding that the Company should have known that the Challenged Deals were connected with VAT fraud is sufficient to dispose of the appeal. HMRC have also, in the alternative, alleged that the Company actually knew of such connection; as that is such a serious allegation, we deal with it for completeness.

89. Ms Vicary for HMRC put forward a number of factors as demonstrative that the Company knew that the Challenged Deals were connected with VAT fraud, which may be summarised as follows:

- (1) The due diligence conducted on PPSM and the customers GECX Greece and GECX Czech Republic was dilatory, and just a box-ticking exercise.
- (2) At the August 2015 meeting Mr Inglis purported to describe to HMRC how the Company conducted its business but did not mention the PPSM deals or that the structure

of those deals was markedly different from the normal trading transactions of the Company.

(3) Going ahead with the PPSM deals on the basis set out in Mr Wildman's email was so blatantly contrary to the advice in Notice 726 that it must have been done in bad faith.

(4) The PPSM deals involved products completely different from those normally traded by the Company, and the goods on deals 1-13 were never seen by the Company.

90. Taking first the matter of due diligence, the Court of Appeal in *Mobilx* emphasised (at [82]) that "tribunals should not unduly focus on the question whether a trader has acted with due diligence." As Ms Vicary stated several times during the hearing, HMRC cannot dictate to traders what checks they should perform or with whom they should trade, and the matters described in paragraph 6.2 of Notice 726 are only suggestions. Given that the Company did have a system of due diligence checks – which were tightened by Mrs Brown in 2013 and again in 2015 – what action was taken by the Company when suppliers/customers did not provide information, or information was received that should have given cause for concern? Credit checks on PPSM and the GECX companies were interpreted by Mr Inglis as satisfactory, for the reasons he explained. Mrs Brown did not take up trade references if she knew from previous experience that the referee was unlikely to reply. Mr Wildman failed to provide a copy of his passport but did provide a copy driving licence. PPSM did not provide a copy utility bill but, as we understand it, explained that it shared premises and the property was in another name. There appear to have been no checks on freight forwarders, who were handling very valuable consignments of electronic goods. While the Company's performance on these issues was clearly unsatisfactory, it was not sufficiently reprehensible that we can draw a conclusion that the due diligence was not being pursued genuinely.

91. In relation to the August 2015 visit, we accept Mr Inglis's explanation, which is supported by HMRC's note of the meeting, that the main topic of interest was console deals. We cannot conclude that if the matter of the PPSM deals had been raised then Mr Inglis would have done anything other than give a straightforward description of the transactions.

92. We have commented above on the clear applicability of the MTIC red flags to Mr Wildman's March 2015 email setting out the basis of the proposed transactions. However, we do not conclude that Mr Inglis ignored those red flags because he was complicit in VAT frauds. Rather, he seems to have been beguiled by a combination of what he perceived to be Mr Wildman's good standing in the industry, and the opportunity to earn a relatively easy profit by acting as commission broker on "no risk" deals arranged by Mr Wildman. That also, we consider, explains Mr Inglis's ready acceptance of Mr Wildman's assurances that PPSM's supplier chain was secure and of no concern to HMRC, and Mr Inglis's pestering of Mr Stock to be allowed to recommence trading with PPSM. The same explanation accounts for why the Company undertook deals with PPSM for goods that were not its usual line of business, and trusted Mr Wildman was looking after the merchantability of the stock.

93. We conclude that the Company did not have actual knowledge that the Challenged Deals were connected with VAT fraud.

DECISION

94. The appeal is DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

95. 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.

**PETER KEMPSTER
TRIBUNAL JUDGE**

Release date: 07 August 2019

APPENDIX: THE DEALS

Deal No.	Sales Invoice: Reference	VAT Period	Purchase Invoice: Reference & Date	Product: Quantity & Description	Corporate entities: role and position in chain			VAT on Purchase Invoice (€) (and UKBP conversion)	
					Step	Entity	Role		
1	SI19312	03/15	REV02	7,630				£75,175.79	
			27.03.15	Mr Site Software					
			-6	Fast Away Services					Defaulter
			-5	TLP Networks Ltd					Buffer
			-4	Presence Networks Limited					Defaulter
			-3	Global SFX Ltd					Buffer
			-2	C D (Europe) Ltd					Buffer
			-1	PPSM Ltd					Buffer
			0	Revive Corporation Limited					Broker
+1	GECX Group Greece	EU Trader							
2	SI19459	04/15	REV07	10,000				€71,020.00 £50,728.57	
			14.04.15	64GB Mark V SD Cards					
			-5	Infy SP Z.O.O.					EU Trader
			-4	Askos Wolt LLP					Contra
			-3	Presence Networks Limited					Buffer
			-2	Global SFX Ltd					Buffer
			-1	PPSM Ltd					Buffer
			0	Revive Corporation Limited					Broker
+1	GECX Group Greece	EU Trader							

3	SI19482	04/15	REV08	10,000	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-5</td> <td>Infy SP Z.O.O.</td> <td>EU Trader</td> </tr> <tr> <td>-4</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-3</td> <td>Presence Networks Limited</td> <td>Buffer</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-5	Infy SP Z.O.O.	EU Trader	-4	Askos Wolt LLP	Contra	-3	Presence Networks Limited	Buffer	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€71,020.00
			Step	Entity		Role																								
			-5	Infy SP Z.O.O.		EU Trader																								
			-4	Askos Wolt LLP		Contra																								
			-3	Presence Networks Limited		Buffer																								
			-2	Global SFX Ltd		Buffer																								
			-1	PPSM Ltd		Buffer																								
			0	Revive Corporation Limited		Broker																								
+1	GECX Group Greece	EU Trader																												
15.04.15	64GB Mark V SD Cards	€50,728.57																												
4	SI19548	05/15	REV14	7000	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-5</td> <td>Infy SP Z.O.O.</td> <td>EU Trader</td> </tr> <tr> <td>-4</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-3</td> <td>Presence Networks Limited</td> <td>Buffer</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-5	Infy SP Z.O.O.	EU Trader	-4	Askos Wolt LLP	Contra	-3	Presence Networks Limited	Buffer	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€62,497.96
			Step	Entity		Role																								
			-5	Infy SP Z.O.O.		EU Trader																								
			-4	Askos Wolt LLP		Contra																								
			-3	Presence Networks Limited		Buffer																								
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			0	Revive Corporation Limited		Broker																								
+1	GECX Group Greece	EU Trader																												
06.05.15	Kaspersky Security Device Software	€44,641.43																												

5	SI19575	05/15	REV15	7,000	Kaspersky Security Device Software	Step	Entity	Role	€62,497.96 £44,641.43
			11.05.15	-5		Infy SP Z.O.O.	EU Trader		
			-4	Askos Wolt LLP		Contra			
			-3	Presence Networks Limited		Buffer			
			-2	Global SFX Ltd		Buffer			
			-1	PPSM Ltd		Buffer			
			0	Revive Corporation Limited		Broker			
			+1	GECX Group Greece		EU Trader			

6	SI19742	05/15	REV16	9,500	Seagate Hard drives	Ste p	Entity	Role	€118,279.3 7 £84,485.36
			29.05.15	-4		Saikona UAB	EU Trader		
			-3	Presence Networks Limited		Defaulter			
			-2	Global SFX Ltd		Buffer			
			-1	PPSM Ltd		Buffer			
			0	Revive Corporation Limited		Broker			
			+1	GECX Group CZ S.R.O.		EU Trader			

7	SI19839	06/15	REV17	6850	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Presence Networks Limited</td> <td>Defaulter</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group CZ S.R.O.</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Presence Networks Limited	Defaulter	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group CZ S.R.O.	EU Trader	€79,629.33
			Step	Entity		Role																					
			-4	Saikona UAB		EU Trader																					
			-3	Presence Networks Limited		Defaulter																					
			-2	Global SFX Ltd		Buffer																					
			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
			+1	GECX Group CZ S.R.O.		EU Trader																					
19.06.15	Mr Site Software	€56,878.14																									
8	SI19963	07/15	REV18	2700	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Presence Networks Limited</td> <td>Defaulter</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group CZ S.R.O.</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Presence Networks Limited	Defaulter	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group CZ S.R.O.	EU Trader	€88,597.80
Step	Entity	Role																									
-4	Saikona UAB	EU Trader																									
-3	Presence Networks Limited	Defaulter																									
-2	Global SFX Ltd	Buffer																									
-1	PPSM Ltd	Buffer																									
0	Revive Corporation Limited	Broker																									
+1	GECX Group CZ S.R.O.	EU Trader																									
			02.07.15	German Microsoft Office 2013	£62,390.92																						

9	SI19975	07/15	REV20	2900	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Askos Wolt LLP	Contra	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€95,160.60
			Step	Entity		Role																					
			-4	Saikona UAB		EU Trader																					
			-3	Askos Wolt LLP		Contra																					
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			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
+1	GECX Group Greece	EU Trader																									
09.07.15	German Microsoft Office 2013	£67,969.79																									
10	SI20033	07/15	REV22	7,500	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-3</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-3	Askos Wolt LLP	Contra	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€39,510			
			Step	Entity		Role																					
			-3	Askos Wolt LLP		Contra																					
			-2	Global SFX Ltd		Buffer																					
			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
+1	GECX Group Greece	EU Trader																									
15.07.15	64GB Mark V SD Cards	£28,221.43																									

11	SI20051	07/15	REV23	7,500	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Askos Wolt LLP	Contra	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€39,510
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			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
			+1	GECX Group Greece		EU Trader																					
16.07.15	64GB Mark V SD Cards	£28,221.43																									

12	SI20109	07/15	REV24	1,250	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Askos Wolt LLP	Contra	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€ 51,400
			Step	Entity		Role																					
			-4	Saikona UAB		EU Trader																					
			-3	Askos Wolt LLP		Contra																					
			-2	Global SFX Ltd		Buffer																					
			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
			+1	GECX Group Greece		EU Trader																					
30.7.15	SD Cards	£36,714.29																									

13	SI20133	07/15	REV26	1,250	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3</td> <td>Askos Wolt LLP</td> <td>Contra</td> </tr> <tr> <td>-2</td> <td>Global SFX Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4	Saikona UAB	EU Trader	-3	Askos Wolt LLP	Contra	-2	Global SFX Ltd	Buffer	-1	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1	GECX Group Greece	EU Trader	€ 51,400
			Step	Entity		Role																					
			-4	Saikona UAB		EU Trader																					
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			-2	Global SFX Ltd		Buffer																					
			-1	PPSM Ltd		Buffer																					
			0	Revive Corporation Limited		Broker																					
			+1	GECX Group Greece		EU Trader																					
31.07.15	SD Cards	£36,714.29																									

14	SI20505	10/15	REV31 02.10.15	7500 64GB Mark V SD Cards	Step	Entity	Role	€42,330.00
					-4A	Borough Brothers Ltd	EU Trader	
					-3A	Askos Walt LLP	Contra	
					-2A	3A Distribution Ltd	Buffer	
					-1A	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	

					+1A	
					GECX Group Greece	EU Trader
					Step	Entity
						Role
				8,640 Ink Cartridges	-4B	Borough Brothers Ltd
						EU Trader
					-3B	Askos Walt LLP
						Contra
					-2B	3A Distribution Ltd
						Buffer
					-1B	PPSM Ltd
						Buffer
					0	Revive Corporation Limited
						Broker
					+1B	GECX Group Greece
						EU Trader
						€22,809.60
						£47,547.15 (total)

15	SI20542	10/15	REV32 14.10.15	5000 SSD Drives	Step	Entity	Role	€74,750.00
					-4A	Borough Brothers Ltd	EU Trader	
					-3A	Askos Walt LLP	Contra	
					-2A	3A Distribution Ltd	Buffer	
					-1A	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	
					+1A	GECX Group Greece	EU Trader	
					<hr/>			
					Step	Entity	Role	
					-4B	Borough Brothers Ltd	EU Trader	
			-3B	Askos Walt LLP	Contra			
			-2B	3A Distribution Ltd	Buffer			
			-1B	PPSM Ltd	Buffer			
			0	Revive Corporation Limited	Broker			
			+1B	GECX Group Greece	EU Trader			
			<hr/>					
						€5,644.00		
						£58,681.75 (total)		

16	SI20838	10/15	REV34 29.10.15	9000 Cannon Ink Cartridges	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4A</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3A</td> <td>Askos Walt LLP</td> <td>Contra</td> </tr> <tr> <td>-2A</td> <td>3A Distribution Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1A</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1A</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4A	Saikona UAB	EU Trader	-3A	Askos Walt LLP	Contra	-2A	3A Distribution Ltd	Buffer	-1A	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1A	GECX Group Greece	EU Trader	€23,760.00
				Step	Entity	Role																					
				-4A	Saikona UAB	EU Trader																					
				-3A	Askos Walt LLP	Contra																					
				-2A	3A Distribution Ltd	Buffer																					
				-1A	PPSM Ltd	Buffer																					
				0	Revive Corporation Limited	Broker																					
				+1A	GECX Group Greece	EU Trader																					
				3000 Samsung SSD	<table border="1"> <thead> <tr> <th>Step</th> <th>Entity</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>-4B</td> <td>Saikona UAB</td> <td>EU Trader</td> </tr> <tr> <td>-3B</td> <td>Askos Walt LLP</td> <td>Contra</td> </tr> <tr> <td>-2B</td> <td>3A Distribution Ltd</td> <td>Buffer</td> </tr> <tr> <td>-1B</td> <td>PPSM Ltd</td> <td>Buffer</td> </tr> <tr> <td>0</td> <td>Revive Corporation Limited</td> <td>Broker</td> </tr> <tr> <td>+1B</td> <td>GECX Group Greece</td> <td>EU Trader</td> </tr> </tbody> </table>	Step	Entity	Role	-4B	Saikona UAB	EU Trader	-3B	Askos Walt LLP	Contra	-2B	3A Distribution Ltd	Buffer	-1B	PPSM Ltd	Buffer	0	Revive Corporation Limited	Broker	+1B	GECX Group Greece	EU Trader	€44,850.00
				Step	Entity	Role																					
				-4B	Saikona UAB	EU Trader																					
				-3B	Askos Walt LLP	Contra																					
				-2B	3A Distribution Ltd	Buffer																					
				-1B	PPSM Ltd	Buffer																					
0	Revive Corporation Limited	Broker																									
+1B	GECX Group Greece	EU Trader																									
				£50,080.29 (total)																							

17	SI21201	12/15	REV36 17.12.15	750 Acoustic Noise Cancelling Headphones	Step	Entity	Role	€37,620.00 £27,064.75
					-3	Askos Wolt LLP	Contra	
					-2	3A Distribution Ltd	Buffer	
					-1	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	
					+1	GECX Group Greece	EU Trader	
18	SI21398	01/16	REV38 20.01.16	900 San Disk Extreme Pro Memory Cards	Step	Entity	Role	€59,045.40 £44,395.04
					-4	techno Trade Baltia	EU Trader	
					-3	Askos Wolt LLP	Contra	
					-2	3A Distribution Ltd	Buffer	
					-1	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	
					+1	GECX Group Greece	EU Trader	

19	SI21412	01/16	REV39 21.01.16	1500 BOSE QC20 Headphones				€75,240.00 £56,571.43
					Step	Entity	Role	
					-4	techno Trade Baltia	EU Trader	
					-3	Askos Wolt LLP	Contra	
					-2	3A Distribution Ltd	Buffer	
					-1	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	
					+1	GECX Group Greece	EU Trader	
20	SI21471	01/16	REV40 22.01.16	1500 BOSE QC20 Headphones				€75,240.00 £56,571.43
					Step	Entity	Role	
					-4	Techno Trade Baltia	EU Trader	
					-3	Askos Wolt LLP	Contra	
					-2	3A Distribution Ltd	Buffer	
					-1	PPSM Ltd	Buffer	
					0	Revive Corporation Limited	Broker	
					+1	GECX Group Greece	EU Trader	

Appendix Two

Extract from *Red 12 Trading Ltd v RCC* [2010] STC 589

[1] This is an appeal from a decision of the Value Added Tax and Duties Tribunal, sitting in London, released on 16 December 2008 ((2008) VAT Decision 20900). By that decision the tribunal dismissed, save in one respect, the appeal under s 83(c) and/or (e) of the Value Added Tax Act 1994 of the appellant, Red 12 Trading Ltd ('Red 12'), against the denial by the respondents, the Commissioners for Her Majesty's Revenue and Customs ('HMRC') of Red 12's ability to deduct input tax in respect of 46 transactions in the tax periods 02/06 and 03/06. The input tax in issue was £2,672,748.

[2] This case concerns what is called 'missing trader intra-Community fraud' ('MTIC fraud'). Anyone reading this judgment is likely to be familiar with this expression, which has been explained in several tribunal and High Court decisions. The classic way in which the fraud works is as follows. Trader A imports goods, commonly computer chips and mobile telephones, into the United Kingdom from the European Union ('EU'). Such an importation does not require the importer to pay any VAT on the goods. A then sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for which A is bound to account to HMRC. There are then a series of sales from B to C to D to E (or more). These sales are accounted for in the ordinary way. Thus C will pay B an amount which includes VAT. B will account to HMRC for the VAT it has received from C, but will claim to deduct (as an input tax) the output tax that A has charged to B. The same will happen, mutatis mutandis, as between C and D. The company at the end of the chain—E—will then export the goods to a purchaser in the EU. Exports are zero-rated for tax purposes, so trader E will receive no VAT. He will have paid input tax but because the goods have been exported he is entitled to claim it back from HMRC. The chains in question may be quite long. The deals giving rise to them may be effected within a single day. Often none of the traders themselves take delivery of the goods which are held by freight forwarders.

[3] The way that the fraud works is that A, the importer, goes missing. It does not account to HMRC for the tax paid to it by B. When HMRC tries to obtain the tax from A it can neither find A nor any of A's documents. In an alternative version of the fraud (which can take several forms) the fraudster uses the VAT registration details of a genuine and innocent trader, who never sees the tax on the sale to B, with which the fraudster makes off. The effect of A not accounting for the tax to HMRC means that HMRC does not receive the tax that it should. The effect of the exportation at the end of the chain is that HMRC pays out a sum, which represents the total sum of the VAT payable down the chain, without having received the major part of the overall VAT due, namely the amount due on the first intra-United Kingdom transaction between A and B. This amount is a profit to the fraudsters and a loss to the Revenue.

[4] The tribunal held that all of the 46 deals save one were part of an MTIC fraud. One deal—deal 32—was tainted by fraud. In respect of 45 of the deals the subject of the fraud the tribunal dismissed Red 12's appeal. In respect of deal 32 the tribunal allowed the appeal because the case was pleaded on the basis of the fraud being an MTIC fraud, adding that, given its finding that deal 32 was tainted by fraud, albeit not MTIC fraud, whether the Commissioners chose to repay the input tax was a matter for them.

[5] A jargon has developed to describe the participants in the fraud. The importer is known as 'the defaulter'. The intermediate traders between the defaulter and the exporter are known as

'buffers' because they serve to hide the link between the importer and the exporter, and are often numbered 'buffer 1, buffer 2' etc. The company which exports the goods is known as the 'broker'.

[6] The manner in which the proceeds of the fraud are shared (if they are) is known only by those who are parties to it. It may be that A takes all the profit or shares it with one or more of those in the chain, typically the broker. Alternatively the others in the chain may only earn a modest profit from a mark up on the intervening transactions. The fact that there are a series of sales in a chain does not necessarily mean that everyone in the chain is party to the fraud. Some of the members of the chain may be innocent traders.

[7] There are variants of the plain vanilla version of the fraud. In one version ('carousel fraud') the goods that have been exported by the broker are subsequently re-imported, either by the original importer, or a different one, and continue down the same or another chain. Another variant is called 'contra-trading', the details of which are explained in paras [9] and [10] of the judgment of Burton J in *R (on the application of Just Fabulous (UK) Ltd) v Revenue and Customs Comrs* [2007] EWHC 521 (Admin), [2008] STC 2123. Goods are sold in a chain ('the dirty chain') through one or more buffer companies to (in the end) the broker ('broker 1') which exports them, thus generating a claim for repayment. Broker 1 then acquires (actually or purportedly) goods, not necessarily of the same type, but of equivalent value from an EU trader and sells them, usually through one or more buffer companies, to broker 2 in the United Kingdom for a mark up. The effect is that broker 1 has no claim for repayment of input VAT on the sale to it under the dirty chain, because any such claim is matched by the VAT accountable to HMRC in respect of the sale to United Kingdom broker 2. On the contrary a small sum may be due to HMRC from broker 1. The suspicions of HMRC are, by this means, hopefully not aroused. Broker 2 then exports the goods and claims back the total VAT. The overall effect is the same as in the classic version of the fraud; but the exercise has the effect that the party claiming the repayment is not broker 1 but broker 2, who is, apparently, part of a chain without a missing trader ('the clean chain'). Broker 2 is party to the fraud.

[8] HMRC will have records of whatever returns have been made to them by companies registered for VAT and will know what has been accounted to them and what has not. Using those records and information provided by VAT registered companies they are able to trace a chain of transactions in respect of which output tax received has been accounted for and claims to deduct input tax have been made. They can, thus, trace back from exporter E to (say) importer A. But at some stage the trail is likely to go cold. In the classic version of the fraud it will do so when HMRC gets to A because A and its documents have disappeared. HMRC will know that A has defaulted on its obligations in respect of VAT since it will not have received any of the output tax paid by B to A (as accounted for by B).

[9] However, HMRC may not be in a position to know whether A is in fact the importer or whether there may have been earlier companies in the chain, either as purchasers or transferees, such that its full length was (say) Y – Z – A – B etc. In that example there will have been a defaulter (A), who will not have accounted to HMRC for VAT, but there will also have been an importer (Y). Whether or not Y or Z are liable to account for VAT may depend on the exact nature of the dealings between Y, Z and A, between whom money may not have changed hands.

[10] In a chain of transactions between traders all of whom are honest each trader will account to HMRC for the output tax received (in respect of which the trader acts, broadly

speaking, as agent for HMRC: *Elida Gibbs Ltd v Customs and Excise Comrs* (Case C-317/94) [1996] STC 1387, [1997] QB 499), less any input tax incurred, which he will claim from HMRC. He will, ordinarily, need most of the money received from his sales to pay his supplier and the VAT due. The full extent of any chain will be patent. Where there is dishonesty the position is different. It is in the interests of those who seek to defraud HMRC of VAT to hide the full extent of any chain by the use of buffer companies. Such persons lack any interest in seeing that they, or the companies through whom they operate, are able to account to HMRC for all the VAT that they should.”