[2022] UKFTT 00008 (TC)

TC 08361/V

VAT – Input tax – HMRC denied input tax claims on the Kittel basis involving alleged direct links to fraudulent VAT losses and contra trading – Were there VAT losses – Yes – Were they fraudulent – Yes – Were the Appellant's transactions connected with the fraud? – Yes - Did Tradestar know or should it have known that its transactions were connected to fraudulent evasion of VAT – Yes – Appeals dismissed
Applications to admit evidence and strike out evidence.
Implications of witness withdrawing from cross examination.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: LON/07 1437 and 09/0019

BETWEEN

TRADESTAR INTERNATIONAL LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE TRACEY BOWLER
MS SUSAN STOTT

The hearing took place on 29 July – 4 August, and 9-13 August 2021. The form of the hearing was V (video) using the video hearing platform CVP. A face to face hearing was not held because of the circumstances of the pandemic and the inability of the sole director of Tradestar to attend a hearing in person.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

In addition, the parties submitted written submissions on 31 August and 1 September 2021.

Mr J. Burgess, director of the Appellant, for the Appellant.

Ms Karen Robinson, counsel and Mr Joshua Carey, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

INTRODUCTION

1. The Appellant ("Tradestar") appeals against two decisions of the Respondents ("HMRC") dated 8 August 2007 and 31 October 2008 to deny its input tax reclaim. The grounds for HMRC's decisions were that Tradestar's transactions in relation to which the claims for input tax arose were connected with the fraudulent evasion of VAT and that Tradestar knew, or should have known, of this connection.

2. The first appeal is in respect of ten transactions entered into in VAT period 02/06 with a total VAT value of £1,724,067.55 and seven transactions entered into in VAT period 05/06 with a total VAT value of £2,378,950.00. The goods subject to that appeal are central processing units ("CPUs"), software called Web Accountant and iPods/MP3/4 players.

3. The second appeal is in respect of two transactions entered into in VAT period 08/06 with a total VAT value of £611,117.50. The goods subject to that appeal are Apple iPods.

4. The connection with tax losses is said by HMRC to be both by way of direct tax loss (i.e. the fraudulently defaulting trader is in the immediate chain of supply) and also tax losses in parallel chains (i.e. contra-trading where there is a single trader that links both chains together) as explained later in this decision. In each case Tradestar is said to have acted as a broker trader, purchasing from a UK trader and selling to an EU trader.

5. Tradestar disputes all elements of HMRC's case.

USE OF VIDEO PLATFORM

6. Mr Burgess expressed concerns about the use of the video platform for his appeal. For the reasons explained below his adjournment applications were refused. However, given the accepted problem of power outages in South Africa the Tribunal had directed in November and again at the start of the hearing that the Tribunal should be informed of any planned outages so that arrangements could be made to work around these times, with, for example, early starts or late finishes to other days.

7. The connection via the video platform worked well in the first 5 days of the hearing. The Tribunal was satisfied that all attending could fully participate in the hearing. However, problems arose with Mr Burgess' connection on 9 August. We address these problems in more detail later in the context of the various procedural decisions made by the Tribunal.

8. However, our conclusion is that the use of the video platform was a fair and effective way of conducting the hearing, particularly in the context of Mr Burgess' inability to travel to the UK. At the end of the day, Mr Burgess chose no longer to participate in the hearing. We are satisfied that that was a matter of choice rather than inability to attend as we explain later.

THE STRUCTURE OF THIS DECISION

9. We start by describing the background and each party's case which informs not only the arguments regarding the substantive issues, but also the procedural applications. The decision is then split into two parts: the first deals with the various procedural issues arising; the second deals with the substantive issues.

BACKGROUND

10. This has been an unusually long running case. It is not necessary to set out the full background and reasons for the delay in progressing to a hearing. However, some elements of the history are particularly pertinent to the decisions made by us:

(1) Tradestar submitted its Notice of Appeal in relation to the first decision on 15 August 2007 and in relation to the second decision promptly after receiving the decision, although the precise date is not clear;

(2) Tradestar has been represented at most times during the litigation by representatives. However, Tradestar was not legally represented when responding to tribunal directions in October 2019, or at subsequent hearings. Instead, it has been represented by Mr Burgess, the sole shareholder and director of Tradestar. Mr Burgess has told the Tribunal that this is because of a lack of funds;

(3) over the course of the litigation the Tribunal has had cause to issue four unless orders when Tradestar has not been engaging with the process;

(4) at a directions hearing in 2013 it was noted that Appellant had "failed to co-operate with the Tribunal; in particular Tradestar did not comply with the tribunal's directions of 30 August 2011 to file a response to HMRC's updated Statement of Case which was due on 2 March 2012 (no application for extension of time having been made…)…In addition the lack of cooperation has taken the form of a failure to communicate adequately with the Tribunal or with HMRC for not insignificant periods of time in relation to the proceedings before the Tribunal which has resulted in delay to the progress of the appeal…";

(5) on 1 July 2016 Tradestar applied for disclosure of information regarding a company called Bullfinch. In directions issued on 11 July 2016 Judge Morgan directed HMRC to provide disclosure regarding Bullfinch. Disclosure followed within the time directed although Tradestar disputes whether full disclosure was in fact made and this is addressed in detail in our decision;

(6) on 26 March 2018 Judge Sinfield issued "Fairford" directions requiring Tradestar to notify HMRC and the Tribunal as to which transaction chains were accepted, whether it was accepted that the transactions were part of an orchestrated fraud and whether it was accepted that Tradestar's transactions were connected to the fraudulent evasion of VAT and where any matters were not accepted the reasons therefor;

(7) on 2 October 2019 Judge Hellier issued directions confirming that Judge Sinfield's Fairford directions were treated as having been complied with. He dealt with several applications which have subsequently been renewed by Tradestar:

> (a) he declined to make a direction that evidence in relation to Bullfinch and FCIB should be struck out because the evaluation of that evidence would be a matter for the tribunal at the hearing. He noted that at the hearing Tradestar could put its case to the relevant witness and make submissions as to why the evidence should be ignored;
>
> (b) he declined to direct that "all elements of the claim that are fraudulent" be struck out. He noted that it would be a matter for the tribunal hearing the appeal to decide whether any part of the assessments on Tradestar, or the case against it, are based on fraud;
>
> (c) in relation to Tradestar's complaint that "HMRC had failed to provide critical disclosure and evidence… to prove the case" he explained that the burden of proof was on HMRC and that any failure by HMRC to provide critical evidence would therefore not be a good reason for requiring eight witnesses' presence, and could be regarded as unreasonable conduct giving rise to a liability to costs.

(8) In the same directions Judge Hellier directed that:

(a) HMRC should write to Tradestar setting out which documents in relation to Bullfinch have been destroyed, why that had been and whether there was any link with Tradestar's appeal;

(b) Tradestar should write to HMRC indicating in relation to the evidence of seven witnesses ("the Seven Witnesses") whether it accepts their evidence and if not which paragraphs of their witness statements are disputed;

(c) Tradestar should write to the tribunal saying whether or not it would wish the tribunal to issue witness summonses to any present or former officer of HMRC and in the directions relating to this Tradestar was required to say why it wished the tribunal to hear their oral evidence rather than refer to witness statements already made.

(9) Following replies to the directions of 2 October 2019, Judge Hellier issued further directions on 5 November 2019 in which he stated that Tradestar should be taken to allege impropriety or serious error or omission only in relation to HMRC's evidence in relation to Bullfinch (or its dealings with Bullfinch) and FCIB and to dispute:

(a) that there was a loss of tax at the beginning of any of the chains;

(b) that any such loss was fraudulent;

(c) that its transactions were connected with such fraud;

(d) that it knew or should have known of such connection;

(e) the evidence in the witness statements of the Seven Witnesses, noting that if the witnesses did not attend the tribunal may accord to the statement such weight as it considers fair and just in the light of all of the circumstances including the challenges made to them by Tradestar on 14 October 2019.

(10) Judge Hellier also directed that if Tradestar wished to apply for witness summons it must make its application within 14 days after notice of the date for hearing.

11. Judge Hellier noted in the directions that Tradestar appeared not to understand the form of the hearing or the onus of proof on HMRC and this had led to a lack of completeness and clarity in Tradestar's reply to the 2 October 2019 directions and those made by Judge Sinfield, including the Fairford directions. The 2 October 2019 direction requiring Tradestar to write to HMRC about the Seven Witnesses was made in the expectation that Tradestar's previous representative would assist the tribunal in limiting, so far as possible, the time and expense of the hearing. However, Tradestar's representative had not been involved in the response and Tradestar was therefore taken to dispute all of the evidence of the Seven Witnesses, although Tradestar was warned that the tribunal may consider the disputation of the entirety of such evidence to be unreasonable conduct and award costs against Tradestar as a result. Tradestar was encouraged to let HMRC know which precise parts of the evidence it disputed.

12. The case was listed for the substantive hearing to commence on 10 November 2020 remotely using the Tribunal's video hearing platform. Problems with Mr Burgess' connection arose and HMRC offered to arrange a room at the South African consulate or embassy or a hotel room. Mr Burgess declined the offer of the room and attempted an alternative means of connection, but problems persisted and he then contracted Covid. The hearing was adjourned. Prior to the adjournment the Tribunal (Judge Bowler and Mr Farooq) had

considered several procedural applications but had not proceeded to hear the substantive appeal. It had become a case management hearing.

13. Following that case management hearing Judge Bowler and Mr Farooq decided:

(1) to adjourn the hearing for at least six months to accommodate Mr Burgess' request to remain in South Africa for that period to support his mother undergoing medical treatment;

(2) to list the case with provision for Mr Burgess, at least, to participate in the hearing by attendance at the Tribunal's London hearing centre, but with the fallback of using the Tribunal's video hearing platform if required;

(3) as Judge Hellier had previously decided, that the further application made by Tradestar to exclude FCIB evidence would be refused as the matters raised by Tradestar related to the reliability of the evidence provided by HMRC. As such they were matters which would be addressed in the substantive hearing;

(4) to refuse the application to bar HMRC from the proceedings. The application had been made by Tradestar on the basis that HMRC had not complied with Judge Morgan's Bullfinch disclosure direction. The Tribunal did not find that was the case, but in any event concluded that Judge Morgan's direction did not state that failure by HMRC to comply with the direction could lead to the striking out of the proceedings or part of them; and neither of the alternative bases for the barring of HMRC under the Tribunal's Procedural Rules applied. At its heart Tradestar's application concerned matters which related to the reliability of the evidence and which would be addressed at the substantive hearing;

(5) to direct that if Tradestar wished the Tribunal to take into account any reports or internet searches (such as referred to by Mr Burgess in the hearing) Tradestar should apply for the new evidence to be admitted on or before 10 December 2020;

(6) to direct HMRC to address the position of the Seven Witnesses as the case management hearing had indicated some confusion about whether they would be called to give evidence;

(7) to direct that where as a result of an HMRC officer's retirement or ill-health it was no longer reasonably practicable for that officer to provide evidence at the hearing replacement officers may be called and replacement Witness Statements may be adduced by HMRC provided that any such replacement Witness Statements did not materially change the evidence given by HMRC and was served at least 35 days before the adjourned hearing.

14. On 24 February 2021 HMRC applied for the admission of a Witness Statement from (i) Officer Begg to replace that of Officer Morrison; and (ii) from Officer Birchfield to replace that of Officer Monk. The first was approved by Judge Bowler in a decision issued by her in line with the directions made after the November hearing.

15. However, Judge Bowler decided that the application to reduce a further Witness Statement from Officer Birchfield would be addressed at the hearing as the new witness statement made changes of substance to the evidence. Tradestar should have the opportunity to address this fully. Tradestar was reminded again that the disputation of the entirety of the evidence may be found to be unreasonable conduct and it was encouraged to identify specific matters in the evidence of HMRC's witnesses which was challenged. Tradestar was directed to prepare for the hearing on the basis of Officer Birchfield's new witness statement being

admitted so that there would be no need for further delay for consideration of it, if it was indeed admitted.

HMRC'S CASE

16. HMRC have provided extensive submissions in their Statement of Case and submissions. This part of the decision merely identifies key elements of those submissions.

17. Overall, HMRC say that the transaction chains which are the subject of this appeal bear the hallmarks of transactions which were part of an orchestrated VAT fraud where the aim was to defraud HMRC of VAT due to it.

18. The tracing as conducted by HMRC's officers demonstrates a fraudulent VAT loss in the transaction chains, which is sufficient for the purposes of proving that the right to deduct input tax was properly denied.

19. HMRC's primary contention is that Tradestar knew that its transactions were connected with the fraudulent evasion of VAT. HMRC's secondary contention is that, in the absence of actual knowledge, Tradestar should have known of the connection of its transactions with a VAT fraud.

20. HMRC have also alleged that there was an overall scheme to defraud the Revenue. The relevance of such a scheme is relevant to the question of knowledge (that relevance is set out in the law section below). However, HMRC submit that even if the Tribunal was to find against them in respect of the overall scheme to defraud this does not mean that they cannot succeed on the test as set out in *Axel Kittel v Belgium & Belgium v Recolta Recycling* SPRL C-439/04 & C-440/04.

21. The fact that the transactions were orchestrated by fraudsters as part of an overall scheme is probative of the Appellant's state of knowledge as part of the "surrounding circumstances".

22. Relying upon *Fonecomp Limited v The Commissioners for HMRC [2015] EWCA Civ 39* it is submitted that lack of knowledge of the specific mechanics of a VAT fraud affords no basis for any argument that the decision of either tribunal was wrong in law: what is required is simply participation with knowledge in a transaction connected with fraudulent evasion of VAT.

23. HMRC do not have to prove that Tradestar knew or should have known either the details of the fraud or the identities of the fraudulent defaulters (*Megtian Ltd In Administration) v The Commissioners for Her Majesty's Revenue & Customs* [2010]. The Tribunal must approach the evidence holistically and without compartmentalising it (*Red 12*)

24. In addition to the transactions under appeal, Tradestar also undertook "buffer" transactions. It cannot be a coincidence that Tradestar was involved in transaction chains where it acted as a broker trader, and a buffer trader, that led to fraudulent default, including through the use of a contra-trader. The likelihood that an "innocent dupe" would be inserted into so many transaction chains as both a buffer and a broker, where the fraud was so heavily orchestrated is extremely remote.

25. The evidence demonstrates that the money that was being used for the transactions under appeal went in a "loop". HMRC rely upon the circularity of the money flows, involving money being introduced and extracted from the chains by Metalix as the financier/conduit trader; and the short time for deal chains to be completed. There is no conceivable reason why there should be complete circularity of funds if there was not an overall scheme to defraud being perpetrated on HMRC.

26. The facts in this case lead to the same conclusion as in *Calltel Telecom Ltd and Opto Telelinks (Europe) Ltd* MAN/06/425 that any checks undertaken by Tradestar were casually undertaken and negative indicators ignored because they were, in truth, unnecessary. Tradestar knew that suppliers and customers would not fail in their obligations because the transactions had been pre-arranged.

TRADESTAR'S CASE

Tradestar's grounds of appeal

27. The grounds of appeal set out in the Notices of Appeal can be summarised as follows:

(1) HMRC is required to prove their case to a heightened civil standard commensurate with a criminal standard;

(2) there is no authority in community law which would enable HMRC to take one chain of transactions into account when determining the fiscal consequences of another. The VAT consequences of transactions must be considered on a transaction by transaction basis;

(3) HMRC's allegations are generalised and unparticularised;

(4) all of the factual assertions are denied;

(5) Tradestar denies direct, implied or constructive knowledge of an overall scheme to defraud the revenue;

(6) it is a standard feature of commodity broking to buy and sell goods on the same day. Tradestar did not purchase stock with a view to holding it;

(7) it is absurd of HMRC to rely upon some unspecified general awareness or fraud;

(8) Tradestar denies trading in the manner described by HMRC, but even if it did, this should not lead to the conclusion that it was implicating itself in a fraudulent transaction;

(9) HMRC are required to prove actual knowledge and actual participation in the alleged fraud;

(10) HMRC's assessments were irrational, breached the Sixth VAT Directive and offended the principle of neutrality;

(11) The decision to withhold the Appellant's input tax is predicated upon an unlawful prior decision to discriminate against Tradestar as against domestic traders and is unlawful pursuant to Article 22(8) Sixth VAT Directive.

28. We address these grounds in more detail later, but note that the Notices of Appeal were submitted in August 2007 and October 2008, prior to many of the leading authorities dealing with the approach required when considering allegations of MTIC fraud.

Tradestar's further basis of case

29. By the time of the hearing Tradestar repeated the same grounds of appeal and provided further detailed submissions picking up on elements of skeleton arguments and correspondence produced over the period of the litigation. The key elements of Tradestar's submissions are:

(1) Tradestar was unable to plead its defence as HMRC repeatedly failed to provide critical disclosure. A number of facts and matters relied upon by HMRC are outside the scope of information that was available to Mr Burgess at the time of the transactions and Mr Burgess fully disagrees with HMRC's evidence;

(2) HMRC had failed to provide any substantive evidence showing Tradestar knew or should have known that any of the transactions were connected to fraud and instead have misled the tribunal and destroyed evidence;

(3) Tradestar was allowed to continue trading and did so until around 2010;

(4) following a period of extended verification visits Tradestar received a VAT repayment in 2005 of more than £200,000 in relation to transactions including those involving the Web Accountant software;

(5) Tradestar carried out verification into its customers;

(6) the concept of joint and several liability in relation to VAT defied logical business sense;

(7) a general warning of the prevalence of MTIC fraud could not have enabled Tradestar to avoid the risk of being unwittingly involved in transaction chains. HMRC was aware of problems in the MTIC sectors and this should have prompted action by HMRC;

(8) reliance was placed on the decision in *Mahageben* (C-80/11 and C-142-11) and it was maintained that the majority of the evidence relied upon by HMRC as being evidence entitling HMRC to disallow the Appellant's claim for tax repayment amounted to a practice which was precluded by that case. HMRC had attempted to transfer the responsibility for its investigative tasks onto the Appellant;

(9) the application of the legal test in *Kittel* was acknowledged, but Tradestar maintained that, to the extent there had been fraudulent transactions or other default, it had taken "every reasonable caution which could reasonably be required of [it] to ensure that [its] transaction was not connected with fraud";

(10) HMRC had failed to provide the evidence to support their assessments raised on other companies and, in particular, in relation to Bullfinch;

(11) Tradestar did not accept any of the transaction chains set out in the deal sheets. Due to misleading and incomplete evidence Tradestar was unable to prove if there was a loss and if so whether it occurred in another transaction chain;

(12) Tradestar could not accept that the transactions were part of an orchestrated fraud as due to the misleading evidence and lack of relevant disclosure by HMRC, it was unable to prove if there was a loss. When HMRC provided the relevant disclosure, then Tradestar would be able to identify the "real facts";

(13) HMRC failed to act appropriately, including in failing to get payments from Bullfinch. Despite evidence in an email in which an HMRC officer had warned Bullfinch's HMRC officers that Bullfinch was of great concern, virtually no action was taken by HMRC for months. If HMRC, who is charged with the statutory responsibility for the care and management of VAT in the UK, was satisfied that at the time Bullfinch was a legitimate company against which no action needed to be taken, this conclusion and the underlying reasons for it provide cogent evidence in support of Tradestar's position that it could not have known that its transactions were connected with fraud (and, in particular, may prevent HMRC seeking to rely on factors that they, at the time, did not consider indicative of fraud);

(14) Alternatively, if HMRC instead confirmed the view expressed in the email and identified Bullfinch as a fraudulent defaulter, but took no action against the company and failed to inform the Appellant, whom it knew was trading with Bullfinch, Tradestar

submits that the EU law principle of legitimate expectation (that HMRC would inform Tradestar if it knew Tradestar was trading with a fraudulent counterparty) is engaged (see *Elmeka* C-181/04); and/or the principle that a Member State cannot rely on its own wrong (namely, failing to take action against Bullfinch) to the detriment of the taxpayer (*Marshall*, C-152/84, §49; and *Marks & Spencer plc* C-309/06, §79). Either or both of those principles override the second limb of the *Kittel* test (based on what Tradestar ought to have known but did not know) and prevent HMRC denying the right to reimbursement;

(15) evidence regarding Bullfinch was suspiciously destroyed with no explanation. This left Tradestar with no opportunity to defend itself against the serious allegations made by HMRC. Given the problems, including HMRC's failure to comply with the tribunal order for disclosure, the Bullfinch evidence should be struck out. HMRC's limited disclosure of only 84 pages of evidence following the disclosure order of Judge Morgan and HMRC's comment that papers had been destroyed in line with departmental policy despite an active and ongoing case shows that HMRC have been preventing Tradestar from forming or presenting a defence;

(16) eight of the 19 deals were traced back to Tau Aspects Ltd against which no action had been taken by HMRC;

(17) two of the 19 deals were UK to UK deals supplied by Crestar. In Crestar's VAT Tribunal case no knowledge or means of knowledge was found in the ruling against them. There are therefore only 17 relevant transactions;

(18) HMRC have resorted to misleading the Tribunal repeatedly with false evidence and by deliberately suppressing evidence against Tradestar in order to prevent the court from finding out the truth. Therefore HMRC forfeits the right to have the court hear its case. HMRC's actions are attempting to compromise the integrity of the court. This is illustrated by the provision of new replacement HMRC officers and applications to rely upon new evidence. In addition, HMRC's assessments and evidence are full of errors and seem to have been "conjured up". For example, in HMRC's second Statement of Case it was stated that HMRC had created assessments against Bullfinch for £51 million. Tradestar had asked for the paperwork supporting that statement and eventually HMRC provided calculations showing approximately £1 million liability;

(19) on the one hand HMRC state at times that they are able to trace a chain of transactions, but on the other hand say that they may not be in a position to know whether a particular party is in fact the importer or whether there may have been earlier companies in the chain. This illustrates their confusion and their contradictions in their case;

(20) the evidence from HMRC's own officers shows that Bullfinch did not abscond with VAT; did not pay away the VAT to a party to whom it was not due; and paid VAT to suppliers who in turn declared it to HMRC;

(21) the evidence regarding First Curacao International Bank ("FCIB") and IP addresses is unreliable and inadmissible for the following reasons:

(a) HMRC's own evidence shows that the session logs do not contain direct information regarding accounts accessed during the session and make no direct link between signatories, account or individual transactions.;

(b) there was an unknown amount of data damaged on some tables. In 2006 data records were missing transaction history and general ledger;

(c) FCIB did not specifically record IP addresses in their banking systems. The tables contained within the online banking system located in the Bankmaster banking system were not populated with IP addresses;

(d) the data in the session logs was manipulated by HMRC to link the IP addresses to specific account holders and transactions. The session log only recorded IP addresses for approximately three months. HMRC do not have any explanation for why this is the case ;

(e) HMRC recognises that if more than one computer is attached to a router they will share one IP address. Consequently, viewed from the outside, it may appear that all communications originate from a single IP address;

(f) VPNs often prevent any IP tracking software. FCIB operated a complex series of servers and used VPNs. This undermined the reliability of the FCIB evidence relied upon by HMRC;

(g) HMRC has identified a highly common Internet service provider as IP number evidence supposedly showing a common link, but the IP data is so common that it shows nothing for the case;

(h) FCIB circularity evidence was "created" by showing which company paid what to whom, using supposedly individual trader's IP data to link payments which was unlikely given that the Bankmaster system did not record or track IP data and the central Internet service provider data was used by thousands of people;

(i) HMRC officers confirmed that parts of the FCIB database were seriously damaged and as a result HMRC were forced to create a new database. It had not been explained why HMRC's first recreated database had not included IP data while the 2011 version apparently did. Officer Letherby stated in his Witness Statement that he could not say to whom each IP address was allocated at the time in question and that no specific enquiries be made by HMRC regarding specific IP addresses;

(22) there is inequality of arms as Mr Burgess is a layman acting as litigant in person. Given the funding challenges Tradestar faces as well as the technical issues raised in this case and the disclosure problems identified by Tradestar it is highly unlikely that Tradestar would get a fair hearing. It was being forced to attend a video hearing without legal counsel because HMRC were preventing Tradestar from accessing its funds;

(23) applications made by HMRC to admit late evidence or to provide replacement witnesses should be refused. In particular, new replacement officers cannot answer questions about original evidence.

(24) the lack of information and disclosure made it impossible for Tradestar to identify if there were losses and if so in which transaction chains they occurred;

(25) Judge Bowler stated in November 2020 hearing she would take very seriously any attempt to introduce evidence outside the normal and expected procedures. HMRC had produced two bundles one of which was 0.5GB larger than the other with no explanation of what accounted for the additional size.

30. Given all of the matters identified by Tradestar and the identification of HMRC having resorted to misleading the tribunal, Tradestar applied again for:

(1) HMRC's case to be struck out;

(2) All FCIB evidence to be stuck out;

(3) All Bullfinch evidence to be struck out.

PART 1 PROCEDURAL MATTERS

Applications made at the start of the hearing on behalf of Tradestar

Postponement application

31. Mr Burgess was treated as making another application for postponement of the hearing, saying that he was unfairly being forced to have a video hearing;

32. We refused this application for the following reasons.

33. We had regard to the guidance in the Equal Treatment Bench Book, Appendix E dealing with remote hearings with particular consideration of the fact that Mr Burgess was effectively a litigant in person.

34. In this case there was no reasonable expectation of when Mr Burgess could attend a hearing in person. Mr Burgess had said his mother needed support for six months in November 2020. Consequently the hearing was adjourned in November 2020 until a date after the period of six months to allow for that support. Now, eight months later, he was saying she needed support for a further two months. In addition, travel restrictions including the Covid "red list", which imposed expensive hotel quarantine requirements for travel from South Africa, meant that as Mr Burgess acknowledged, he was unable to travel back to the UK without unacceptable costs. The use of the video platform hearing was therefore particularly appropriate in this case.

35. The overriding objective set out in Rule 2 of the First-Tier Tribunal Procedural Rules must be given paramount consideration when deciding any application. Given the circumstances of Mr Burgess and the background to this case involving protracted litigation over many years we were satisfied that it was the interests of justice and fairness (which must consider the positon of both parties to the litigation) to proceed as arranged by way of the video platform.

36. Given potential issues with connectivity and power cuts in South Africa the tribunal decided to start after the first day at 9 a.m. in order to maximise the likely available time for the hearing on each day. However, Mr Burgess chose not to attend most of the subsequent days (despite clarification of his attendance described below) and the Tribunal reverted to a 10 a.m. start.

Application to exclude FCIB and Bullfinch evidence

37. We refused this application. The same application had been refused in November 2020 and reasons had been given at that time. No application to appeal that decision was made. Indeed, similar applications in 2019 had been refused by Judge Hellier on the same basis and had not been appealed.

Application to bar HMRC

38. We also refused this application. The same application had also been refused in November 2020 and reasons had been given at that time. No application to appeal that decision had been made.

Application made by HMRC prior to the hearing to admit new evidence in the form of a second Witness Statement from Officer Birchfield.

39. The new Witness Statement addressed an exercise conducted by Officer Birchfield when asked to take the place of Officer Monk who was one of the Seven Witnesses. Officer Monk had been due to provide evidence in relation to work carried out by him in which he said that money flows involved in the transaction chains in which Tradestar participated could be traced to show a circular flow of money to and from a company called Komidex in Poland.

40. In reviewing Officer Monk's evidence, Officer Birchfield conducted his own analysis of the FCIB evidence. His review was wider in date range than the work conducted by Officer Monk: Officer Monk examined payments to and from the Komidex account for the month of August 2006, and Officer Birchfield examined payments for the period 1 April 2006 until the closure of the relevant accounts. Officer Birchfield's evidence was also an update of Officer Monk's and concluded that nearly all of the money flows started and ended with a company called Metalix. Officer Birchfield also specifically addressed commonality of IP addresses.

HMRC submissions

41. Ms Robinson submitted that the following questions were of particular significance in the Tribunal's consideration of this application:

(1) Whether the evidence is relevant, and the degree of relevance;

(2) Whether the evidence, properly analysed, should be considered entirely "new";

(3) How long Tradestar has had to consider the evidence;

(4) The reasons for its service in February 2021;

(5) The true procedural prejudice to the Appellant, such as it exists;

(6) Whether Tradestar has an opportunity to cross-examine Officer Birchfield, including on the differences between his statement and that of (now retired) Officer Monk; and

(7) The overall circumstances.

42. Ms Robinson submitted that Tradestar could interrogate the evidence exhibited by Officer Birchfield better than that exhibited by Officer Monk as Officer Birchfield had produced the full bank accounts. It was therefore easier to check the transaction number and time reflected in loop charts prepared by Officer Birchfield and to consider whether Officer Birchfield made appropriate choices in choosing specific debits and credits.

43. She noted that Mr Letherby was the witness to cross-examine about how the underlying data had been produced. Officer Birchfield had just done the paper exercise of extracting items from the data in order to identify the alleged loops. If Tradestar successfully challenged the core material and the explanation for it by Mr Letherby then Officer Birchfield's Witness Statement would be undermined.

44. HMRC submitted that there was no compelling reason to exclude this new evidence. It did not cause real prejudice to Tradestar. Relevant evidence should generally be allowed, even if late, and in this case the evidence had been provided in February 2021, some five months before the hearing. In fact, it had resulted from Tradestar's insistence after the November hearing that the Seven Witnesses should be required to attend despite the lack of specific challenge to their evidence. As a result, HMRC had identified that one of those witnesses, Office Monk, had retired and Officer Birchfield had been asked to take his place.

The evidence was highly relevant as it showed that Tradestar's deals were repeatedly and consistently connected with chains where there were VAT losses. This was of particular relevance to whether there was an orchestrated scheme and in turn whether Tradestar knew, or should have known, of connection to fraud.

45. However, Tradestar would not now be required to deal with an evidential area which had not formed part of HMRC' case previously. Tradestar had been put on notice in directions in March that it should prepare on the basis that the evidence was admitted in case that decision was made and therefore had had plenty of time to address it. There was therefore no need for an adjournment to permit a review by Tradestar.

46. Tradestar would have an opportunity to cross-examine Officer Birchfield on the contents of his second statement generally, and/or the differences between his statement and that of Officer Monk, and/or any other relevant matter.

47. Mr Burgess did not oppose the points made by Ms Robinson at the hearing and conceded that the evidence could be dealt with in cross-examination if it was admitted.

48. We were grateful to Mr Burgess for his pragmatic approach to the evidence.

49. However, we were conscious of the fact that Mr Burgess is, in effect a litigant in person, and had regard to the requirements of the Equal Treatment Bench Book. We therefore considered it was incumbent on us to consider whether this was an appropriate concession for Tradestar to make.

50. We considered that the starting point was that all relevant evidence should be before the Tribunal, but this must be considered in the context of an assessment of what prejudice the admission of late evidence would cause to, in this case, Tradestar. In considering the application, the overriding objective set out in rule 2 of the Tribunal Rules, was paramount.

51. We considered the principles described by us later in this decision in the context of the applications made later by Tradestar for admission of evidence. We were satisfied that Mr Burgess' agreement to admit the evidence was entirely appropriate given:

(1) there was good reason for the delay in the application to admit the evidence;

(2) given that the evidence had been provided some five months previously Tradestar had had ample time to consider the evidence and prepare cross-examination. There was therefore no procedural prejudice caused to Tradestar; and

(3) the evidence was more comprehensive in that full bank statements rather than extracts therefrom were provided. This offered Tradestar the opportunity to interrogate the evidence more fully and, in particular, to consider whether the choices of money flow were correct.

52. Mr Birchfield's second Witness Statement was therefore duly admitted.

A potential withdrawal by Tradestar and decisions to proceed in Mr Burgess' absence

53. At the start of day two of the hearing, having heard Ms Robinson's opening submissions the previous day, Mr Burgess said that, having heard the explanation of the application of the *Kittel* principles, in particular in relation to contra trading, it was pointless for him to continue to take part as it was clear to him that the law was wholly unbalanced. Despite the serious matters he had identified in HMRC's case over a number of years, it would be pointless for him to take part in the hearing any longer. His understanding of the law did not accord with the current position of the law described by the courts and he was therefore unlikely to get a fair trial.

54. Judge Bowler explained to Mr Burgess that Ms Robinson's job was to present the case as cogently as possible for HMRC. It was the Tribunal's job to decide to what extent, if at all, that HMRC's case was correct. Judge Bowler then spent some time identifying with Mr Burgess, as a litigant in person, whether he was stating that the hearing should proceed in his absence, or that Tradestar was withdrawing its appeals. In the case of the hearing in absence, the hearing could continue without Mr Burgess' attendance and the burden of proof remained with HMRC. In contrast, if Tradestar withdrew its appeal the decisions made by HMRC would stand without more. It was explained to Mr Burgess that in his absence his Witness Statements would be taken into account, but would not be given as much weight as they would if he attended and was cross-examined.

55. In this context Judge Bowler asked Ms Robinson for the costs implications to be addressed, given that this is a case which started before the formation of the First-Tier Tribunal and the introduction of the First-Tier Tribunal Procedural Rules.

56. It was identified that the position regarding costs was not entirely clear. A direction issued by Judge McKenna in 2012 indicated that the Tribunal had probably exercised its discretion and categorised the case as a complex case for cost purposes. It was explained to Mr Burgess that if that was correct then, following a withdrawal, Tradestar would be faced with the costs of the appeal. In contrast, if the hearing proceeded in Mr Burgess's absence the costs would be expected follow the outcome, but those costs would increase by reference to the costs of this hearing.

57. Following explanation of the difference between a hearing in absence and withdrawal and the potential cost implications of each, Mr Burgess decided that Tradestar would not withdraw its appeal and he asked that the hearing should continue.

58. In the course of further discussions explaining the tribunal process it was agreed that the hearing could be shortened as Mr Burgess said that he would not be cross-examining several of HMRC's witnesses previously asked to attend. Mr Burgess had identified issues in written submissions with the Witness Statements of three HMRC witnesses: Mr Evans, Mr Quinn and Mr Reardon. He also asked that Mr Fyffe, Mr Letherby, Mr Mortlock and any HMRC witness giving evidence regarding FCIB should be asked to attend the hearing.

59. At one stage Mr Burgess suggested that Judge Bowler could cross-examine the witnesses for him, but Judge Bowler made clear that neither she nor Ms Stott could do so. It was for the Tribunal to ensure that Mr Burgess' participation was facilitated as much as possible, but that did not mean that they could act on his behalf or challenge witnesses on his behalf. The Tribunal would routinely ask witnesses to clarify matters where there was uncertainty and may ask a witness to address apparent inconsistencies, but that would be all.

60. In fact, despite these arrangements and despite starting the hearing early in order to accommodate the concern that the connectivity with South Africa deteriorated later in the day, Mr Burgess chose not to attend on day 3 or day 4. Mr Burgess sent an email to the Tribunal on day 3 saying that he was only planning on attending to put questions to Mr Mortlock.

61. Given Mr Burgess' email and his decision that he would only attend parts of the hearing, the Tribunal decided it was in the interests of justice and fairness to proceed in his absence.

62. On 9 August (day 6) the Tribunal was due to hear evidence from Mr Birchfield. His evidence concerned the circularity of fund flows. Mr Burgess had said in the context of the admission of the second Witness Statement of Mr Birchfield that he would put questions to him about it in cross-examination. However, Mr Burgess did not attend the hearing. He had

informed the Tribunal by email at 6am that "Unfortunately Monday is public holiday in South Africa (Woman's Day) and I have no power currently. If the power returns later in day may be able to attend video session in afternoon." The Tribunal therefore adjourned as a result of Mr Burgess' inability to connect and his desire to cross examine Mr Birchfield.

63. On 10 August Mr Burgess was able to connect successfully and the hearing continued. The Tribunal expressed concern that, despite previous directions, Mr Burgess had not informed the Tribunal in advance of the power outage which was readily seen on the internet to have been notified in advance to Johannesburg residents.

64. Mr Burgess explained that the problem was not a power outage but was as follows:

> "Basically on Sunday evening at around about 7 o'clock I believe at my time the power to the house -- there was a surge and it blew the circuit board and fried the main power coming into the building. I tried to get hold of an electrician in the power company but Monday, the next day, was a public holiday and I had to arrange for an emergency electrician to come. They weren't very willing, as you can imagine, and they turned up at about I think 4 or 5 o'clock to remedy the situation."

65. Evidence was heard from Mr Birchfield on 10 August. Mr Burgess cross-examined Mr Birchfield. Mr Burgess started to give evidence. He was sworn in and adopted his Witness Statements as his evidence-in-chief. Ms Robinson then started her cross examination of Mr Birchfield but Mr Burgess' connection failed around 2:30pm, shortly after Ms Robinson's questions had started.

66. The clerk to the court contacted Mr Burgess who initially told him that his computer had frozen and he had no internet connection. A short while afterwards he told the clerk that the circuit board in the building had gone and the electrician was due to attend at 4-5pm that afternoon. This describes the same problem as Mr Burgess said was the cause of the inability to attend on 9 August and which had apparently been remedied. However, the Tribunal decided to adjourn until 9am on 11 August with the early start designed to maximise the time for the connection to work.

67. At 9am Mr Burgess on 11 August Mr Burgess was not present. The clerk called Mr Burgess but the line was poor and Mr Burgess agreed to email the clerk. A photograph was attached to the email described as showing electrical circuit board damage. Mr Burgess wrote that he had been informed that the electrician "could only come that afternoon between 4 and 5pm" and therefore Mr Burgess would only be able to attend on Thursday at 9am. Judge Bowler expressed concern about the conduct of Mr Burgess and Ms Robinson was asked for submissions on what was effectively a further application for adjournment by Mr Burgess. Ms Robinson confirmed that HMRC did not object to the adjournment but asked for directions to be issued directing that it was incumbent on Mr Burgess to find a way to participate in the hearing and that if he did not do so HMRC would be inviting the Tribunal to make adverse inferences from his failure to attend.

68. Mr Burgess had failed to contact the Tribunal in advance of the 9am scheduled start. He had previously asked for witnesses to attend and had not then attended the hearing himself. He had told the Tribunal that his reason for being unable to connect to the hearing on 9 August was a broken circuit board, but that was clearly fixed for him to attend on 10 August.

69. The Tribunal therefore had very real concerns about Mr Burgess failing to recognise his duty under the Tribunal Procedure Rules to facilitate the proceedings. However, given HMRC's acceptance of the application for adjournment the hearing was adjourned and the Tribunal issued directions as follows:

(1) Mr Burgess was required either to make alternative arrangements for attendance from another location, such as a friend or relative's home, or contact HMRC's solicitor to identify whether a room at a local hotel could be provided (as previously offered in November 2020 and referred to in previous directions issued by Judge Bowler in March 2021);

(2) Mr Burgess was put on notice that the hearing would continue in his absence if he did not attend on 12 August without good reason. A failure to make alternative arrangements as directed would not be a good reason;

(3) Mr Burgess was also put on notice that Ms Robinson had indicated that if he did not attend on 12 August, HMRC would be inviting the Tribunal to make adverse inferences. The tribunal explained that if it decided to make adverse inferences these would be taken into account in the Tribunal's decision to dismiss or allow Tradestar's appeals.

70. Mr Burgess responded to the directions with written submissions sent by email at 9:56pm which the Tribunal received shortly before the planned start on 12 August at 9am. Mr Burgess also sent a copy of an invoice to the Tribunal shortly before the planned start of the hearing.

71. The Tribunal rose to consider the written submissions from Mr Burgess. On return Ms Robinson submitted that the Tribunal had issued directions in the clearest of terms to Mr Burgess and it was clear that he had received them, given his response. There was no suggestion that he wanted to attend the hearing but was unable to do so and in fact his submissions indicated that he no longer wish to attend. The fact that he had submitted what were, in effect, closing submissions showed that Tradestar was not withdrawing its appeals.

72. The Tribunal noted that:

(1) it was clear that Mr Burgess had received the directions issued on 11 August 2021;

(2) his latest submissions stated "HMRC have such a low burden of proof it is almost pointless, as I said, continuing under those circumstances";

(3) there was no indication that Mr Burgess wished to continue attending the hearing, but was prevented from doing so by technical or other reasons;

(4) the latest submissions were consistent with Mr Burgess' approach to the hearing since day two.

73. Accordingly, the Tribunal decided that it was in the interests of justice and fairness to proceed with the hearing in Mr Burgess' absence under Rule 33 of the Tribunal Procedure Rules. Ms Robinson was invited to prepare closing submissions for presentation the next day.

74. A little later, on the morning of 12 August, Mr Burgess responded to the transcript of the morning's proceedings saying that there were more fundamental issues regarding HMRC's conduct of the litigation which needed to be addressed and that it was "pointless to continue with his cross-examination". It was therefore made even clearer that Mr Burgess had chosen to take no further part in the hearing and, in particular, to absent himself from cross-examination.

First Application on behalf of Tradestar during the hearing to admit further evidence

75. Following Mr Burgess' decision not to withdraw on day two he said that he wished to address some new evidence sent to the Tribunal during the hearing. Mr Burgess had sent

eight pages of evidence obtained from Google searches to the Tribunal. The eight pages related to HMRC's evidence about the commonality of IP addresses used by multiple participants in transaction chains involving Tradestar. The eight pages appeared to link IP addresses to companies other than those connected to the transactions involving Tradestar. The submission of these pages by Mr Burgess was treated as an application to admit that evidence.

HMRC submissions

76. Mr Burgess recognised that HMRC would need to place the pages in front of the expert witness to seek his view. It gave rise to the type of compelling procedural injustice referred to in cases such as *Nottinghamshire and City of Nottingham Fire Authority & Anor v Nottingham CC [2011] EWHC 1918 (Ch)* and *Mobile export 365 Ltd v Anor [2007] EWHC 1737 (Ch)*. There would need to be an adjournment in order for HMRC's expert be given the time to address the material.

77. Ms Robinson also referred to the case of *Lawrence Supply Company Leather Goods* v Revenue and Customs [2019] UKFTT 71 (TC) to submit that the admission of expert evidence (i.e. evidence on matters which cannot be expected to be within the knowledge of the Tribunal) should be dealt with quite separately to the admission of other evidence. Tradestar had obtained its own expert evidence but had chosen to withdraw that in November 2020. The topic was not a new one for Tradestar. It had been before Tradestar since at least 2014 when the Witness Statement of Officer Mendes was served in which he addressed the IP addresses.

78. Furthermore, there was no indication as to what Mr Burgess wished to say about the pages or the basis on which he would do so (i.e. the basis of his expertise to comment).

79. Ms Robinson referred to the decision of Lord Sumption in the Supreme Court case of *Barton v Wright Hassall* [2018] UKSC 12 to submit that the court should not circumvent the rules for litigants in person.

Tradestar submissions

80. Mr Burgess submitted that it had been clear that Tradestar challenged HMRC's position regarding the IP addresses since first seeing HMRC's evidence on this point as far back as 2012. The position had been constantly maintained that the evidence was flawed and misleading. He had not been expecting his application to strike out the FCIB evidence to be dismissed. Tradestar had run out of funds to pay for its experts to attend the hearing or to meet with HMRC's experts.

Refusal of application to admit the new evidence

81. The case of *Mobile export 365 Ltd v Anor* [2007] EWHC 1737 (Ch) makes clear that the starting point is that all evidence should be admitted unless there is a compelling reason to the contrary.

82. In addition, the fact that material is served late does not in itself preclude its admission (see *Nottinghamshire and City of Nottingham Fire Authority & Anor v Nottingham CC* [2011] EWHC 1918 (Ch).

83. The decision of Judge Mosedale in the case of *First-Class Communications v Revenue and Customs Commissioners* [201] UKFTT 342 considered the case law regarding applications to admit evidence. Her analysis was approved by the Upper Tribunal ([2014] UKUT 0244). The Upper Tribunal considered that it was not only in situations where procedural prejudice was caused to the other party that the FTT might impose sanctions.

84. Judge Mosedale's decision describe the process of consideration of whether to admit new evidence as a question of degree:

> "The longer the delay, the more likely there will be procedural prejudice. The greater the procedural prejudice, the less likely it will be admitted. It is also clear that the importance of the evidence the person seeking to rely on it must be weighed in the balance. Evidence critical to one party's case is more likely to be admitted that evidence of any peripheral relevance."

85. The Upper Tribunal confirmed that delay and the reason, if any, for it is a factor that should be taken into account. The delay should be weighed against the relevance of the evidence.

86. In considering the application, the overriding objective set out in rule 2 of the Tribunal Rules, was paramount.

87. The Tribunal accordingly weighed the relevant circumstances:

(1) The eight-pages of evidence were printed from one or more internet searches on 26 and 28 July 2021. It was therefore of limited evidential weight regarding the potential commonality of IP addresses in 2006.

(2) Even taken at its highest, the evidence addressed only one element of HMRC's case against Tradestar; but fundamentally given its date it would have limited impact on HMRC's case.

(3) There would be procedural prejudice caused to HMRC. HMRC would need to instruct the expert providing evidence regarding the IP addresses. Although Mr Letherby was booked to give evidence that did not mean that his diary was clear to suddenly consider the matters raised by Mr Burgess.

(4) The evidence had been provided after the hearing had started even though Mr Burgess had been aware of the issues for years. He was told in the hearing in November 2020, and reminded in the directions immediately therafter, that any further evidence must be provided in advance of this hearing. That expressly referred to Google search evidence, as Mr Burgess had made passing reference in previous written submissions to such evidence without providing it for consideration. Mr Burgess had confirmed that the eight pages we were considering were different to the Google searches to which he had previously referred, but we were satisfied that he had been clearly told to submit any relevant evidence prior to the hearing.

(5) Tradestar had had numerous opportunities over the course of the protracted process running up to this hearing to provide the evidence. As Mr Burgess recognised himself, he and his lawyers were repeatedly asking about the IP evidence and challenging it over the years of litigation, yet he had failed to provide this evidence before the hearing.

(6) Mr Burgess had said that he only provided this latest evidence when his latest application for the FCIB evidence to be excluded was unsuccessful. However, Mr Burgess had been unsuccessful in 2019 and 2020 when making the same application and should have had little doubt that he would be unsuccessful again. This was therefore not a valid reason for the delay in seeking for the new evidence to be admitted.

88. Overall, we concluded that given the date of the evidence there was little weight in it to outweigh the considerable factors weighing against its admission.

89. Accordingly the application was denied.

Second application on behalf of Tradestar to admit further evidence

90. On day 5 of the hearing Mr Burgess applied to admit further evidence in response to evidence given by HMRC's witness, Mr Reynolds, concerning CPU box numbers.

91. The evidence Mr Burgess sought to have admitted consisted of Excel spreadsheets listing box numbers for CPU transactions. Mr Burgess said that the underlying data had been provided to HMRC in the quarterly VAT returns and this evidence showed the context of Tradestar's CPU deals. It was therefore not, in essence, new evidence but a consolidation of evidence into a different format.

HMRC submissions

92. Ms Robinson submitted that the properties of the sheets show that they were created in March 2007, so after the time of the deals in dispute. It therefore could not be of assistance regarding Tradestar's due diligence in the relevant periods for the disputed deals, in particular, in checking that boxes of CPUs were not traded in more than once. The earliest deal covered by the sheets was in October 2006, after the disputed deals in CPUs. Mr Burgess could give oral evidence about the steps taken in respect of the periods in dispute.

93. Tradestar had been served the evidence from Mr Reynolds and Mr Dean some years prior to the hearing and until day two of the hearing had said that a day for cross-examination for each witness would be required. Then Mr Burgess decided that he would not cross-examine either of them and he had not attended for the evidence of Officer Reynolds, who together with Officer Dean presented the CPU evidence. It was procedurally wrong for him to be able to review transcripts and then raise points, such as the spreadsheets he sought to have admitted, which could not now be put to the witnesses.

94. No good reason had been provided for why the evidence was so late.

Tradestar's submissions

95. Mr Burgess was invited to respond to Ms Robinson's submissions, but simply said that he disagreed.

Decision to refuse to admit the further evidence

96. We applied the same legal principles described above in relation to the previous application to admit evidence.

97. We took into account the following matters:

(1) Mr Burgess had the evidence since 2007 and had chosen not to submit it before the hearing. No good reason had been provided for that delay;

(2) the evidence was of little relevance to the actions taken in relation to the disputed deals. Mr Burgess confirmed that it did not relate to the disputed deals. At most it related to the picture of Tradestar's activity after the periods in dispute;

(3) to the extent that the evidence showed matters which Mr Burgess had dealt with in his Witness Statements we would be hearing more about those matters in due course;

(4) Mr Burgess had had a clear opportunity to address points to the HMRC witnesses and had chosen not to do so;

(5) it was entirely inappropriate for Mr Burgess to choose not to attend the hearing, read transcripts and then submit comments and evidence in response to which the witnesses could not respond.

98. Accordingly we decided that the spreadsheets should not be admitted as evidence.

PART 2 – SUBSTANTIVE DECISION

THE LAW

99. Although the law in this area has been frequently set out by our colleagues in other MTIC decisions in this tribunal, Mr Burgess was acting as a litigant in person and it was apparent from his repeated documentary submissions (which repeatedly copied material from lawyers from some years ago) that he had not fully appreciated the way in which the law has been articulated by the higher courts over the past 14 years. We therefore set out a summary of the key principles which apply to our decision.

100. If a taxable person has incurred input tax that is properly allowable, he is entitled to set it against his output tax liability and, if the input tax credit due to him exceeds the output tax liability, receive a repayment (Regulation 29 of the VAT Regulations 1995).

101. However, the European Court of Justice ("the ECJ"), in its judgment dated 6 July 2006 in the joined cases *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* [2008] STC 1537 ("*Kittel*"), confirmed that, in the context of MTIC fraud, traders who "knew or should have known", that the transactions in which they were engaging were connected to such frauds would not be entitled to reclaim any input tax incurred.

The terms used

102. The two main versions of MTIC fraud and the jargon developed to describe participants therein were described by Christopher Clarke J in *Red 12 Trading Ltd v HMRC* [2009] EWHC 2563(Ch) as follows:

> "2. … 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 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 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-UK transaction between A and B. This amount is a profit to the fraudsters and a loss to the Revenue…

> 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 paragraphs 9 and 10 of the judgment of Burton J in *R (on the application of Just Fabulous (UK) Ltd) v HMRC* [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 UK 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 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."

The application of the *Kittel* test

103. In *Mobilx, Blue Sphere Global and Calltel v HMRC* [2010] STC 1436 ("*Mobilx*"), the Court of Appeal (Moses LJ giving judgment) formulated the following test and approach for the purposes of the application of the principle in *Kittel* in paragraph 59:

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

104. As to the time in identifying a connected fraud the Court said:

> "62. The principle of legal certainty provides no warrant for restricting the connection, which must be established, to a fraudulent evasion which

> immediately precedes a trader's purchase. If the circumstances of that purchase are such that a person knows or should have known that his purchase is or will be connected with fraudulent evasion it cannot matter a jot that that evasion precedes or follows the purchase. That trader's knowledge brings him within the category of participant. He is a participant whatever the stage at which the evasion occurs."

105. Each transaction to which the taxpayer is party must be considered on its merits. However, the Tribunal is entitled to make inferences of fact from the surrounding circumstances. This was made clear by the Court of Appeal's endorsement of the following description of approach by Charles J in *Red 12 Trading Ltd v Revenue and Customs Comrs* [2009] EWHC 2563 (Ch) at [109]–[111]:

> '[109] Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> [110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.
>
> [111] Further 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.'"

106. Further Lewison J in the decision of the Upper Tribunal in *Brayfal Ltd v HMRC* [2011] UKUT 99 (TCC) said:

> "In answering the factual question, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focusing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader

> should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT."

Contra trading

107. *Mobilx* made it clear that there has to be a VAT loss which can be attributed to a defaulting trader, but a transaction may still be treated as sufficiently 'connected' with a VAT fraud to permit denial of a claim to input tax even if that VAT fraud does not occur in the same chain of supply of goods and services, but occurs in another chain of supply. This was illustrated by the decisions in *Blue Sphere Global Ltd v HMRC* [2008] UKVAT V20901 and *Edgeskill.*

108. In *Edgeskill* the Upper Tribunal said (at paras 117 and 126) that:

> "the rationale of *Kittel* applies to contra-trading as it does to the simpler or 'plain vanilla' single chain species of MTIC fraud…
>
> … the test is the same in the context of contra-trading cases as in others: did the claimant/Appellant know or should it have known of the connection between its transaction and the fraudulent evasion of VAT or its disguise" (at [126(5)]).

109. The following description of contra trading by VAT and Duties Tribunal (Dr Avery-Jones and Ms Sandi O'Neill) in *Olympia Technology Ltd v HMRC* [2008] UKVAT 20570 was approved in *Blue Sphere Global*:

> "In contra-trading there are, in its simplest theoretical form, two chains of transactions. First, the 'dirty chain,' in which there is a defaulting trader ('defaulting trader' for short), comprising A (the defaulting trader) who is the importer of goods into the UK, who sells them to B (the buffer company), who sells them to C who exports the goods, and is thus in a VAT reclaim position. (For simplicity we shall use the expressions import and export for intra-Community trade, acknowledging that these are not the proper labels.) Secondly, the 'clean chain,' in which there are no missing traders, comprising C, who is this time the importer of other goods, who sells to D, who sells to E, the exporter (the Appellant in this appeal is in the position of E in relation to the three alleged contra-trading deals). The effect of the clean chain is that the net input tax position of C in the dirty chain is cancelled by output VAT in the clean chain. There is no direct financial benefit to C in this as C has paid the input tax to B, and therefore C could be in league with the defaulting trader, or could be a trader who is controlled (possibly without knowing it) by a 'puppet master' to enter into the cancelling transactions to disguise A's involvement a fraud, or a trader who happens to carry out both import and export transactions unconnected with any fraud. The effect of the contra-trades is that C does not excite Customs' attention as it is not applying for a repayment; the non-payment of tax by A is less noticeable since without a return Customs do not know how much tax A owes. The input tax reclaim that C had in the dirty chain has moved to E who is at the end of a clean chain. The only way for Customs to refuse repayment of E's input tax is to show that E knew or ought to have known of A's fraud in a completely different chain, and of C's involvement in the fraud."

110. Further the Court of Appeal in *Atlantic Electronics Ltd 5 v HMRC* [2013] EWCA Civ 651 (per Ryder LJ at [14], approved of the following statement in in *Blue Sphere* (at para 55):

> "In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is party to both the clean chain with E and dirty chain with A constitutes a sufficient

> connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could have known, nor was the occurrence of such dirty chain inevitable in the sense of being pre-planned."

111. However, to clarify the state of knowledge of a trader such as Tradestar, in *Fonecomp Limited v HMRC* [2015] EWCA Civ 39 Arden LJ stated:-

> "51. However, in my judgment, the holding of Moses LJ [in *Mobilx*] does not mean that the trader has to have the means of knowing how the fraud that actually took place occurred. He has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transactions to which his transaction is connected. The participant does not need to know how the fraud was carried out in order to have this knowledge. This is apparent from [56] and [61] of Kittel … Paragraph 61 of Kittel formulates the requirement of knowledge as knowledge on the part of the trader that 'by his purchase he was participating in a transaction connected with fraudulent evasion of VAT'. It follows that the trader does not need to know the specific details of the fraud".

Key questions

112. In applying the above law to the facts in this appeal the Tribunal is required to make findings on the following four questions (see *Blue Sphere Global Limited*):

(1) Was there a tax loss?

(2) If so, did this loss result from a fraudulent evasion?

(3) If there was a fraudulent evasion, were the Appellant's transactions which are the subject of this appeal connected with that evasion?

(4) If such a connection was established, did Tradestar know or should it have known that its transactions were connected with a fraudulent evasion of VAT?

113. In relation to the deals involving contra traders, HMRC must also prove that the contra-traders were parties to conspiracies involving the defaulters in their transaction chains.

THE BURDEN OF PROOF

114. The standard of proof is the normal civil standard of proof i.e. the balance of probabilities and the burden of proof lies upon HMRC.

115. In the Notices of Appeal Tradestar submits that a heightened burden of proof applies. That is incorrect. In the House of Lords case of *In re B (children)* [2008] UKHL Lord Hoffman confirmed that there is only one civil standard. This has been recognised and applied in countless MTIC cases in the First-tier and Upper Tribunal.

116. In addition, Mr Burgess has frequently argued over the course of the litigation in recent years and again in his submission for this hearing that he has been provided with insufficient documentation for Tradestar to be able to prove whether there was a tax loss. He has been told on numerous occasions by judges, including Judge Hellier and Judge Bowler, that it is not for Tradestar to prove the losses. Instead, it is for HMRC to prove its case, including the existence of the alleged tax losses. In making our decision we set out in some detail the basis on which we have made our findings in relation to the alleged losses.

THE EVIDENCE

117. We have been provided with very extensive documentary evidence in the bundles. The evidence we saw referred to a large number of companies and individuals. A list of

companies and the defined terms we use to identify them, is contained in Appendix 1 to this decision.

118. Mr Burgess raised concern that some evidence had been added without notice because HMRC had produced two copies of the evidence bundle, one of which was 0.5GB larger than the other, with no explanation of what accounted for the additional size.

119. We were assured by Ms Robinson that no new evidence had been added without notice and we were happy to rely upon her professional assurance. In addition, we are satisfied after our detailed scrutiny of the evidence that none has been provided which has not been identified or described in HMRC's Witness Statements.

HMRC's evidence generally

120. We heard evidence from the following persons for HMRC:

(1) David Reynolds - the Officer who conducted the overall investigation of the Tradestar's disputed deals and prepared a deal pack for each one of them.

(2) Matthew Quinn – Cybersol,

(3) Tim Reardon – Computec Solutions and Visionsoft

(4) Gordon Fyffe – Bullfinch

(5) Andrew Letherby – expert evidence regarding IP matters

(6) Tim Mortlock – expert evidence regarding FCIB

(7) Martin Evans, - 3D Animations;

(8) Peter Birchfield – FCIB, Metalix and Komidex

121. At the start of the hearing Tradestar was requiring 19 of the 25 witnesses whose evidence had been served to attend. In the course of the second day in which we addressed with Mr Burgess whether Tradestar was withdrawing, it was agreed with him that the only witnesses whom Tradestar wished to attend for cross examination were Officer Reynolds, Officer Fyffe, Mr Letherby, Mr Mortlock, Officer Birchfield, Officer Reardon, Officer Evans and Officer Quinn. It was made clear to Mr Burgess that if a witness was not required to attend and their evidence was "taken as read" that means that it would be given full weight. Mr Burgess agreed that he had no questions for the other HMRC witnesses. A revised timetable was produced by HMRC.

122. However, Mr Burgess chose not to attend for the evidence of any of the eight agreed to be called except Mr Mortlock and Mr Birchfield. He put questions to Mr Mortlock and Mr Birchfield in cross-examination and we address those matters when assessing their evidence later in this decision.

123. The evidence of the remaining witnesses was not challenged by Tradestar at the hearing. We therefore give it full weight. In this regard we refer to the statement made in *Kiely v Minister for Social Welfare* [1977] IR 267 at 281, Irish Supreme Court to which we refer more fully later in this decision.

124. It was not Ms Robinson's job to cross examine HMRC's witnesses on behalf of Tradestar. Similarly, we made clear to Mr Burgess that we were unable to do this in response to a suggestion to that effect made by him on the second day. However, to assist us in addressing the matters raised by Mr Burgess in his previous written submissions and to give the witnesses the opportunity to address them we asked Ms Robinson to put the specific points identified by Mr Burgess to the witnesses. We are also satisfied that none of the matters raised by Mr Burgess in relation to the witnesses evidence would cause the weight

given to their evidence to be reduced even if the matters were to be treated as if made in person by Tradestar.

125. On day four of the hearing Mr Burgess sent a note of comments to HMRC and the tribunal by email in response to the transcript setting out the evidence presented on day three by HMRC witnesses. He did not attend the hearing on day four, but attended on day five at which point it was made clear to him that, despite the arrangements having been made with him for the witnesses to attend, he had chosen not to attend in the previous two days and had therefore forgone his opportunity to put matters to the witnesses and cross-examine them. Mr Burgess' note commented that the matters he had identified were addressed in his second witness statement and accordingly the Tribunal would hear from him about those matters when he gave his evidence. The Tribunal explained that to the extent that there was any conflict in the evidence the Tribunal would, in the normal way, determine which evidence was preferred and explain why. In fact, Mr Burgess stopped attending the hearing shortly after cross-examination started and he therefore did not take the opportunity to address the matters as he had said he would.

126. It is not for one party to raise points about evidence in the way Mr Burgess attempted after choosing not to attend. Therefore the points made by him in the comments submitted on day four of the hearing are not taken into account by us. In addition, as he chose to cease attending the weight given to his evidence in his Witness Statements has been reduced by us for the reasons we explain more fully later.

127. We were satisfied that the evidence of the HMRC witnesses who attended was honest, straightforward and reliable. They stated what they did not know. For example Officer Birchfield explained clearly how he had used FCIB data but that he had no knowledge of how the data was pulled together by HMRC. That was a matter which only the experts, Mr Letherby and Mr Mortlock, could address. Similarly, HMRC have identified in the context of alleged buffer trades conducted by Tradestar, the limits on HMRC's ability to trace transaction chains in certain cases, particularly once chains were traced back to Vision Soft and Heathrow Business Solutions. To the limited extent they were posed questions in cross examination by Mr Burgess, they provided full and consistent answers.

128. We therefore give full weight to the evidence of the HMRC Officers who attended.

129. It was agreed by Mr Burgess at the start of the hearing that the following witnesses were not required to attend the hearing and their Witness Statements would be taken as read: Gavin Stock (Tau Aspects), Lauren Brand (Crestar), Barry Patterson (Zenith Sports and Goodluck Enterprises), Karen Davidson (the Appellant), Kevin Begg (PC-Mac Solutions), Smita Parikh (Web Accountant software), Romaine Lewis (Heathrow Business Solutions), Jill Evans (operational accountant), Karen Davidson (visit to the Appellant), Theo Pressner (Web Accountant), Peter Dean (CPU tracing), Kevin Findlay (CPU). No challenges were made to their evidence. All of their evidence is accordingly given full weight.

Expert evidence

130. Mr Letherby and Mr Mortlock provided expert evidence. Their qualifications to provide expert evidence have not been challenged by Tradestar and we find no basis to do so as we explain below.

131. At one point in preparation for the hearing Tradestar had provided expert evidence, but this evidence was retracted by Mr Burgess at the hearing in November 2020. Mr Burgess had told the hearing in November 2020 that Tradestar had run out of money to pay for its experts to meet with HMRC's experts or otherwise continue to give evidence in the case. Ms Robinson confirmed that the Tribunal in November 2020 had indicated that the expert reports

prepared for Tradestar could remain as evidence albeit that the reports would be given less weight than would be the case if the experts had been able to attend the hearing, but Mr Burgess had chosen to remove them.

132. Officer Letherby gave expert evidence on various computing matters, principally relating to information contained on servers of the First Curacao International Bank ("FCIB").

133. Andrew Letherby is the lead digital forensics officer responsible for the recovery of evidence held on the computer systems of FCIB. Although he is an employee of HMRC, his evidence fully recognises his prime duty to assist the court with independence of mind. We note that pursuant to that obligation he has identified in various parts of his report where there is a range of opinion on a matter and explains the basis for his conclusion.

134. One of Officer Letherby's Witness Statements was written in response to a report prepared by an expert (Prof Sommer) for Tradestar. That report was no longer before us. We therefore asked Ms Robinson to address the status of that third Witness Statement.

135. We agreed with Ms Robinson's submissions that the bulk of the third statement could be read without reference to the Prof Sommer report as a result of the fact that Mr Letherby summarised the relevant points to which he was responding. We decided that the third Witness Statement should remain as evidence, but to the extent that any evidence could not be understood without reference to Prof Sommer's report, that evidence would not be taken into account by us.

136. In fact, the preservation of Mr Letherby's third Witness Statement as evidence in this appeal has been helpful to us in that he has specifically addressed points raised on behalf of Tradestar by Professor Sommer. In doing so, Mr Letherby's Witness Statement emphasises, for example, that there is little scope for IP addresses to be incorrectly recorded on the server seized by the French authorities and that any failure would be manifestly obvious. It is also clear from that Witness Statement that he and Professor Sommer agree that there is little evidential value in looking at current registrant details when seeking to identify the assignment of IP addresses previously.

137. Mr Burgess chose not to attend when Mr Letherby gave evidence, despite specifically asking for him to attend so that he could put questions to him. He gave no explanation for his failure to attend. Mr Letherby's evidence was therefore unchallenged. We have, however, taken into account the specific maters about the IP evidence raised by Mr Burgess in his submissions so that those can be addressed to aid understanding of this decision. We are satisfied that Mr Letherby's evidence fully addressed all of those matters. None of them led to the weight of Mr Letherby's evidence being reduced.

138. Mr Mortlock gave evidence about the FCIB banking systems. Bankmaster Plus is a common software product used in the banking industry by many banks. It is a central ledger system and provides the mechanism by which a bank records transactions and stores account records for its customers. Mr Mortlock was the lead developer/architect and development manager at the company that developed Bankmaster Plus from 1995 to 2003. In 2003 he became the system architect for Bankmaster Plus, the most senior technical role on the entire product. At the request of HMRC and under his direct supervision the company, Fairmort Ltd, of which he is director, developed a number of applications to extract data from FCIB's systems. He compiled a report of his work and a CD-ROM disc with the source code and technical documents for the applications which have been available to Tradestar since 2009.

139. The extent of Tradestar's challenge to this evidence has been limited to Mr Burgess' generalised allegations and comments. There has been no challenge to the basis of Mr Mortlock's work contained within the CD-ROM.

140. Mr Burgess attended the hearing on the day of Mr Mortlock's evidence and put questions in cross examination to Mr Mortlock. Those questions assisted in clarifying the processes used by Mr Mortlock. Some questions related to the IP address evidence and Mr Mortlock made it clear that that was not his area of expertise; Mr Letherby was the expert who addressed that area. Overall, the cross examination did not give rise to any substantive challenge to the evidence provided by Mr Mortlock

141. We address specific matters raised by Mr Burgess in written submissions in relation to the FCIB and IP evidence later in this decision. Overall, we are satisfied that the written and oral evidence of Mr Mortlock and Mr Letherby has fully dealt with the points raised by Mr Burgess.

142. Given the lack of challenge to the expert evidence we have concluded that it should be given full weight by us.

143. However, even though HMRC's other witnesses were not purporting to offer expert evidence some of their witness statements contained inadmissible opinion evidence. That is understandable - HMRC's case involves submitting that the Tribunal should make inferences as to the Appellant's knowledge or means of knowledge from particular facts. Therefore at times some of the HMRC witnesses included statements as to why, in that officer's view, the facts led to the conclusion that Tradestar knew, or should have known, that its transactions were connected with fraud. Judge Hellier identified in his directions of that the Tribunal guards its fact-finding role carefully and we made clear at various points in the hearing that opinion evidence from HMRC's witnesses is inadmissible. We have excluded such evidence from our own deliberations whether or not it was challenged by Mr Burgess.

Replacement witnesses

144. During the course of this particularly protracted litigation several of HMRC's expected witnesses have retired. HMRC has therefore sought to rely on another officer replacing each retiree. Mr Burgess has objected to this practice on several occasions.

145. Section 2(4) of the Commissioners for Revenue and Customs Act 2005 states:

> "Anything (including anything in relation to legal proceedings) begun by or in relation to one officer of Revenue and Customs may be continued by or in relation to another."

146. It is standard practice in accordance with this legislation for the evidence of one officer to be replaced by that of another when the first is no longer with HMRC. In this context it is usually the case that the replacement evidence is essentially the same as that which it replaces.

147. There may be other issues raised if the replacement evidence is substantially different and is produced late in the appeals process. Just such a situation arose in the context of Officer Birchfield's second Witness Statement which we have addressed earlier in this decision.

Allegations made by Tradestar

148. Tradestar asserts that the evidence provided by HMRC is incomplete, "conjured up", inconsistent and unreliable. We address these assertions in making the findings of fact. However, we comment generally that despite explanations from Judge Hellier in 2018 and 2019, Judge Bowler and Mr Farooq in November 2020 and by this Tribunal, Mr Burgess has

not taken into account the fact that the burden of proof lies with HMRC. This has coloured many of his submissions in which he asserts that HMRC have not provided enough evidence for Tradestar to "prove" its case.

149. Mr Burgess has made very serious allegations. He has repeatedly said that HMRC have resorted to misleading the Tribunal repeatedly with false evidence and by deliberately suppressing evidence against Tradestar in order to prevent the court from finding out the truth. He was warned by Judge Hellier that if Tradestar wished to continue with such allegations it must write with the details set out. This has not happened. Instead, Mr Burgess has simply repeated the comments made before 2019 saying, for example, that assessments were conjured up out of thin air on companies alleged to be defaulting traders. There is a huge volume of material provided as evidence by HMRC in this case and it may be that Mr Burgess has not appreciated how the evidence fits together. Indeed, some of his comments indicate confusion, for example, in relation to the role of the evidence about alleged buffer trades conducted by Tradestar. Similarly, he has not understood the use of processes such as the issue of "best judgment" assessment. This is perhaps surprising given that Tradestar was legally represented for much of the litigation. However, we have scrutinised the evidence carefully and have set out the detailed basis on which findings are made to enable Mr Burgess to understand the basis on which we have decided the evidence leads to them.

150. Many of Mr Burgess' allegations of misleading or suppressed evidence focus on evidence regarding Bullfinch and we address those separately below.

151. Other allegations relate to the FCIB and IP evidence. They are even less particularised and in effect say that HMRC has made up the FCIB and IP evidence. We are satisfied that there is no basis to support such allegations which we address further in the context of considering that evidence.

152. We comment that, as a general matter, the allegations made by Mr Burgess are not supported in any way by the extensive and comprehensive material provided for these appeals.

The Bullfinch allegations

153. We have found all of HMRC's witnesses to be reliable and honest witnesses.

154. Despite numerous and repeated very serious allegations made by Mr Burgess of fabrication of evidence regarding Bullfinch and intentional destruction of other Bullfinch evidence, Mr Burgess did not take the opportunity to attend the evidence of Officer Fyffe (who gave the Bullfinch evidence) in which he could have raised the matters he has repeatedly described. We decided that in Mr Burgess' absence no more than the specific challenges to, and questions raised about, parts of the Bullfinch evidence should be put to Mr Fyffe.

155. Mr Burgess has alleged that assessments were made, in particular, in relation to Bullfinch, with insufficient disclosure of their basis and that documentation was intentionally destroyed or fabricated to assist HMRC's case. We decided that there was no basis shown by Tradestar to support the more generalised allegations of malpractice as we explain further below.

156. To understand the issues on this matter it is necessary to briefly address the chronology.

157. Mr Burgess' refers to the "Bullfinch Disclosure Order" which is the description given to directions made by Judge Morgan on 11 July 2016. Tradestar had made an application for the disclosure of any internal documents and correspondence recording what HMRC did and what decisions they took in the period from 30 September 2005 until May 2006 as regards Bullfinch. That had been prompted by the disclosure of an HMRC email in September 2005

saying that HMRC were "faced with a very short chain - Bullfinch, Tradestar, Micropoint - with Bullfinch looking as if they will default. Someone really needs to hit them today." Judge Morgan considered that the argument that what HMRC knew of Bullfinch's involvement was potentially of evidential relevance in assessing whether Tradestar should have known its transactions were connected with fraud, had a reasonable prospect of success and therefore directed that HMRC should produce any internal documents and correspondence recording actions or decisions taken by HMRC in relation to Bullfinch in the period from 30 September 2005 to 31 May 2006.

158. As noted by Mr Burgess this led to disclosures by HMRC. This was in addition to previous evidence having been provided, partly in the context of the provision of witness statements in the ordinary course and partly in response to specific questions raised by Tradestar's representatives. This evidence included: all release notes/allocation notes held in respect of Bullfinch, an explanation of why HMRC had not put Bullfinch on monthly VAT reporting in late 2005 and why it had not been deregistered earlier; FCIB statements for Bullfinch; a spreadsheet in which Officer Fyffe explained what documentation was held by HMRC in respect of each assessment raised against Bullfinch with an invitation for Tradestar to inspect the supporting deal logs and deal sheets prepared in connection therewith.

159. However, in HMRC's response to Judge Morgan's directions enclosing the disclosures it was noted that an HMRC officer responsible for Bullfinch had advised that many of the records from the relevant period were kept in hard copy format only and that the records were destroyed after six years in line with department policy. In addition, HMRC noted that due to the age of the records involved it could not guarantee that what was disclosed was the full extent of the records and would continue to disclose any that were identified. This caused Tradestar's representatives to query how evidence relating to an alleged defaulting trader and ongoing tribunal proceedings was allowed to be destroyed by the policies. A comprehensive witness statement concerning HMRC's compliance with the disclosure order was requested. Shortly thereafter Mr Burgess started to represent Tradestar himself in correspondence and started to assert that HMRC had stopped Tradestar from forming a defence as a result of the destruction of Bullfinch evidence.

160. This issue came before Judge Hellier who, in directions issued on 2 October 2019, directed HMRC to write to Tradestar describing, so far as possible, which documents relating to Bullfinch had been destroyed, why that had happened and what link if any there was to Tradestar's appeal.

161. In a letter dated 14 October 2019 HMRC responded. It was noted that hardcopy records are generally destroyed after six years in accordance with HMRC's general data retention policy and that HMRC could not confirm whether any Bullfinch materials relating to the period around 2006 were amongst those destroyed.

162. Judge Hellier also issued the following direction on 2 October 2019:

> "If Tradestar intends to make any allegation of fraud or improper conduct against any officer of HMRC who has been volunteered by HMRC to give oral evidence (or is one of those Tradestar says it may wish the tribunal to summon so to do), it must write to HMRC (cc tribunal) on or before 14 October 2019 indicating by reference to each such person that such an allegation will be made, the particulars of the allegation and an outline of the basis for it."

163. Tradestar has not identified the allegation, its particulars and an outline basis for it. All that Mr Burgess wrote in response was to say:

> The Bullfinch Disclosure Order and subsequent further disclosure by HMRC (84 Pages) shows various Departments within HMRC were very concerned about Bullfinch and their trading activities. It also demonstrated that HMRC had taken no action to recover owed outstanding payments due from Bullfinch. Also HMRC Bullfinch VAT Assessments simply didn't match the suppose £51 million VAT liability claimed by HMRC. This pointed to serious errors and omissions relating to Bullfinch.

164. This response was inadequate to identify a basis of fraud or improper conduct. Mr Burgess has continued to adopt the same stance of unparticularised allegations despite Judge Hellier's directions, particularly in relation to the Bullfinch evidence but also more generally.

165. At the hearing Mr Fyffe addressed the specific points raised in Mr Burgess' submissions, referring to a letter dated 14 October 2019 in which the allegations and queries about the evidence were fully addressed by HMRC. For some reason, which is not apparent to the Tribunal, Mr Burgess has failed to take any account of the details in that letter giving answers to the points raised repeatedly since and in the written submissions for the hearing.

166. We are clear that there is no basis shown for Tradestar's allegations of suppressed or fabricated evidence in relation to Bullfinch, or more generally.

167. In addition, it has also been made clear repeatedly (including in the directions issued by Judge Hellier) that the burden of proof is on HMRC. Therefore destruction of documents relating to Bullfinch has the potential to directly impact HMRC's ability to prove its case.

Relevance of Assessments

168. Tradestar has repeatedly made comments in submissions in the course of the litigation suggesting that the making and evidencing of assessments is necessary for HMRC to establish a tax loss has arisen.

169. This argument has been raised in other hearings and has been consistently dismissed. It was addressed by the first-tier tribunal in *S&I Electronics v HMRC 2009 UKFTT 108* who said:

> "61. The issue is whether there is, in the words of paragraph [59] of *Kittel*, 'fraudulent evasion of VAT'. It seems to us that this will be the case where, as the result of fraud, the State does not receive the VAT it ought to have received had the relevant legislation been complied with by the trader. The question of whether or not an assessment has been made is irrelevant.
>
> 62. Article 10 of the Sixth Directive indicates that the tax becomes chargeable when the tax authority becomes entitled to claim the tax from the person liable to pay. In that context there is fraudulent evasion where the person who is liable to pay, because of the relevant chargeable event (the delivery of the goods) has occurred, defeats the entitlement of the State by fraudulent means; that entitlement exists not by virtue of administrative action but by reason of the occurrence of the chargeable event. The ECJ said in *Société Financiere d'Investissements v Belgium* [2000] STC 164 at 23, that Article 10 'enables the date on which the tax debt arises to be determined'. What is at stake in our view is fraudulent evasion of the payment of that debt, not of a later assessment."

170. We agree with those conclusions. The tax loss arises when a trader fails to account for output tax. The assessments are simply the mechanism by which HMRC take action to seek to recover that VAT.

171. However, we would note that in this case HMRC has identified assessments in relation to each alleged defaulting trader said to be connected to Tradestar's disputed deals.

172. Mr Burgess has also challenged the ability of HMRC to make "best judgement" assessments. This is a standard and well recognised basis for HMRC to assess a trader to VAT which is specifically permitted by the VAT legislation in section 73 VATA. That provision enables HMRC to assess the amount due from a taxable person "to the best of their judgement" where a person has failed to keep any documents and afford the facilities necessary to verify their VAT returns, or where it appears to HMRC that such returns are incomplete or incorrect.

173. The application of the "best judgement" requirement has been addressed by the courts, most notably in the cases of *Van Boeckel v C&E Commrs and Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015 and *Rahman t/a Khayam Restaurant v Customs and Excise Commissioners* [1998] STC 626. The result of those cases insofar as relevant to Mr Burgess' submissions in this case can be summarised as follows:

(1) As long as there is some material on which HMRC can reasonably act then they are not required to carry out investigations which may, or may not, result in further material being placed before them; and

(2) The result may necessarily involve an element of guesswork.

Adequacy of Bullfinch evidence

174. Mr Burgess submits that insufficient evidence has been provided by HMRC to support the assessments made on Bullfinch. We address what the evidence shows in relation to transactions with Bullfinch later in this decision. As explained, the key issue is whether HMRC have shown that tax losses arose in the Bullfinch-Tradestar deal chains. Assessments are one element of potential evidence, but are not a prerequisite for HMRC to prove its case.

175. We note that the letter of 14 October 2019 explains that Mr Fyffe had prepared a spreadsheet in which he set out each assessment raised against Bullfinch and indicated what documentation was held by HMRC in respect of each assessment. The documentation held in support of each assessment consisted of deal logs and deal sheets prepared by broker officers in deal chains which feature Bullfinch with all the usual supporting paperwork that goes with deal packs. That material was said to be available for inspection as it was a large volume of paperwork, but Tradestar never took up that opportunity. In addition to that material, HMRC also had FCIB statements for Bullfinch which have been provided to Tradestar along with the various documents provided in the deal packs addressed by us in detail later in this decision.

HMRC's actions in relation to Bullfinch

176. Mr Burgess has made repeated references to the email in which an HMRC officer said that Bullfinch "should be hit now" and has challenged HMRC's actions (or omissions) in allowing Bullfinch to continue to trade despite apparent issues including concerns related to the sole director, Mr Pandya.

177. At the hearing Mr Fyffe explained the process for taking action in relation to a trader and how it was not possible simply to act on suspicion and withdraw a trader's registration. The email showed that someone was interested in the chain involving Bullfinch around 30 September. The system showed that there was no interest in the company shown on the electronic folders. At that point the central coordination team would be contacted who would identify officers to be sent to the trader to review their activities. The most urgent action would be taken in relation to repayment traders.

178. This description of activity is consistent with what the Tribunal would expect in such circumstances. HMRC has a duty to carry out investigations before taking the very significant action of deregistering a trader.

179. Mr Burgess has also submitted that HMRC failed to take necessary action in relation to the known tax history of Bullfinch's director, Mr Pandya. Officer Fyffe's evidence shows that HMRC sought security from Bullfinch because Mr Pandya's previous company had gone into liquidation owing HMRC a significant amount of money. On 12 October 2005 Bullfinch wrote to HMRC and confirmed that it would make a series of payments as a security. In fact, it only made two of the promised four payments in November 2005 and December 2005. It is unfortunate, to say the least, that this was not followed up at that time and that Bullfinch's VAT registration was only cancelled with effect from 11 May 2006.

180. However, the extent of HMRC's actions or omissions is not the issue before us, which is to determine what Tradestar knew or should have known about the transactions into which it entered.

181. We refer in this context to the Upper Tribunal decision in *CCA Distribution Ltd v HMRC* [2015] UKUT 513 (TCC). The appellant's director in that case was Mr Trees and the Upper Tribunal said:

> "the Judge was required to determine on the evidence before the FTT whether it had been demonstrated on the balance of probabilities that Mr Trees knew that the CCA transactions were connected with fraud. What other people thought at an earlier time, probably by reference to material which was different from the evidence before the FTT was irrelevant."

182. This approach was endorsed by the Court of Appeal in *CCA Distribution Ltd (in administration) v HMRC* [2017] EWCA Civ 189.

Basis of HMRC's deal tracing

183. There have been two tracing exercises conducted by HMRC in this case. The first traces the invoice trail for the transactions. This is the tracing we address here. There has also been a separate exercise tracing money flows which we address later.

184. Officer Reynolds explained the process by which Tradestar's transactions had been traced. He started with the documents supplied by Tradestar, which would include invoices, purchase orders and bank statements. He worked back up the chain company by company. If a company was UK-based he would be able to access information uploaded onto HMRC's Electronic Folder by other officers in respect of traders for whom those other officers had responsibility. The Electronic Folder was a computer database accessible to other authorised HMRC officers. If there was no information for a company a request would be made to the central team to make a visit to the company and seek information on the deal. If the work traces to an overseas company, Officer Reynolds would first look to see if HMRC already held electronic information on that company. To the extent there was insufficient information, a request would go to the international central team to visit the company and seek information on the deal.

185. Officer Reynolds compiled "deal packs" containing documentation for each transaction chain in which Tradestar's 19 disputed deals took place as well as for 101 deals in which Tradestar is said to have acted as buffer. The deal packs for the disputed deals were exhibited to Officer Reynolds' Witness Statements. They were originally produced and made available to Tradestar in 2009/10 for Officer Reynolds' first Witness Statement. They have subsequently been updated, not least to reflect the fact that HMRC's subsequent work has led them to assert that Bullfinch was not acting as a blocking buffer as originally thought, but to have been supplied by Crestar.

186. There was therefore a chain of documentation leading from Tradestar to a defaulter in relation to each of the 19 disputed deals. This documentation consisted chiefly of purchase

orders, invoices, supplier declarations, FCIB intra-account transfer confirmations, some export documents, freight company inspection reports, and faxes to freight forwarders directing transfer or release.

187. Many of the documents cross-referenced other documents e.g. invoices to purchase orders. The description and quantities of the goods contained in the various documents matched each other.

188. Therefore, through such cross-referencing, the description of the goods, the quantity of the goods, the date of the documentation and FCIB intra-account transfer records, the deal chains were, in our view, accurately reconstructed by Officer Reynolds.

The FCIB and IP evidence

189. HMRC has also carried out an exercise tracing the money flows in connection with the transactions. In the course of that exercise the use of IP addresses by more than one participant at any time has been identified.

190. Tradestar has repeatedly asserted that the FCIB evidence on which the money flow has been compiled is unreliable, inconsistent and even fabricated. We therefore set out our findings regarding the production of the FCIB evidence and our conclusions regarding the weight to be given to it.

191. These findings are made on the basis of the evidence provided by the expert witnesses, Tim Mortlock and Andrew Letherby, as explained by us earlier.

192. Overall, we would comment that the evidence provided by the witnesses provided an overwhelmingly clear and detailed account of the steps taken to extract information from FCIB and pull it together in such a way that it could be used by HMRC to analyse money flows and transactions. We are entirely satisfied that the processes used involved numerous cross checks to ensure that the integrity of the data was preserved and where there was doubt about the analysis arising therefrom that was suitably identified. We find no basis for Mr Burgess' repeated allegations that data was fabricated. A generous approach to those allegations would conclude that they were based on misunderstandings; for example where it was said that a server was "created" which Mr Burgess has appeared to understand to imply that data was "created". However, it is clear that no data was "created".

193. We now turn to some of the core details which explain the processes used.

194. On 9 October 2006 the Bank van de Nederlandse Antillen revoked FCIB's banking licence. At the same time the "Court of First Instance" put the FCIB into emergency measures pursuant to s28 of the National Ordinance on the Supervision of Banks and Credit Institutions 1994.

195. Following the freeze over the bank account, the FCIB banking records were made available to HMRC by the Dutch and French authorities.

196. The main elements of FCIB's banking systems were Bankmaster Plus, its central ledger system, an internet interface to allow customer online access to accounts, the DataStore document collection and archive system and a document sharing server, SharePoint. The Bankmaster Plus data shows the flow of money between traders.

197. It also operated two email systems, a standard Microsoft system and a secure customer email system linked to the Internet interface. The customer e-banking interface consisted of a Web server front end together with an "SQL" database back end. ("SQL" is a programming language.)

198. The E banking database was located at the offices of an FCIB associated company in Paris and has become known as the "Paris server".

199. The Bankmaster system was located in the Netherlands with backups in the Netherlands Antilles and was linked to the Paris Server. The Bankmaster server is referred to as the "Dutch server". Initially, the Dutch authorities seized the backups in the Netherlands Antilles which consisted of tapes taken at incremental points for the years 2003, 2004, 2005 and the first half of 2006. Dutch officers restored these backups to their own server and took a virtual machine image of it which was provided to HMRC.

200. A backup of the live server in the Netherlands was also attempted. That sought to back-up from January to September 2006. However, as this server was running certain parts of the database were effectively locked which meant that there were gaps in the transactional records extracted. However, as a result of the full back-ups obtained when the Netherlands Antilles office was visited, the gaps were limited to the period from June 2006 to September 2006.

201. At the same time though as the Dutch seizures, further Dutch officers accompanied French officers and seized the Paris server. The Dutch officers received a copy of that in 2007 and Mr Letherby and colleagues then took a forensic image of that. When the Paris server was seized it had been paused so that a full copy could be taken without the problems encountered with the Dutch server copy. The gaps in the Dutch server data could therefore be remedied.

202. Mr Letherby confirmed that the forensic processes used to take copies of the data in the Netherlands and France were in line with the processes used in the UK which were established and recognised by the Association of Chief Police Officers.

203. Mr Letherby also described the forensic procedure used to ensure that data had not been changed when forensic images were taken using what he described as the "gold standard" hash system. In short, if a single byte of data is changed the "hash value" of the data alters significantly and shows there has been damage to the image.

204. Mr Letherby built a stand-alone network and server and installed the Bankmaster (Dutch server) data so that HMRC officers could use the Bankmaster interface to search for accounts and to understand the information held in the Bankmaster system. Court orders were obtained to compel various companies involved with encryption of the data to decrypt it so that it could be readily reviewed.

205. When Mr Letherby loaded the data to the HMRC server he again "hashed" the data and then compared the hash values to ensure that the HMRC copy was identical to that which had been originally seized.

206. In addition, the Dutch authorities seized the DataStore server and again a virtual machine image as well as original forensic images were provided to HMRC.

207. However, in relation to the copy of the Paris server, HMRC did not have the user interface and therefore employed Mr Mortlock who wrote programmes to allow HMRC to extract the data from the Paris server.

208. The date thus extracted plugged the holes in the Dutch server data.

209. A customer accessing their account would use the E-banking interface to login to their account. The whole login procedure however was managed by the Paris server and the information about the account is replicated in the Paris server.

210. Overall, the systems held a copy of the transaction history for customers in the Bankmaster system and another copy held on the Paris server.

211. Customers would login with the username and password. The Paris server would decide which accounts the person could access and their level of access. People could be signatories, authorised to generate transactions, or just have a review type role. When an authorised signatory wishes to carry out a transaction a pin number provided to the customer was used to access a separate section on the Paris server where the customer could generate a series of transaction "test keys", i.e. a grid of numbers. When the customer wished to authorise a transaction they would go to their test key sheet and the Paris server would prompt them for a single value from the grid. Once one grid had been used the signatory would have to generate another sheet.

212. On three minute cycles the Paris server would synchronise with the Bankmaster server and confirm whether the transaction would be authorised.

213. Customers do not interact directly with the Bankmaster Plus system.

214. The Paris server contained the:

(1) Name and address of the account holder;

(2) Secret password of the trader;

(3) Date and time the payment was authorised; and

(4) Narrative which would have been entered by the transferor of the funds. If funds were received into the account from outside the FCIB, the narrative of the depositor as the funds entered the FCIB account was identified.

215. For transactions that were undertaken after 1 May 2006 the Paris server also included the IP address from which the payments were made and the start and cessation of the logging on session to enable the payee to make the payment.

216. When a customer connected to the FCIB Paris server, the Paris server captured a copy of the IP address and recorded it for that customer. It stored those into a spreadsheet within the database, which had referential keys in it. Those keys allowed Mr Letherby and colleagues to join the activity in the IP address spreadsheet with the customer who was then using it, through the authentication process. They were thereby able to make a direct correlating link between an IP address which had been captured and allocated to the session that was established, and then link that to the authentication and therefore the customer who was using that IP address.

217. This authentication process involved looking at session logs from the Paris server which record the time at which an authorised user connects to the online server and the time at which they disconnect. Separately it could be seen what accounts a user was authorised to access and then from those accounts it was possible to see what transactions were requested during the time of the user's session. The times used were all the internal clock times of the Paris server. A programme was written to carry out this process of linking sessions to account transactions.

218. Sometimes a user does not log out. On those occasions the "backfilling" process looking at what transactions were completed during the session time would not work. Mr Mortlock explained that the programme written by him sifted those occasions out. If there was any ambiguity no IP address would be shown on the face of this statement produced by the programmes.

219. Overall, we find that the evidence provided by Mr Letherby and Mr Mortlock was detailed, comprehensive and consistent. They provided in-depth descriptions of the processes undertaken to retrieve the data and varying forms of cross checks performed on it. They identified points of weakness in the data.

220. There has been little challenge by Tradestar to the reports setting out these processes and to the extent there has been any challenge that has been fully dealt with in responses and evidence in the reports, or in the experts' oral evidence at the hearing. Tradestar has not, for example, claimed that its own bank statements show different entries to those captured by the HMRC processes.

221. We are therefore satisfied that the FCIB data which has been extracted as described above is reliable.

The use of the FCIB and IP data by HMRC

222. Officer Birchfield provided evidence about the transaction information compiled by HMRC from the data extracted from the Bankmaster and then Paris servers.

223. We have concluded that full weight should be given to the evidence of Officer Birchfield. The matters put to him in cross-examination were fully answered as we explain below. His evidence is consistent, comprehensive and coherent.

224. In his first Witness Statement he updates evidence which had originally been prepared by Officer Mendes who had retired. Officer Mendes had prepared a witness statement which was dated 29 October 2014 which had been available to Tradestar since that date. Officer Mendes had traced fund flows in the disputed deals and had produced charts showing the circularity of the fund flows, starting and ending with Metalix. Officer Birchfield has confirmed those charts, but has carried out some additional tracing in relation to some of the deals.

225. Officer Mendes had traced the monies by starting with the deal chain documents and, in particular the invoices, matching the details from the invoices to bank statements where possible. Officer Birchfield explained that his additional tracing goes beyond the invoice trails. For example, if £1 million is received into a bank account but only £500,000 is used for the deal chain transaction, Officer Mendes would only have traced the £500,000 used in the purchase of the goods in the deal chain. Officer Birchfield has gone on to trace the remaining £500,000 and has shown that those monies also flow in circles from and back to Metalix.

226. The money flow for each of the 19 disputed deals has been set out in the HMRC officers' evidence, with the bank statements on which the flows are based, attached.

227. Fundamentally, the evidence of both Officer Mendes and Officer Birchfield shows the money moving in circles. However, Officer Birchfield has shown that the circles do not start and end with Komidex as Officer Mendes concluded. As explained to us by Officer Birchfield that is because Officer Birchfield has not simply followed the invoices but has traced through the money flows. Mr Burgess put questions to him about this in cross examination

228. The money flows and loops of funds identified by Officer Birchfield reflect his conclusions having undertaken the tracing exercise described. The evidence in his first Witness Statement fundamentally confirms the evidence previously provided in the Witness Statement of Officer Mendes. Tradestar has not challenged the specifics of that evidence which it has had for some years.

229. The evidence from Officer Birchfield in his second Witness Statement (admitted at the start of the hearing) was an update of previous evidence provided by Officer Monk regarding the company Komidex. Officer Monk's evidence had focused on the position of Komidex and traced monies in and out of that account, showing that they had moved in a circle. However, Officer Birchfield started with Tradestar and followed the money both ways from that company. He has traced 83 loops of money passing through Tradestar's account in the period 1 April 2006 to the closure of Tradestar FCIB account on 5 September 2006. The loops relate to deal chains which HMRC allege involved Tradestar as a buffer.

230. In reviewing Officer Monk's evidence, Officer Birchfield conducted his own analysis of the FCIB evidence. His review was wider in date range than the work conducted by Officer Monk: Officer Monk examined payments to and from the Komidex account for the month of August 2006, and Officer Birchfield examined payments for the period 1 April 2006 until the closure of the relevant accounts. Officer Birchfield traced the money payments without any attempt to match them to the paper (or invoice) chain whereas Officer Monk had followed the invoices.

231. Officer Birchfield's second Witness Statement builds upon the evidence of Officer Monk. Officer Monk's evidence had been provided to Tradestar for some years and again no specific challenges to its contents have been made. In his second Witness Statement Officer Birchfield extends the tracing carried out by Officer Monk beyond Komidex to Metalix. It is more clearly focused on the position of Tradestar given that Officer Birchfield's work started with Tradestar's bank account.

232. No specific challenges have been made to the latest evidence provided by Officer Birchfield's second Witness Statement. That evidence has gone further than previous evidence and has provided full bank statements for consideration. That means that Tradestar had the opportunity to compare the loop charts with the bank statements to check transaction details and also enables Tradestar to check whether appropriate choices have been made by Officer Birchfield in identifying multiple payments connected with one transaction chain. No challenges have been made on such a basis by Tradestar.

233. The Tribunal took time at the hearing to put questions to Officer Birchfield in order to understand the basis on which Officer Birchfield charts have been produced and, in particular, how funds were traced when it was not simply a matter of following one set amount from account to account because, for example, payments were amalgamated or split at different points. We were entirely satisfied that Officer Birchfield had provided clear, comprehensive and consistent explanations for the process.

234. Given our conclusions regarding the tracing process undertaken by Officer Birchfield, and the fact that none of the money flow evidence has been challenged by Tradestar, we have concluded that Officer Birchfield's charts can, and should, be relied upon by us. We set out our findings in relation to the circularity of funds relying on his evidence.

235. In producing the charts showing the loops of money, Officer Birchfield has also identified the use of common IP addresses, but consistently with the evidence we heard from Mr Mortlock and Mr Letherby, Officer Birchfield recognises that he could not provide such evidence for transactions which occurred prior to 1 May 2006. This was a matter focussed on by Mr Burgess in cross examination and is taken into account by us in our findings and conclusions.

236. Officer Birchfield was therefore unable to identify the IP information in relation to the first 21 loops he considered. Out of the remaining 62 loops he randomly selected 34 by choosing approximately every other 10 loops.

237. We address his findings later this decision, but we are satisfied from Officer Birchfield's evidence taken together with that of Mr Letherby and Mr Mortlock that the IP address evidence should be relied upon by us.

238. In his cross-examination of Officer Birchfield, Mr Burgess sought to refer to a Witness Statement from another HMRC witness, Officer Kerr, which had been withdrawn on Officer Kerr's retirement. Mr Burgess was querying the fact that Officer Kerr had referred to IP evidence for all 19 disputed deals even though the evidence now was clear that there was no IP information available for transactions prior to the end of April 2006. This was not something which Officer Birchfield could comment upon. The evidence referred to by Mr Burgess was no longer before the Tribunal as Tradestar had not indicated that it wished to rely upon Officer Kerr's evidence. We must make our decision on the basis of the evidence before us. It is entirely understandable that over the course of some 14 years HMRC's evidence has developed and, indeed, changed, given the huge amount of work which has clearly been undertaken in relation to not only these appeals, but challenges to numerous other companies' transactions.

239. Mr Burgess also sought to question Officer Birchfield regarding the reasons for commonality of IP addresses. Officer Birchfield was clear that that was not a matter for him. He simply extracted the data. It was Mr Letherby who considered the possible reasons for commonality.

240. Mr Burgess was asked whether he challenged any of the loop charts produced by Officer Birchfield. He did not challenge any specifically. He did not challenge any of the individual money movements, although he queried identification of payments made to the company 3D Animations given that it did not have an FCIB account. This is a matter dealt with by us in addressing 3D Animations, but we note now that the evidence shows that the company received and paid money through accounts in its directors' names.

241. More generally, Mr Burgess' comment was that by following money flows rather than invoices the process would become very complex when contra traders in particular were involved with monies crossing from parallel transaction lines. He therefore queried the reliability of the charts given the fact that the monies did not all move in a straight line. However, this point had been specifically addressed by us with Officer Birchfield and we were satisfied with his explanation of how that very issue was taken into account by him in the tracing process, with the result that the charts, at times, show multiple merging loops connected to a deal chain. Indeed, it is particularly notable how even the parallel, or offshoot loops, all route in a circle to Metalix.

242. Mr Burgess also queried the fact that the charts produced by Officer Birchfield for his second Witness Statement are not limited to the transactions in the 19 disputed deals. That is fully recognised. The charts exhibited to Officer Birchfield second Witness Statement address other transactions which flowed through Tradestar's bank account. Those are transactions which HMRC allege were buffer transactions which were all related to fraudulent VAT loss transactions.

Tradestar's evidence - Adverse inferences

243. HMRC have invited us to make adverse inferences against Tradestar as follows:

(1) for failing to call a single witness from any of its counterparties to support its case on the facts;

(2) for Mr Burgess choosing to disengage from giving evidence once cross-examination commenced.

244. Brooke LJ in *Wisniewski* cited *McQueen v Great Western Railway Company* (1875) LR 10 Q.B. 569, where Cockburn CJ had said:

> "If a prima facie case is made out, capable of being displaced, and if the party against whom it is established might by calling particular witnesses and producing particular evidence to displace that prima facie case, and he omits to adduce that evidence, then the inference fairly arises, as a matter of inference for the jury and not a matter of legal presumption, that the absence of that evidence is to be accounted for by the fact that even if it were adduced, it would not displace the prima facie case. But that always presupposes that a prima facie case has been established; and unless we can see our way clearly to the conclusion that a prima facie case has been established, the omission to call witnesses who might have been called on the part of the defendant amounts to nothing."

245. In *British Airways PLC v Airways Pension Scheme Trustee Ltd* [2017] EWHC 1191 Mr Justice Morgan confirmed the following statement of principles resulted from the decision of Brooke LJ in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 at page 340 :

> " (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

246. The application of those principles has been confirmed in the context of the tax tribunal by the Upper Tribunal in *Hannah and Hodgson v HMRC* [2021] UKUT 0022.

247. Furthermore, in the context of Mr Burgess withdrawing from being cross examined and submitting written "submissions" we refer to the following statement in Kiely v Minister for Social Welfare [1977] IR 267 at 281, Irish Supreme Court:

> "Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the proceedings. Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross-examination."

248. We are satisfied for the reasons we explain fully in this decision that HMRC have set out a prima facie case. HMRC have provided evidence to show that VAT losses were incurred in connection with Tradestar's disputed deals and that those deals were connected to fraud. HMRC's evidence regarding Tradestar's knowledge and awareness of fraud at the

time of the deals, the terms and commercial context of the disputed deals, circularity of payments involved with the deals, the speed of payments made by Tradestar after receipt, the use of common IP addresses by Tradestar and other participants in deal chains, and the evidence about other alleged "buffer" deals all provide a prima facie case for Tradestar to answer.

249. As explained earlier, that does not mean that Tradestar had any burden to prove the details of transaction chains or its knowledge. However, it does have a case to answer. As we explained to Mr Burgess the hearing was his opportunity to do just that and explain the basis on which transactions were entered into, how funds were moved etc. He chose not to do so.

Mr Burgess' disengagement

250. Mr Burgess was sworn in and adopted his three Witness Statements as evidence in chief. However, shortly after Ms Robinson started cross-examination Mr Burgess' connection was lost and, as explained earlier, he made no further attempt to attend the hearing. Indeed, he made it clear in his correspondence that he would no longer participate in the hearing.

251. As explained earlier, on day two of the hearing there had been detailed discussions about whether Tradestar was withdrawing. One of the matters which came up at that point was the extent to which Mr Burgess would present his evidence to the Tribunal. At one point Mr Burgess said that he may be prepared to attend to be cross-examined on some particular points. We made clear that that was not how the system operated. Mr Burgess could not pick and choose the subjects on which he would be cross-examined. Later on that day Mr Burgess confirmed that he would attend the hearing to give evidence. He can have been in no doubt from the earlier discussions that attendance to give evidence was not on the basis of picking and choosing the subjects on which he would be cross-examined.

252. Mr Burgess was and has been at all relevant times Tradestar's sole director. He was the person responsible for its activities, the person who engaged with suppliers and customers and who dealt with HMRC. He is therefore clearly a person who would be expected to have material evidence to give on the matters in issue, in particular in relation to knowledge, in these proceedings.

253. The Tribunal warned Mr Burgess, when problems with his participation arose shortly after the start of his cross-examination, that if he did not return HMRC would invite the Tribunal to make adverse inferences.

254. The Tribunal had been at pains to explain to Mr Burgess from the start of the hearing that his evidence was the opportunity for him to explain what he did and did not know about the deals and to address such matters as the timing of the transactions entered into by Tradestar (relied upon by HMRC as indicative of knowledge of the alleged fraud). Mr Burgess was therefore fully aware of the potential role he could play in giving evidence for Tradestar but chose not to take that opportunity. The matters on which he could be expected to give evidence were not dependent on HMRC's disclosures (or as Mr Burgess describes them, their non-disclosures), but were matters which should have been entirely within his knowledge, describing how he carried on business through Tradestar and addressing some of the core matters in HMRC's case such as the timing of bank transfers.

255. In addition, on day five of the hearing, after submission by Mr Burgess of comments on evidence for which he had not attended, Mr Burgess was told by Judge Bowler that he had made the choice not to attend and therefore not to challenge the evidence of the witnesses; but he had said that all of his points would be dealt with in the context of his evidence in particular, as set out in his second Witness Statement. Therefore that would be the

opportunity to deal with those points. By absenting himself, Mr Burgess denied Tradestar the opportunity of addressing those points.

256. Moreover, by absenting himself he denied Tradestar the opportunity of providing innocent explanations for many of the features of its activities set out in this decision and relied upon by HMRC. We infer that his reason for doing so was because he would not have found it possible to provide such explanations. Indeed, after only a brief period of cross-examination it was clear that there were inconsistencies in Mr Burgess' evidence even regarding the relatively simple matter of his professional background.

257. Mr Burgess sets out in his Witness Statements, and in particular, his second Witness Statement, his background and work experience. However, when asked about that work experience his repeated answer in cross-examination was that he could not remember. He could not provide even the broadest of indications of when he worked for the organisations identified in his Witness Statement.

258. As soon as Ms Robinson referred Mr Burgess to a particular exhibit relating to the information he provided to FCIB in order to open an account with that bank, Mr Burgess' connection failed.

259. The exhibit to which Ms Robinson had referred Mr Burgess before he left the hearing included a curriculum vitae submitted to FCIB as part of the account opening documentation which is significantly different to the evidence in his Witness Statement. In his Witness Statement he describes working in: Dixons selling electrical goods and refers to his particular understanding of computer products; a company called PCS Group involved in marketing and sales for company specialising in selling manuals that taught people how to self-build computers as well as purchasing physical stock and computer components; Granada saying he was responsible for sourcing, buying and monitoring computer equipment and component stock levels; and Inweb, managing its ADSL launch and increasing the company's brand awareness/profile within the Internet sector. He provides detailed description of the computer skills and background he developed in those roles. He then explains that he took time to consider setting up his own business but as it was such a big step he did some consultancy work for about a year for a company called Somap Group, setting up and maintaining the companies IT infrastructure, prior to setting up Tradestar.

260. In contrast, in the CV provided to FCIB Mr Burgess describes working for Welcome Finance from June 2004 until July 2005 as an account manager selling finance and managing debt collection activities; and Ringway Highway Services from April 2003 until May 2004, monitoring and maintaining stock levels; sourcing materials construction crews and managing depots for vehicles and construction plant after working for Somap Group for 2 ½ years from September 2000 until March 2003 as its office manager coordinating its banking and legal requirements, dealing with its stationery needs, organising travel and entertainment and providing IT support.

261. Although the CV also referred to work for Inweb and PCS Group in the period 1995 - 2000, which was broadly consistent with the evidence in his Witness Statement, the remainder of the CV is markedly different when compared to the description set out in Mr Burgess' Witness Statement. Such experience he gained in companies involved in computers and the internet was much older than he sought to portray in his Witness Statement and in the years from 2000 onwards there is barely any computer or internet reference.

262. Mr Burgess did not take the opportunity of addressing the inconsistencies. We agree with HMRC's submission that Mr Burgess' Witness Statement was written with the intention of providing an incorrect picture of a seamless background in the IT sector, in particular involving the wholesale of IT components, which was not in fact the reality of his experience.

263. We are fortified in this conclusion by the fact that even though Mr Burgess has repeatedly asserted his significant knowledge of the IT sector, according to his first Witness Statement, he claims the first time he had heard of MTIC fraud was at the meeting with HMRC on 30 September 2005. A person with the level of experience Mr Burgess has claimed would be expected to have heard of MTIC fraud before that point.

264. We find that the only explanation for Mr Burgess' withdrawal, given his clear statements to this effect, is that he did not want to continue when he realised that he would be faced with such inconsistencies as those concerning his work experience. That is not a basis which can "satisfy" this tribunal to enable us to conclude that no adverse inference should be drawn or that the potentially detrimental effect of Mr Burgess' silence should be reduced.

265. We therefore conclude that an adverse inference arises from Mr Burgess' disengagement and we have reduced the weight given to his evidence in his Witness Statements.

266. This means that, given our conclusions that the evidence provided by HMRC should be given full weight, where there is a conflict in evidence between HMRC's and Tradestar's we have relied upon HMRC's evidence in making our findings.

Failure to call other witnesses

267. In the context of the disengagement by Mr Burgess this is of less impact.

268. In addition, given that in most, if not all, cases the individuals involved in carrying out business of the counterparties have disappeared such that HMRC has been unable to engage with them in the context of HMRC's own separate enquiries, we are not inclined to make an adverse inference in relation to the lack of their presence. There is a credible, even if not wholly satisfactory, explanation for their absence.

Further matters arising in relation to Tradestar's evidence

269. Tradestar's evidence is set out in three Witness Statements from Mr Burgess. For the reasons we have explained that evidence has been given reduced weight.

270. In addition, we note that there are numerous inconsistencies in Tradestar's evidence which have been identified by HMRC. Ms Robinson identified a series of questions addressing inconsistencies and gaps in Tradestar's evidence in her closing submissions. Mr Burgess' disengagement meant that Tradestar's response to those matters was not provided. For example:

(1) the names on the list produced following the trade fair at which Web Accountant was said to have been displayed appear to be end users, despite that not being the market targeted by Tradestar;

(2) the delivery, allocation and release documentation for the Mezinarodni deals show delivery to Freight Connection in the Netherlands, when Mezinarodni sought delivery (according to their purchase orders) to Boston Freight in Belgium.

(3) a letter dated 31 Oct 2006 from Mr Burgess to Aymaksan confirming Web Accountant transactions shows that 6000 Chinese units started with serial number 74001 and 5000 English units had no serial numbers, but that is inconsistent with the other evidence from Mr Burgess that serial numbers were needed for security and technical support registration purposes. It also conflicts with the evidence in a fax from Mr Burgess to Aymaksan dated 23 February 2006 in which he notes that every retail box of Web Accountant software has a unique serial number;

(4) why none of the Redhill checks were made by him before or contemporaneously with the deals he undertook with counterparties;

(5) why he claimed to be the only licensed distributor of Web Accountant even though the agreement with Bullfinch was non-exclusive;

(6) why he says in his Witness Statements that he found other purchasers for Web Accountant, but in a letter of 16 November 2005 to HMRC he says that they (mobile Computer World and Micropoint) were referred to Tradestar by Bullfinch.

271. Inconsistencies in Mr Burgess' evidence further reduce its weight.

FINDINGS OF FACT

272. In this part of the decision we set out our findings of fact which we have grouped as follows:

(1) Background – considering Tradestar's history;

(2) The disputed deals – in which we identify whether HMRC have shown the facts to prove:

(a) Whether there were tax losses;

(b) If so, whether the losses arose from fraudulent evasion of VAT;

(c) If there was a fraudulent evasion, whether Tradestar's transactions which are the subject of this appeal were connected with that evasion?

We address the alleged straight line deals first and then the alleged contra deals.

(3) The knowledge of Tradestar in which we consider not only the evidence of matters such as the background of Mr Burgess, information provided by HMRC and due diligence carried out by Tradestar, but also matters which are considered by us more widely in determining what should be inferred from the activities in which Tradestar was involved.

Background

The formation of Tradestar

273. Tradestar was incorporated on 21 December 2004. Mr Burgess was appointed a company director on 21 December 2004.

274. Mr Burgess was also the director of three other companies. He had been the company secretary of two other companies.

275. Tradestar did not have any employees in the periods in dispute. However, at some meetings with HMRC, Mr Burgess' father was present and HMRC was informed that a "temp" had been hired to chase leads following a tradeshow.

Tradestar's VAT history

276. Mr Burgess completed a VAT1 dated 2 May 2005. The estimated turnover was stated as £1,000,000. The nature of its business was described as "General trading of various goods – Software".

277. Tradestar was approved for VAT with effect from 1 June 2005. The trade classification was said to be "software publishing".

278. The Appellant's first VAT return for the period 08/05 was a small payment return of £1442.80.

279. The second VAT return for the period 11/05 gave rise to a repayment claim of £204,233.47.

280. For the period 02/06 a repayment claim was made for £1,411,718.70. That return reflected not only the disputed deals but also the following transactions which are not in dispute:

(1) five export wholesale deals of one type of Intel CPUs;

(2) four export wholesale deals of another type of Intel CPUs;

(3) one export wholesale deal of software called Web Accountant; and

(4) three UK wholesale deals of Intel CPUs.

281. The period 05/06 a repayment claim for £2,355,293.15 was made. That return reflected not only the disputed deals but also the following transactions which are not in dispute:

(1) two export wholesale deals of MP3 and MP4 players;

(2) four export wholesale deals of Apple iPods

(3) one export wholesale deal of Web Accountant software;

(4) and several other UK wholesale deals of Intel CPUs.

282. For the period 08/06 a repayment claim for £1,347,192.95 was made. That return reflected not only the disputed deals but also the following transactions which are not in dispute:

(1) two export wholesale deals of Apple iPods; and

(2) several UK wholesale deals of Intel CPUs.

283. The subsequent VAT quarters gave rise to much smaller repayment claims: £193,790, £3002 and £2,714 for the next three quarters. No repayment claim after the quarter ended 11/06 exceeded £8000 and most were significantly less than that.

284. Tradestar ceased to trade and ceased to be registered for VAT in 2010.

The disputed deals

Overview of the deals undertaken by Tradestar which are disputed

285. In the 02/06 VAT period, Tradestar was supplied by Bullfinch for all of the disputed deals. It purchased Web Aaccountant Software from Bullfinch on one occasion. The rest of the deals involved CPUs.

286. In relation to the software deals, HMRC allege Bullfinch was a defaulting trader and fraudulent losses arose directly in connection with Tradestar's deal.

287. In the other 9 transactions undertaken in this VAT period the transactions are said to trace through to Crestar who is alleged by HMRC to be a contra trader and Tradestar's deals are alleged to be connected to fraud through Crestar.

288. In the 05/06 VAT period, Tradestar was supplied with the Web Aaccountant software by Bullfinch for the first transaction in time. The same basis of alleged fraud arises as for the earlier Bullfinch deal.

289. Tradestar was supplied by Universal Traders Ltd ("Universal") for all 6 remaining transactions. In all of those transactions it was buying and selling iPods, and MP3/MP4 players. HMRC allege that the deals trace back to a fraudulent defaulting trader called 3D Animations.

290. In the VAT 08/06 VAT period, Tradestar was supplied by Universal and Linbar Limited respectively. It was buying and selling iPods. There were two transactions denied in this VAT period. The first is said to trace back to a fraudulent defaulting trader, Vison Soft and the second to a fraudulent defaulting trader Cybersol.

291. In each of Tradestar's disputed deals it bought from a UK trader and dispatched to an EU trader. HMRC therefore say that it acted as a "broker trader".

292. Apart from on a few occasions, all the transactions in each of the chains were conducted in sterling despite the location of the participant.

The purchases and sales by Tradestar

293. The table below summarises the purchases and sales in the disputed deals. This table is based on the evidence provided by Officer Reynolds for which Mr Burgess did not attend. Officer Reynolds has put together a deal pack for each of the deals which included the purchase and sale invoices for these deals as well as bank transfer documents. Tradestar has not challenged that evidence relating to the purchases and sales entered into by it.

Deal number	Date	Goods	Supplier	Customer
Quarter ended 02/06				
1	24/02/06	6000 Web Accountant out of 10,000 purchased	Bullfinch	Aymaksan
2	24/02/2006	11,970 CPUs	Bullfinch	Mezinarodni
3	24/02/2006	10395 CPUs	Bullfinch	Mezinarodni
4	27/02/2006	12,600 CPUs	Bullfinch	Mezinarodni
5	27/02/2006	10,080 CPUs	Bullfinch	Mezinarodni
6	27/02/2006	11,340 CPUs	Bullfinch	Mezinarodni
7	28/02/2006	11,340 CPUs	Bullfinch	Mezinarodni
8	28/02/2006	9,450 CPUs	Bullfinch	Mezinarodni
9	28/02/2006	10,710 CPUs	Bullfinch	Mezinarodni
10	28/02/2006	11,970 CPUs	Bullfinch	Mezinarodni
Quarter ended 005/06				
11	24/04/2006	5000 Web Accountant	Bullfinch	Aymaksan (only 5000 sold to Aymaksan out of 6000 purchased; remainder sold to Mobile Computer World)
12	31/05/2006	15000 iPod 30GB	Universal Traders	Taurus SA
13	31/05/2006	15000 iPod 30GB	Universal Traders	Taurus SA
14	31/05/2006	15000 iPod 60GB	Universal Traders	Taurus SA
15	31/05/2006	15000 iPod 60GB	Universal Traders	Taurus SA
16	31/05/2006	4000 MP3/4	Universal Traders	Taurus SA
17	31/05/2006	6000 MP3/4	Universal Traders	Taurus SA
Quarter ended 08/06				
18	22/06/2006	9500 iPod	Universal Traders	Taurus SA
19	09/08/2006	7550 iPod (15000 originally sold	Linbar	Taurus SA

		with a credit note issued on 16/10/2006 for 7,450)		

The chains to which Tradestar's deals relate

294. Tradestar has been provided with the deal packs and all relevant documentation relied upon by HMRC for several years during which Tradestar (until recently) had legal representation.

295. The original packs were produced in 2009/2010. Since then HMRC have conducted significantly more work on these and related transactions. Initially, HMRC concluded that Bullfinch was a blocking buffer in several of the deal chains, but it was subsequently understood by HMRC that Bullfinch had bought from Crestar Global Ltd. in alleged contra trading transactions. Consequently the deal sheets which summarised the deals were updated and the additional documents traced back in the chains. Our findings reflect the latest work and deal sheets.

296. Apart from the overall challenge to all evidence, Mr Burgess has made little challenge to the evidence of the chains. He chose not to attend for the evidence of the HMRC witnesses for each of the alleged defaulting companies and for the alleged contra trader. Their evidence was therefore effectively unchallenged. As noted however, we have addressed the points raised in written submissions by Mr Burgess in the hope that this will assist his understanding of this decision.

297. Mr Burgess has said on several occasions that in fact there were only 17 relevant deals as two of the deals were UK to UK. That is not correct. The deal packs provided by Officer Reynolds clearly identify the 19 deals described above.

298. We start by addressing the deals which are said to be directly traced back to defaulting traders before addressing the deals which are said to link back to contra trading.

299. We set out our findings regarding the deals as shown by the deal packs exhibited by Officer Reynolds, together with the evidence of payments provided by Officer Birchfield.

Deals 1 and 11

300. The transaction chain was: Bullfinch to Tradestar to Aymaksan.

301. In relation to deal 1, an invoice dated 24 February 2006 shows the sale of 10,000 units of Web Accountant (Chinese) by Bullfinch to Tradestar at £315 per unit giving a total invoiced amount of £3.15 million on which VAT of £551,250 was applied. This corresponded to a purchase order from Tradestar to Bullfinch on 23 February 2006.

302. On 24 February 2006 Tradestar issued an invoice to Aymaksan for the sale of 6000 units of Web Accountant (Chinese) at £340 per unit giving a total cost of £2,040,000 with zero VAT. This corresponded to a purchase order from Aymaksan to Tradestar on 22 February 2006. The denied input tax relates to the amount of input tax paid by Tradestar to Bullfinch which is attributed by Tradestar to this sale, which is an amount of £330,750.

303. Payment was made by Aymaksan on 1 May 2006. Although only two payments are documented shown totalling £1,749,500 by Officer Reynolds' deal pack we note that Officer Mendes' analysis of flows through bank statements identifies the remaining amount having been paid at the same time.

304. In relation to deal 11, a purchase order dated 28 April 2006 shows the purchase of 6000 units Web Accountant (English) by Tradestar from Bullfinch at the unit price of £100 per unit giving rise to payment of £600,000 plus VAT at the standard rate of £105,000. This corresponds to an invoice issued by Bullfinch dated 5 May 2006. Payment was paid by Tradestar on 1 May 2006 by two separate payments.

305. A Tradestar sales invoice dated 28 April 2006 shows sale of 5000 units of the Web Accountant (English) at a unit price of £230 per unit for a total of £1.15 million and zero VAT to Aymaksan. This corresponds to a purchase order from Aymaksan showing the same date. Payment was made by Aymaksan to Tradestar by two separate payments made on 1 May 2006.

306. The remaining units of the software bought by Tradestar were sold to a UK company, Mobile Computer World. Those sales are not disputed deals. However, Mobile Computer World has been identified by HMRC as an alleged broker in relation to the purchases by it from Tradestar and Tradestar has been identified by HMRC as an alleged buffer.

Deals 12 – 17

307. The transaction chain was: 3D Animations to Globaltech to Linbar to Capital Distribution to Universal Traders to Tradestar to Taurus.

308. In relation to deal 12 this is shown by:

(1) a purchase order from Globaltech dated 31 May 2006 to 3D Animations for 15,000 Apple iPods which corresponds to an invoice issued by 3D Animations on the same date at a unit price of £154.50 for a total amount of £2,317,500 plus VAT of £405,562.50;

(2) a purchase order and corresponding invoice for the sale of the same number of Apple iPods at a unit price of £154.70 by Globaltech to Linbar each dated 31 May 2006 showing VAT applied of £406,087.50;

(3) bank transfer information showing payments made by Globaltech to Ahamed Farook and by Linbar to Globaltech on 5 June 2006;

(4) a Linbar invoice dated 31 May 2006 and corresponding purchase order showing sale of the same number of Apple iPods at a unit price of £154.80, plus VAT to Capital Distribution;

(5) a Capital Distribution invoice showing sale of the same items at a unit price of £154.90 plus VAT to Universal Traders;

(6) Universal Traders' invoice to Tradestar and Tradestar's purchase order for the same items at a unit price of £155 dated 31 May 2006 and bank transfer statement showing payment made by Tradestar to Universal Traders on 5 June 2006. The VAT applied to this sale was £406,875 which is the input tax denied by HMRC on this deal;

(7) a Tradestar invoice dated 31 May 2006 showing sale of the goods to Taurus at unit price of £164 with zero VAT and bank transfer statement showing payment made on 5 June 2006 by Taurus to Tradestar. Tradestar's mark-up was therefore £9 compared to a few pence for the previous participants in the chain;

(8) instructions to a freight company directing the transfer of the goods from company to company through the chain dated 31 May 2006 until a final transfer direction from Tradestar to a Belgium freight company directing release to Taurus on 5 June 2006.

309. Equivalent documents have been produced for deals 13-17 from which we find in particular that:

(1) all of the transactions are shown by invoices and purchase orders to have taken place on 31 May 2006;

(2) Each company in the chain charged VAT until Tradestar's zero rated sales to Taurus;

(3) in deal 13 the mark-ups were the same as in deal 12 so that the first sale in each chain was at the price of £154.50, the mark-up was then 20p, 10p, 10p,10p before Tradestar's mark-up of £9 per unit;

(4) payments were made not only on 5 June 2006 but also on 21 June 2006; and in deal 17 on 22 June 2006;

(5) in deal 14 Tradestar was paid in full on 5 June 2006 but did not direct release to Taurus until 21 June 2006;

(6) some payments were made to Kalidas Gopal by Globaltech;

(7) in deals 14 and 15 the first sale in the chain was the price of £214.50. The mark-up was then 20p, 10p, 10p, 10p before Tradestar's mark-up of £13.

(8) In deals 16 and 17 there were two types of MP3/MP4 players transacted: one "iRiver" in Deal 16 was initially sold by Globaltech for £160.50 and the other "Grundig" by it for £224.50. The mark-ups were 20p, 10p, 10p, 10p and then £8 when Tradestar sold the iRivers to Taurus in deal 16. The mark-ups were 20p, 10p, 10p, 10p and then £10.25 when Tradestar sold the Grundigs to Taurus.

310. The input tax shown on the invoices for sales to Tradestar is as follows - Deal 13: £406,875; deal 14: £564,375; deal 15: £564,375; deal 16: £112,700; deal 17 £236,250.

311. Evidence from Mr Evans shows that Farook Ahmed was company secretary of 3D Animations and Kalidas Gopal was a director of the company. We are therefore satisfied that FCIB payments made to accounts in those individual's names for the relevant amounts payable to 3D Animations are evidence of payments to the company.

Deal 18

312. The transaction chain was: Proxi Partners to Vision Soft to Heathrow Business Solutions to Globaltech to Linbar to Capital Distribution to Universal Traders to Tradestar to Taurus.

313. All elements of this chain have been shown by the evidence except for the first link from Proxi Partners to Visions Soft. However, it is not necessary for HMRC to show that first link if they are correct in their allegation that Vision Soft was the defaulting trader in the chain.

314. Officer Reynolds has exhibited equivalent documents for this deal to those produced for deals 12-17 as far up the chain as Heathrow Business Solutions.

315. In this case we find that:

(1) all of the purchase orders, release notes and sales invoices were dated 22 June 2006;

(2) payments shown on the invoice chain were made on 13 July 2006 and 14 August 2006 although extra payments in the transaction chain are shown to have taken place on 22 June;

(3) Globaltech bought the iPods for a unit price of £214.49 from Heathrow Business Solutions. There is then a mark-up of 20p, 11p, 10p, 10p before Tradestar's mark-up on its sale to Taurus of £13;

(4) the input VAT charged to Tradestar by Universal Traders was £357,437.50;

(5) the sale by Tradestar to Taurus was zero-rated;

(6) the freight company was instructed company by company to allocate the goods to each customer in turn on 17 August 2006.

316. Officer Reardon's evidence shows that an assessment was raised on Vision Soft on 14 August 2008 which identified an invoice for the sale of the same items shown to have been transacted in this deal (9500 units of "Apple iPod 60gb White') on 22 June 2006 to Heathrow Business Solutions Ltd. This therefore completes the evidence of the chain back to the alleged defaulter, Vision Soft.

Deal 19

317. The transaction chain is: Proxi Partners to Cybersol to Zenith Sports to Neon Leicester to Linbar to Tradestar to Taurus.

318. Officer Reynolds has exhibited equivalent documents for this deal to those produced for deals 12-17 as far up the chain as Heathrow Business Solutions.

319. In this case we find that:

(1) all of the purchase orders, release notes and sales invoices were dated 9 August 2006;

(2) the chain started with the sale of 15000 Apple iPods on 9 August 2006 but on 16 and 17 October credit notes were issued for 7,450 of them back to Neon Leicester;

(3) Tradestar made payments on 11, 12 and 19 October 2006. FCIB had been closed and therefore Tradestar used another bank account;

(4) Neon Leicester bought the iPods for a unit price of £191.78 from Zenith Sports. There is then a mark-up of 10p, 12p, before Tradestar's mark-up on its sale to Taurus of ££6.50 per unit;

(5) the input VAT charged to Tradestar by Universal Traders was £504.000;

(6) the sale by Tradestar to Taurus was zero-rated;

(7) the freight company was instructed company by company to allocate the goods to each customer in turn on 17 August 2006.

320. Officer Quinn's evidence shows that Cybersol was assessed to VAT of £253,059 in relation to the sale of 7550 Apple iPods to Zenith. This evidence completes the chain to the point of Cybersol which HMRC alleges is the defaulting trader.

Alleged Defaulters in the disputed straight line deals

321. HMRC say that deals 1, 11, 12-17, 18 and 19 are "straight line" chains.

322. In relation to the "straight line chains" HMRC have alleged that the following are fraudulent defaulting traders to whom the transactions can be traced in those chains: Bullfinch (deals 1 and 11), 3D Animations (deals 12-17), Vision Soft (deal 18) and Cybersol (deal 19). We address the evidence regarding each of these and set out our findings.

323. Overall, we find that the evidence of the officers in respect of each defaulting trader was overwhelming and in each case clearly proved that the defaulting trader in question had

fraudulently evaded VAT. For completeness, we set out the following detailed findings about the deal chains 1, 11, 12-17, 18 and 19 and the defaulting traders.

Bullfinch – deals 1 and 11

324. Officer Fyffe's statement provided the core of HMRC's evidence. We make the following findings relying on that evidence.

325. Bullfinch was incorporated on 28 May 2004 and registered for VAT with effect from 1 August 2005. The company director was named as Sanjay Pandya, appointed on 28 May 2004. Bullfinch's VAT1 declared that its business activities involved software and security implementation, no hardware. The VAT1 also stated that Bullfinch did not expect to receive regular repayments of VAT and that the estimated value of its taxable supplies in the next 12 months was £1million. Notes of meetings with Mr Pandya show that he said that he had no previous experience in the computer and software market prior to setting up Bullfinch.

326. We have explained already that Bullfinch failed to make the security payments it promised.

327. HMRC became aware from freight forwarder allocation and release notes that in April and May 2006 Bullfinch was acquiring a large amount of stock from Germany and the Czech Republic. (Notably many of the purchases were from Mezinarodni - the company to whom Tradestar was selling goods in the period ended 02/06.) This alerted HMRC to a high risk resulting from goods being purchased from the EU and being sold in the UK with a high output tax bill and it was therefore decided to bring forward the latest VAT return accounting date from 31 May 2006 to 11 May 2006. In addition, Bullfinch's VAT registration number was cancelled with effect from 11 May 2006 on the basis that it was abusing the right to be registered.

328. On 5 June 2006 HMRC wrote to Bullfinch requesting information and noting that HMRC was in the process of raising an assessment in the sum of more than £23 million. Over the course of 22 months, as HMRC discovered further transactions, assessments were raised totalling approximately £56 million. Copies of the 33 assessments issued have been provided as exhibits by Officer Fyffe. All of them relate to the period ended 04/06 or the company's final accounting period (ended 11 May 2006). None of them has been appealed by Bullfinch.

329. When HMRC contacted Bullfinch's supposed accountants they said that they had not in fact worked for the company. On 11 September 2007 HMRC contacted Mr Pandya's home address and was told that he no longer lived there. On 26 March 2008 HMRC were told by a relative of Mr Pandya that the family had been trying to contact him for approximately two years and that he had not lived at his supposed home address for 12 years. It was believed by the family that he had left the UK.

330. When HMRC visited Bullfinch's place of business the office manager said that the company had vacated the premises two years previously. Bullfinch was wound up by order in 2007. No annual accounts were supplied to HMRC for VAT or corporation tax purposes.

331. We find that the evidence shows that:

(1) Bullfinch is a missing trader;

(2) Bullfinch is a defaulting trader responsible for VAT losses of more than £56 million. It has not paid any of its VAT liabilities;

(3) The evidence of invoices attached to Officer Reynolds' Witness Statement shows that Bullfinch issued invoices charging VAT to Tradestar for the sales of Web Accountant in deals 1 and 11. In addition, the evidence of Officer Fyffe shows that VAT assessments were issued to Bullfinch in relation to the VAT assessed on those

sales in the amounts of £551,250 and £105,000 on 6 June 2007 and 19 November 2007 respectively. Those assessments form part of the total assessments of approximately £56 million which have not been appealed or paid;

(4) the evidence therefore shows that there was a tax loss in each of the deals 1 and 11 attributable to Bullfinch, Tradestar's immediate supplier in each case.

332. Given the evidence overall, we also conclude that Bullfinch was a fraudulent defaulter given that:

(1) from a standing start in August 2005, Bullfinch entered into transactions for the sale of goods amounting to hundreds of millions of pounds within a matter of months, despite indicating that its estimated value of supplies would be around £1 million and despite the fact that Mr Pandya had no previous experience in the market;

(2) Bullfinch issued invoices charging VAT on its supplies to Tradestar (and numerous others) but failed to declare its VAT liability on these supplies in a VAT return. It only submitted VAT returns for 10/05 (declaring sales of just over £7 million showing a payment due to HMRC of £18,949) and 01/06 (showing sales of just over £1.5 million and VAT owed of around £550);

(3) Bullfinch and its director have had no contact with HMRC since May 2006. The director has left the jurisdiction. The director had provided false information about his residential address.

(4) No annual accounts were supplied to HMRC for VAT or Corporation Tax purposes.

3D Animations Ltd (deals 12 – 17)

333. The evidence regarding this company has been provided by Officer Evans. He was not one of the witnesses whom Mr Burgess identified on day two of the hearing as needing to attend. His Witness Statement was therefore taken as read.

334. For the sake of hopefully assisting Mr Burgess' understanding, at least, we have addressed specific points raised by him in submissions.

335. 3D Animations was incorporated on 5 April 2006 and registered for VAT with effect from 3 May 2006. Kalidas Gopal was appointed company secretary and on 15 April 2006, Gengatharan Sritharan was appointed director of the company. Mr Gopal was a director of the company from 10 April 2006 until 30 May 2006. Farook Ahmed was director of the company from 30 May 2006.

336. 3D Animations declared in its VAT1 that its current business activities were design, multimedia and animation graphics. The estimated taxable turnover for the next 12 months was said to be £89,000. 3D Animations indicated that it did not intend to sell to or buy from other EU members states in the next 12 months. 3D Animations was required to render monthly returns. No returns were submitted by the company, which was deregistered by HMRC before completing its first quarter as a VAT registered entity.

337. On 1 June 2006 Officer Lane visited 3D Animations at its principal place of business. The property was a residential address which appeared to have been converted into offices. The name "3D Animations" had been written on a piece of paper which was taped to the front door. No one was present during the visit and a Regulation 25 letter (bringing forward the VAT return due date) and a 7 day de-registration letter were posted through the letterbox. 3D Animations failed to respond to any of the notices issued at the principal place of business. As a result it was deregistered for VAT with effect from 7 June 2006.

338. 3D Animations did not declare any taxable supplies or submit any VAT returns. The exhibits attached to Officer Evans' Witness Statements show that HMRC raised assessments against 3D Animations totalling more than £128 million (which indicates gross sales of approximately £866 million). None of those assessments has been appealed.

339. Mr Burgess queried the total amount of the assessments but evidence has been produced in the form of the assessments and an HMRC screenshot showing the total amount outstanding.

340. Its last known day of trading was 6 June 2006. It therefore traded for little more than a month.

341. Freight forwarder release notes show that almost immediately after being allocated a VAT number, 3D Animations started acquiring and selling on large numbers of goods from the EEA to other UK-based companies

342. On 20 September 2006 3D Animations was compulsorily wound up. The liquidator has been unable to contact the responsible persons at 3D Animations or recover the sums owed by 3D Animations.

343. Mr Burgess has submitted that, as HMRC recognises, 3D Animations did not have an FCIB account and therefore FCIB payments could not be traced to it. However, Officer Evans provides evidence that the account was operated in the names of the company's directors. The records extracted from FCIB showed that 3D Animations issued third party instructions with payments made to an account in the name of Kalidas Gopal and one payment instruction is shown for payment to Mr Ahmed.

344. Mr Burgess has challenged the evidence regarding the VAT Assessments in that it only identifies sales and not purchases. Mr Evans deals with this point in his Witness Statement. He exhibits release notes showing that 3D Animations acquired goods it traded from outside the UK. He has concluded on balance that, given the lack of any evidence to show that 3D Animations purchased goods from another UK company, it should be assumed that its other purchases were also from EEA companies. We agree with this conclusion. We heard clear evidence from Officer Reynolds explaining the process of HMRC tracing transactions through UK companies and on the basis of that evidence we are satisfied that if 3D Animations had in fact purchased goods from another UK company, some evidence of that would have appeared. The fact that none has and the fact of evidence of other purchases from EEA companies leads us to conclude that on balance 3D Animations purchased its goods generally from the EEA, including the goods ultimately bought and then on sold by the Appellant.

345. Mr Burgess has said in his documentary comments that the evidence does not show that 3D Animations generated tax losses in any of the disputed deals. However, Officer Evans has provided a copy of the assessment for an amount of nearly £45 million of VAT raised by Officer Lane together with a transaction sheet identifying all of the transactions to which that assessment relates. The transaction sheet highlights the six sales of iPods and MP3/4s which correlate with the items identified in the disputed deals 12 – 17.

346. For the reasons stated above we therefore reject Mr Burgess' claim that the tax losses are insufficiently documented.

347. We find that the evidence shows that:

(1) 3D Animations is a missing trader;

(2) 3D Animations is a defaulting trader responsible for VAT losses of more than £128 million. It has not submitted any VAT returns or paid any of its VAT liabilities;

(3) The evidence of invoices attached to Officer Reynolds' Witness Statement shows the items which were the subject of the disputed deals 12-17. The evidence traces the Appellant's purchases back to 3D Animations. The evidence provided by Officer Evans shows that the sale of those items generated some of the tax losses reflected in the unpaid assessment of more than £45 million.

348. Given the evidence overall we also conclude that 3D Animations was a fraudulent defaulter given, in particular, that:

(1) from a standing start within one month 3D Animations entered into transactions for the sale of goods amounting to hundreds of millions of pounds despite indicating that its estimated value of supplies would be around £89,000;

(2) it entered into a huge volume of transactions buying goods from the EEA despite registering on the basis that no such activity would take place;

(3) the sheer volume of transactions against a background of a new company which had no history in the trade sector and an insufficient infrastructure to support such a volume of trade.

(4) 3D Animations issued invoices charging VAT on its supplies but failed to declare its VAT liability on these supplies in a VAT return.

349. For the reasons stated above we reject the claim made by Mr Burgess that the alleged tax losses have been "conjured up out of thin air" by HMRC without sufficient supporting documentation.

Vision Soft (deal 18)

350. Officer Reardon gave evidence about this company. Mr Burgess asked that he attend the hearing for cross-examination but Mr Burgess did not then attend himself.

351. Vision Soft was incorporated on 8 October 2004 and registered for VAT with effect from 15 March 2005 (quarterly VAT returns). Vision Soft's VAT1 declared that its intended business activities were software development, consultants and supply. Further the VAT1 stated that no purchases or sales were anticipated to or from other EU member states, and that it did not expect to receive regular repayments of VAT. The estimated value of Vision Soft's turnover in the next 12 months was £80,000.

352. In correspondence with HMRC in January 2005 the company said that it did not sell any hardware but would source it if its customers required.

353. Vision Soft rendered five 'nil' returns for the periods 05/05 to 05/06 inclusive. On 6 July 2006, an HMRC Officer visited Vision Soft's principal place of business which was found to be a serviced mailbox address. In those circumstances HMRC cancelled the VAT registration of Vision Soft with effect from 6 July 2006 which was later amended to 13 July 2006 after HMRC became aware of deals which had taken place after 6 July 2006.

354. On 16 January 2008 Vision Soft was wound up by order of the High Court.

355. On 8 June 2010 HMRC issued a letter with a copy of an assessment dated 23 July 2009. It was noted that it was one of a series of assessments that have been raised against the company and the total debt stood in the region of £12 million. Previous letters have been sent back to HMRC marked "return to sender". Copies of the assessments had been sent by HMRC not only to the company's stated place of business but also to addresses provided for

its director and company secretary. HMRC received a complaint from the occupier of the address stated for Vision Soft's director who said that no such person lived at the address.

356. The company had an FCIB account which had the same account number as used by another company identified in the deals, Heathrow Business Solutions. (The evidence shows that at times in analysing other non-disputed deals it has been difficult to identify whether Heathrow Business Solutions or Vision Soft took part in the chain as a result of the overlap in bank accounts.)

357. Vision Soft received £51 million into the FCIB account and made payments out of approximately the same amount. Most of the payments out were to overseas accounts. Those payments were made in the period of 4 July 2006 - 21 July 2006.

358. The officers of Vision Soft have not contacted HMRC, and no VAT returns have been submitted since 05/06.

359. Freight forwarder release notes show that Vision Soft bought goods from EU companies and supplied them to UK companies.

360. We find that an assessment was raised on Vision Soft on 14 August 2008 which identified an invoice for the sale of 9500 units of "Apple iPod 60gb White' on 22 June 2006 by Vision Soft. That transaction gave rise to an assessment of VAT of £356,257.12 which has not been disputed by Vision Soft and has not been paid by it.

361. We are satisfied that the evidence overall, including that of Officer Reynolds, shows that Tradestar's transactions in 9500 units of Apple iPods in deal 18 can be traced back to this sale by Vision Soft.

362. We therefore find that a tax loss arose in the chain of deal 18.

363. We are satisfied that the loss was fraudulent because:

(1) The address of Vision Soft's principal place of business was changed without the required notification to HMRC. The officers of the company did not reside at the address declared on Companies House records;

(2) In June and July 2006 Vision Soft generated a turnover in excess of £50 million in just two months;

(3) Vision Soft did not render a VAT account in respect of its trading;

(4) HMRC uncovered the trading from its analysis of records held by other traders and freight forwarders;

(5) Vision Soft has filed no accounts with Companies' House; and

(6) No contact has been made by the company or its officers with HMRC regarding the assessments. Vision Soft effectively went missing after its trading in June and July 2006.

364. Mr Burgess says that the paperwork in relation to the assessments raised on Vision Soft is inadequate, misleading or incorrect. We do not agree. We have explained above how there is ample evidence to show the tracing through invoices, release notes and purchase orders to show the involvement of Vision Soft set out by us above and that it was a fraudulent defaulting trader.

Cybersol (Deal 19)

365. Officer Quinn provided the evidence regarding Cybersol. He was another witness whom Mr Burgess had asked to attend for cross-examination but for whose evidence Mr

Burgess did not then himself attend. Officer Quinn's evidence was therefore not challenged in cross-examination. We find that points raised by Mr Burgess in documents do not alter our conclusion that this company was a fraudulent defaulting trader for the reasons we now explain.

366. Cybersol was incorporated on 20 February 2004. Its main business activities were declared in a VAT 1 as an "Internet café". There was no indication of buying and selling from and to the EEA. Estimated turnover was stated to be £50,000. The company was registered with effect from 1 November 2004.

367. On 24 April 2006 the company contacted HMRC to correct the trade classification to "Internet café, computer sales/service, software and electronics".

368. On 22 June 2006 a deregistration pack was sought for the company to cancel its VAT registration.

369. On 28 July 2006 HMRC sent a notice of unpaid cheque letter for a cheque in the amount of £372.10 to Cybersol in relation to VAT period 05/06. That amount was never paid. The letter was returned showing that the trader was no longer at its principal place of business.

370. Cybersol submitted VAT returns for the periods 11/05, 02/06 and 05/06 showing net sales declared in the region of £30,000. No return was submitted for VAT period 08/06, but HMRC issued an assessment in excess of £6 million based on sales disclosed by the company's customers' invoices and allocation notes from freight forwarders.

371. Release notes dated 30 August 2006 were captured by HMRC's electronic filing system showing sales of phones and iPods. Cybersol's address was different to that provided to HMRC.

372. On 11 September 2006 HMRC wrote to the company at both its original stated address and the new one shown by the release notes noting that HMRC had not heard back despite the request for a deregistration pack. Both letters were returned to sender. As there had been no reply, HMRC deregistered the company on the basis that it must have ceased to trade.

373. In June 2006 HMRC discovered that the company had acquired goods with an input tax value of more than £2 million. HMRC wrote to the company noting that the correct amounts of VAT appeared not to have been declared. This was returned to sender on 12 January 2007. An additional assessment was raised by HMRC on 18 April 2007.

374. Overall there is unpaid output tax in respect of transactions undertaken by the company in the sum of £6,279,715. No appeal or correspondence from the company has ever been received in relation to its assessments.

375. The company was placed into compulsory liquidation on 20 September 2006.

376. A further VAT assessment was issued to the company's liquidators on 1 February 2008 for VAT of £253,059 in relation to the sale of 7550 Apple iPods to Zenith. The evidence overall, including that of Officer Reynolds, shows that this sale was at the start of the chain of transactions in deal 19. The assessment has not been paid.

377. We therefore find that:

(1) Cybersol is a missing trader;

(2) Cybersol is a defaulting trader responsible for VAT losses of more than £6 million. It has not paid those VAT liabilities or appealed the related assessments;

(3) Specifically a tax loss of £253,059 arose in relation to the disputed deal 19 which was attributable to default by Cybersol

378. We are satisfied that the loss was fraudulent because:

(1) the company's turnover was far in excess of the estimate. In just one transaction with Zenith in deal 19 the value was nearly £1.5 million;

(2) Cybersol failed to declare any of the sales which are the subject of the outstanding assessments;

(3) the assessments were not paid or challenged;

(4) the company completed millions of pounds of transactions after requesting deregistration; and

(5) it changed address without updating HMRC and correspondence was repeatedly returned unopened to HMRC.

379. As for Vision Soft, Mr Burgess says that the paperwork in relation to the assessments raised on Vision Soft is inadequate, misleading or incorrect. We do not agree. We have explained above how there is ample evidence in invoices, release notes and purchase orders to show the involvement of Cybersol set out by us above and that it was a fraudulent defaulting trader.

380. Mr Burgess also queried and challenged exhibits to the evidence of Officer Quinn's Witness Statement saying that they strongly suggest third party payments and deliveries to third party companies which make it difficult to show if there was contra trades or losses on another chain or any reliable assessments. Mr Burgess' comment comes back to the inherent problem in many of his submissions of not recognising where the burden of proof lies with the result that he has been side-tracked in attempting to "prove" matters which it is not for him to prove.

The alleged contra trades – deals 2-10

381. HMRC allege that Crestar operated as a fraudulent contra trader acquiring goods from, and dispatching them to, the EU. They submit that Tradestar's disputed deals were in the acquirer (clean) chains for Crestar and that Crestar's broker (dirty) chains can be traced back to tax losses at the defaulting trader, PC Mac IT Solutions Ltd ("PC Mac")

382. The evidence of Officer Brand was taken as read and we make our findings based on that evidence.

383. Officer Brand has undertaken a similar process to Officer Reynolds in working through invoices, freight forwarding information etc. which have been attached as exhibits.

Crestar overall

384. Crestar was incorporated on 9 December 2004. It was registered for VAT on 1 October 2005 with a Yahoo email address and the registered address at its director's residential address. The business was described as "wholesale trade business" although on 11 October 2005 Mr Iqbal, Crestar's director, wrote to HMRC to say that his business activities were "a general trading wholesale of electrical goods to market traders and retail outlets". He noted that he was in negotiations with foreign companies and would be importing goods. It was said at registration that it was expected to make no zero-rated supplies for its first 12 months. The estimated value of taxable supplies in the next 12 months was said to be £200,000. Neither of these indications was changed by Mr Iqbal in his later correspondence.

385. On 7 February 2006 Mr Iqbal, was told by HMRC that no VAT return or payment had been received.

386. Mr Iqbal attended a meeting with HMRC on 14 March 2006 in which he explained that the first deal undertaken by the company was in November 2005 and he had subsequently carried out 30 – 40 deals in software and CPUs for a value of between £10 million and £13 million. He did not require finance as his customers paid him before he paid his suppliers.

387. That was followed on the same day by a visit of HMRC officers to Crestar's principal place of business in order to serve a deregistration letter (on the basis of abusing the VAT registration) and a letter bringing forward the VAT return date from 31 May 2006 to 14 March 2006. HMRC's offices were told that Crestar had a "virtual office" at the building, no office and no storage space.

388. At a subsequent meeting with HMRC on 28 March 2006 Mr Iqbal explained that Crestar imported from Poland and exported to other member states, but was not involved in UK to UK deals. He confirmed that Crestar only operated an FCIB account as UK banks would question the large sums of money going in and out of an account.

389. Mr Iqbal applied for the VAT registration to be reinstated, but this was declined by HMRC on 12 May 2006.

390. On 26 June 2006 an HMRC officer arranged for an inhibit to be placed against repayments of VAT to Crestar to stop repayments being automatically made prior to returns being checked. On 5 July 2006 a letter was sent to Crestar explaining that its repayment claim of £91,720.20 for the period ending 14 March 2006 had been amended to a payment of £3,752,723.34.

391. On 13 July 2006 Crestar's HMRC officer was provided documents from the Dutch authorities stating that goods sold by Crestar had been collected by a driver for a company called SC Efekt SRO, a Czech company. Instructions to the freight forwarder from Komidex showed that it requested release of the goods to SC Efekt. However, the Czech authorities then told HMRC that SC Efekt had been deregistered for VAT purposes on 25 April 2006 as it did not submit VAT returns and "the company does not cooperate [with] the tax authority at all".

392. No payments were received by Komidex into its FCIB account from SC Efekt.

393. Crestar appealed its VAT assessment. Following that appeal HMRC decided that there was sufficient evidence to support Crestar's claim that goods were removed from the UK in respect of some of its deals and the assessment was reduced by £743,205.30, resulting in a balance owed of £3,009,517.34.

394. On 18 July 2007 the VAT and Duties Tribunal dismissed Crestar's appeal finding that there was no acceptable evidence to show exports. On 25 March 2008 HMRC issued an unpaid VAT demand for the sum of £3,009,517.

395. On 27 September 2007 Crestar became insolvent. It was dissolved on 7 June 2008.

396. On various occasions HMRC asked Mr Iqbal to provide business records. On 28 March 2006 Mr Iqbal produced the immediate purchase and sales paperwork for each Crestar deal and a copy of Crestar's FCIB statements. However, he failed to provide any records showing any due diligence carried out by him, whether VAT-related or simply commercial due diligence for the multi-million pound transactions. He provided no evidence of negotiation of the deals entered into by Crestar, whether in respect of price, or otherwise. The VAT Tribunal stated in its decision that it was not satisfied as to the reliability of Crestar's evidence and there was no acceptable evidence to show exports had in fact taken place.

Overview of Crestar's deals in the relevant period

397. In the period 15 February to 13 March 2006:

(a) Crestar acted as an acquirer in 36 deals (between 15 February 2006 and 10 March 2006) with a value of £25,032,579.55. The supplier for all but one of the transactions was Komidex. The other supplier was Taurus SA (Tradestar's customer in deals 12 – 19). Crestar sold to Tau Aspects Ltd on 27 occasions and the remaining nine sales were made to Bullfinch. 31 of the transactions took place in February 2006 (the month in which Tradestar's deals 2-10 took place). With the exception of one deal (not in a chain involving Tradestar) in which mobile phones were traded, all of them were for computer processor chips;

(b) In each case in which the goods were sold to Bullfinch that company in turn sold to Tradestar and Tradestar then sold on to Mezinarondni. Each sale was for the full amount bought by Crestar. Each of these steps in the chains took place on the same day (and indeed, as we address later, within very short periods;

(c) Crestar also acted as a broker for 20 deals between 1 March 2006 and 13 March 2006. The invoice value of these deals was £25,812,691.25 and in each case its customer was Komidex in Poland. However, Crestar did not produce evidence to show that its goods had in fact been dispatched to a customer in the EC and as a result Crestar's zero-rating of those sales was denied. This resulted in Crestar's output tax, which had previously broadly matched its input tax on the acquirer deals, save for a small net payment due of nearly £92,000, increase to a liability to HMRC of nearly £3 million. Crestar lost its appeal of the increase in its liability resulting from a denial of zero-rating. It never paid its VAT liability.

398. Consequently, Tradestar's deals which are in dispute in this appeal fit into one part of the overall activities of Crestar in February and March 2006 which in contra trading parlance is the "clean" chain.

Details of the Crestar acquirer deals involving Tradestar

Deal 2

399. On 24 February 2006 Crestar acquired 11,970 CPU units at a unit price of £83.50 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £84.05, plus VAT. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £84.24, plus VAT. On the same day Tradestar sold the consignment to Czech customer Mezinarondni at a unit price of £88.40.

400. The transaction chain was therefore Komidex to Crestar Global to Bullfinch to Tradestar to Mezinarodni. This is the case for all of the deals 2-10 as explained further below.

401. Officer Reynolds' evidence shows for deal 2:

(1) a Tradestar purchase order dated 24 February 2006 shows the purchase of 11,970 CPUs (Intel SL729) at a unit price of £84.24 a total price of £1,007,874 plus standard rated VAT of £176,377.95. This corresponds to a Bullfinch invoice dated 24 February 2006. It is this input tax which is denied by HMRC.

(2) a Tradestar invoice dated 24 February 2006 shows the sale to Mezinarodni of 11,970 CPUs (Intel SL729) at a unit price of £88.40 total price of £1,058,148.00 VAT. This corresponds to a purchase order from Mezinarodni bearing the same date;

(3) a freight company inspection report confirms inspection of the outside of boxes for the amount and description in the invoices on 1 March 2006 and lists the box numbers;

(4) correspondence shows Tradestar directing that freight company on 1 March 2006 to forward the goods to a Dutch freight company and on 6 March 2006 directing the Dutch company to release the goods to Mezinarodni;

(5) bank transfer information shows that Tradestar paid Bullfinch on 6 March 2006 in four separate payments and Tradestar was itself paid on the same date in four separate payments from a source account, the numbers of which can be seen from the deal 1 documentation as belonging to Aymaksan.

402. Corresponding evidence is provided by Officer Reynolds for deals 3-10.

Deal 3

403. On 24 February 2006 Crestar acquired 10,395 CPU units at a unit price of £84.20 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £84.70, plus VAT. On the same day Bullfinch sold the consignment to Appellant at a unit price of £84.90, plus VAT. On the same day Tradestar sold the consignment to Czech customer Mezinarondni at a unit price of £89.25.

Deal 4

404. On 27 February 2006 Crestar acquired 12,600 CPU units at a unit price of £83.30 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £83.85 plus VAT. On the same day Bullfinch sold the consignment to Appellant at a unit price of £84.05, plus VAT. On the same day Tradestar sold the consignment to Mezinarodni at a unit price of £88.25.

Deal 5

405. On 27 February 2006 Crestar acquired 10,080 CPU units at a unit price of £84.30 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £84.80, plus VAT. On the same day Bullfinch sold the consignment to Appellant at a unit price of £85.05, plus VAT. On the same day Tradestar sold the consignment to Mezinarodni at a unit price of £89.25

Deal 6

406. On 27 February 2006 Crestar acquired 11,340 CPU units at a unit price of £83.75 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £84.30, plus VAT. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £84.55, plus VAT. On the same day Appellant sold the consignment to Mezinarodni at a unit price of £89.25.

Deal 7

407. On 28 February 2006 Crestar acquired 11,340 CPU units at a unit price of £72.90 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £73.40, plus VAT. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £73.60, plus VAT. On the same day Tradestar sold the consignment to Mezinarodni at a unit price of £75.85.

Deal 8

408. On 28 February 2006 Crestar acquired 9,450 CPU units at a unit price of £72.90 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £73.55, plus VAT. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £73.70, plus VAT. On the same day Tradestar sold the consignment to Mezinarodni at a unit price of £75.95.

Deal 9

409. On 28 February 2006 Crestar acquired 10,710 CPU units at a unit price of £73.10 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £73.30, plus VAT. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £73.50, plus VAT. On the same day Tradestar sold the consignment to Mezinarondni at a unit price of £75.90.

Deal 10

410. On 28 February 2006 Crestar acquired 11,970 CPU units at a unit price of £72.80 from Komidex. On the same day Crestar sold the consignment to Bullfinch at a unit price of £73.10, plus VAT of £153,126.23. On the same day Bullfinch sold the consignment to Tradestar at a unit price of £73.35, plus VAT of £153,650.00. On the same day Tradestar sold the consignment to Mezinarondni at a unit price of £75.85.

Tradestar's comments

411. Mr Burgess has submitted that account should be taken of the fact that HMRC's witnesses have said that Bullfinch paid Crestar for the goods and the VAT due thereon and that Crestar's output VAT was declared in its VAT return. It is intrinsic in contra trading that there is a "clean" chain in which the VAT is at least declared correctly. It is not disputed that in these chains Crestar sold to a UK company Bullfinch and issued invoices charging VAT on the sales to it. The first question is whether this "clean" chain is connected to a "dirty" chain thereby producing VAT losses. The evidence of the transaction chains in which Tradestar's purchases and sales sat is not the whole picture.

Crestar's other alleged acquirer deals

412. Officer Brand has set out equivalent evidence for the other alleged acquirer deals which we rely on to find that those deals took place as described.

The alleged dirty chain and PC Mac

413. The Witness Statement of Officer Morrison was taken as read. He has provided evidence about PC Mac which is alleged by HMRC to be the fraudulently defaulting trader in respect of Crestar's broker deals. He has undertaken a similar process to the other officers referred to by us in working through invoices, freight forwarding information etc. which have been attached as exhibits. He has noted where original documents have not been provided and has explained that he has relied upon spreadsheets contained on HMRC's electronic files. We are satisfied that in the context of the overall evidence, and the time which has expired since the transactions, the exhibits in the spreadsheets are sufficient basis for the findings we make below.

414. The substance of his evidence has not been challenged by Tradestar and we make the following findings relying upon it.

PC Mac

415. PC Mac was incorporated on 17 April 2000 and applied for VAT registration on 15 May 2000 stating that its main business activity was "computer sale and repair (retail), make to specification", although this was changed on 3 February 2003 to "other computer related activities". No indication was given that it intended to buy or sell goods that were either exempt or wholly or mainly zero-rated. Its estimated turnover was said to be £35,000. Its initial directors resigned in 2005 and were replaced by Mr Shajid from October 2005.

416. On 27 March 2006 PC Mac submitted a VAT return for the 02/06 period requesting a repayment of £116,000 after previous VAT returns had given rise to small repayments or payments of less than £1000.

417. PC Mac was visited by HMRC who identified concerns on reviewing its records. The company had been buying CPUs from Komidex and PPUH Kamar in Poland and selling those items to Bluestar Trading UK Ltd. Nine transactions had resulted in £1,897,909.25 of output tax liability.

418. At the same time PC Mac was claiming to have made purchases from a UK company called Parkacre Contractors Ltd ("Parkacre") of phone cards and to have on-sold them to an Italian company called Umbria Equazione ("Umbria"). Nine such deals were said to have taken place. These transactions had resulted in an input tax claim of £1,897,696 which was only £213 less than the purportedly unrelated output tax liability.

419. Officer Morrison has provided evidence from a visit report documenting the visit to PC Mac on 28 March 2006 describing a witness statement from the managing director of the company manufacturing the phone cards. Such evidence described in the visit report is clearly hearsay, but there is no rule in this tribunal preventing reliance upon hearsay evidence. However, we have given that evidence less weight as the witness statement has not been provided. That does not mean we give the description set out in the visit report no weight and we take into account the resulting description that:

(1) less than 10,000 of the cards have been printed by that company yet 361,466 were purportedly bought and sold by PC Mac;

(2) the manufacturer of the phone cards had a turnover for 2006 of only £582,000 yet PC Mac purportedly bought £10.8 million of cards;

(3) the manufacturer of the phone cards never made any sales to Parkacre;

420. In addition, Mr Morrison has provided evidence in the form of a report from the Italian authorities regarding Umbria. The report is not translated. However, this evidence has been provided to Tradestar for some while and no objection has been raised to the summary contained within the visit report attached to Mr Morrison's witness statement. We have concluded that we should give this evidence less weight as a translation of the Italian report has not been provided, but as with the hearsay evidence described above that does not mean no weight. We therefore take into account the summary of the Italian authority's report as follows:

(1) Umbria was described by the Italian tax authorities as a company trading in wholesale and retail of riding items. The Italian tax authorities said that Umbria did not purchase phone cards, the contact details provided by PC-Mac did not exist and the headed paper and logos used by Umbria were completely different to those used by the company known to the Italian tax authorities.

421. A payment instruction exhibited to Mr Morrison's statement shows that PC Mac instructed Umbria to make payment for its invoices to an account in Dubai in the name of "MU Consultants". A further payment instruction from Parkacre to PC Mac also directs PC Mac to make payment into the Dubai bank account in the name of MU Consultants. Emails attached to Mr Morrison's statement show that Middlesex University has confirmed that the bank account details belonged to one of its subsidiaries called MU Consultatnts. The visit report shows that Mr Shajid did not question the direction to make payments to the account's name and Komidex did not query the identity of the recipient of the £1.8 million described below.

422. No export documentation was ever produced for the claimed export of the phone cards.

423. PC Mac had paid a VAT inclusive amount to Parkacre and was issuing zero-rated invoices for its sales to Umbria. Further payment instructions from PC Mac to Komidex

dated 8 February 2006 asked for payment of the exact amount of the shortfall for each of the first eight out of the total nine deals to be made to the MU Consultants' bank account. Yet Komidex is not said by PC Mac to have been a participant in any of the deals. The visit report shows that Mr Shajid described the VAT as his "commission".

424. Parkacre was VAT registered from 14 November 2005 to buy and sell number-plates. It estimated sales of £90,000 for that year. However, a visit to its principal place of business on 30 January 2006 found it to be derelict and its contact number was disconnected. The company was deregistered on that day. No VAT returns have been submitted by the company. This evidence in itself raises the obvious question of how Parkacre could have entered into the transactions with PC Mac as described by Mr Shajid at a time when the company was apparently no longer operating and after it had been deregistered.

425. Added to this is the evidence (albeit in some respects with reduced weight) regarding Umbria and the phone cards, as well as the lack of export documentation which would have been required for zero-rating by PC Mac.

426. HMRC concluded that PC Mac could not have made the purchases of phone cards and the invoices were invalid so that the credits of input tax claimed by PC Mac were denied. This led to the 02/06 VAT return being amended from a repayment of just over £116,000 to a payment of £1,781,678.50. PC Mac appealed the decision, but the appeal was struck out on 24 October 2011 as the company had been dissolved on 17 August 2010.

427. On 10 April 2006 PC Mac was sent a letter shortening its VAT period due to end on 31 May 2006 to 27 March 2006. A VAT return was submitted by the company on 28 March 2006 with payment of £432.08. However, HMRC identified a number of deals that were not included in that VAT return and issued an assessment for more than £2.5 million. This assessment was not appealed.

428. On 15 February 2010 HMRC wrote off a debt of £4,783,224.80 as uncollectible.

429. Without the Parkacre/Umbria transactions PC Mac was left with a very large output VAT liability of nearly £1.9 million in relation to the Komidex/PPUH transactions. They were, in essence, a set of their own in which the input and output VAT position almost exactly matched. That is not in itself unlawful. A taxpayer can legitimately seek to match its inputs and outputs for VAT purposes. However, the context of the companies' activities is relevant in considering the position overall.

430. The "dirty chain" as far as Crestar was concerned came about when PC Mac also entered into a further 20 deals between 1 March 2006 and 13 March 2006 in which it acquired goods from PPUH Kumar which were then sold to Bluestar who in turn sold to Crestar who in turn sold to Komidex. The total VAT charged by PC Mac in those deals was nearly £4.5 million, but this was not declared in its VAT return.

431. We therefore conclude as result of all our findings that:

(1) PC Mac is a defaulting trader responsible for VAT losses of more than £4.5million. It has not paid those VAT liabilities;

(2) the numerous elements described above of its purported phone card deals with Parkacre and Umbria show that PC Mac was actively engaged in VAT fraud from February 2006;

(3) specifically a tax loss of more than £2.5 million arose in relation to deal chains in which Crestar participated.

432. We are satisfied that the loss in the Crestar chain was fraudulent because:

(1) PC Mac's turnover was far in excess of the estimate and suddenly increased in the VAT period 02/06 with sales of £25 million from apparently nowhere. That increase was attributable to transactions which gave rise to VAT losses;

(2) The VAT due on the Crestar chain transactions was not declared;

(3) the VAT assessments resulting from those transactions were not paid or challenged;

(4) given the overlap with Komidex in particular, a company seen repeatedly at the heart of the VAT loss transactions identified in this case, the entry into the first set of transactions by PC Mac was closely related to its entry into the second set involving Crestar. This is emphasised by the otherwise inexplicable payment instruction for £1.8 million to be paid by Komidex to PC-Mac in relation to the first set of transactions in which Komidex was supposed to be nothing more than a supplier to PC Mac.

Conclusions about the alleged contra-trading

433. Cutting to the core of these transactions, we find that:

(1) Crestar entered into the 20 transactions in identical chains in which PC Mac was a defaulting trader and later a missing trader;

(2) in each of those 20 chains Crestar sold to Komidex. Those sales were purportedly zero-rated sales of goods purchased by Crestar from a UK company thereby generating an input tax reclaim in the sum of £4,491,391.49;

(3) those 20 chains were in the same period, 1 February 2006 – 14 March 2006 in which Crestar acquired goods from Komidex on 35 occasions;

(4) the 35 acquisitions from Komidex together with one acquisition from Taurus gave rise to output tax liability for Crestar of £4,400,082.06 when the goods were sold on by it to its UK customers;

(5) the result of the two sets of chains was that Crestar claimed repayment of just £91,720.20, which was an almost perfect match of its input and output VAT.

434. For the sake of brevity, we do not set out the details of each of the 20 "broker transactions in this decision, but we are satisfied that Officer Brand's Witness Statement and exhibits thereto combined with Officer Morrison's Witness Statement and exhibits thereto have identified each step in those transactions. Notably:

(1) As in the case of Crestar's "acquirer" deals set out above, the transactions in each chain were back to back on the same days;

(2) In each case each transaction in the chain was for the entire consignment;

(3) Each transaction chain involved the same participants from start to end;

(4) On 1 March 2006 there were three sets of transactions each of which involved the same type of CPUs, Intel P4 SL 729;

(5) that same type of CPUs was the subject of two sets of transactions on 2 March 2006;

(6) one further deal chain involving that type of CPUs took place on 8 March 2006 alongside a deal chain involving mobile phones;

(7) on 9 March 2006 there were two deal chains involving the same type of CPUs and one mobile phone chain;

(8) on 10 March 2006 there were four deal chains involving the same type of CPUs and one mobile phone chain;

(9) on 13 March 2006 there were five deal chains involving the same type of CPUs

(10) therefore over the course of only six days out of a two-week period 17 deal chains involving the same type of CPUs took place involving identical participants, all transacted back to back on the same day and all of them for the entire consignment purchased initially in the chain by PC Mac from PPUH.

435. We agree with HMRC's submission that there are numerous reasons why on the balance of probabilities, the acquirer and broker transactions were not entered into by Crestar by mere coincidence given the near matching of the input and output VAT position for Crestar, as well as our findings regarding PC Mac, the transactions involving that company and Komidex's repeated role in the transactions.

436. Since the evidence produced by Officer Morrison the role of Komidex has been somewhat altered by the fact that Officer Birchfield has traced the money flows beyond Komidex to Metalix. However, that does not alter the conclusions we have reached above about the generation of fraudulent tax losses and the defaulting characteristics of both PC Mac and Crestar.

437. These conclusions are set in the context of the following:

(1) Crestar's VAT registration details provided less than six months before these transactions in which it was said that it was not expected to engage in any zero rated transactions, that its turnover would be less than £200,000 and in which it omitted to indicate that it would be trading in computer chips and mobile phones. This is in sharp contrast to a turnover of more than £50 million in the period February – March 2006 including purported EU sales of more than £25 million;

(2) Crestar itself failed to provide evidence to justify zero-rating and became a defaulting trader. The VAT Tribunal was not satisfied as to the credibility of Crestar's evidence and concluded there was no acceptable evidence to show exports. The Tribunal's decision was made on 18 July 2007 and Crestar was placed into liquidation on 27 September 2007;

(3) Crestar provided no records of due diligence carried out by it prior to suddenly entering into millions of pounds worth of transactions with obvious potential risks in a commercial context regarding the creditworthiness of its customers in particular;

(4) Crestar provided no explanation for how its business suddenly exploded in value in the way we have described;

(5) Our findings regarding the speed with which funds moved between participants in the chains and the circularity of the money flows which we set out later.

438. We therefore conclude that HMRC has shown that:

(1) given the evidence overall of the deal chains involving Crestar and the evidence of the money loops we address later, that Crestar was party to a conspiracy involving the defaulter, PC-Mac, in their transaction chains;

(2) Crestar operated as a contra – trader;

(3) Tradestar's deals 2-10 can be traced back via Crestar and thereby connected to fraudulent tax losses.

Conclusions about VAT losses connected to the disputed deals

439. We conclude that HMRC has shown that:

(1) VAT losses arose in the transaction chains either directly or via contra trading for all of the disputed deals;

(2) those losses resulted from fraudulent evasion of VAT by defaulting traders;

(3) in the case of the alleged contra trading deals, Crestar entered into the transactions in the dirty chains with PC-Mac knowing that those chains would generate VAT liabilities for PC-Mac which would not be paid;

(4) Tradestar's transactions which are the subject of this appeal were connected with VAT evasion in each case.

The knowledge of Tradestar

Mr Burgess' background

440. As explained above, the career background described by Mr Burgess in his Witness Statements does not correspond to that shown by other evidence. As a result we have given less weight to Mr Burgess's Witness Statement and make the following findings based on the other evidence.

441. Based on the CV provided to FCIB, we find that Mr Burgess worked for Welcome Finance from June 2004 until July 2005 as an account manager selling finance and managing debt collection activities; and Ringway Highway Services from April 2003 until May 2004, monitoring and maintaining stock levels; sourcing materials construction crews and managing depots for vehicles and construction plant after working for Somap Group for 2 ½ years from September 2000 until March 2003 as its office manager coordinating its banking and legal requirements, dealing with its stationery needs, organising travel and entertainment and providing IT support.

442. Prior to that he worked for a company called PCS Group involved in marketing and sales for company specialising in selling manuals that taught people how to self-build computers as well as purchasing physical stock and computer components; and Inweb, managing its ADSL launch and increasing the company's brand awareness/profile within the internet sector.

443. He therefore had some knowledge of the IT industry, albeit dating from some years before starting Tradestar.

444. He has referred in his Witness Statements to reading IT industry publications. He did so with some earlier knowledge of the sector. He should therefore have been aware of the existence of MTIC fraud in the sector even without being told about it by HMRC.

Tradestar's dealings with HMRC and general awareness of MTIC fraud

445. On 1 September 2005 HMRC wrote to Tradestar and notified it of the prevalence of MTIC fraud in the market. It was advised that it should undertake Redhill checks on its suppliers and customers. A copy of Public Notice 726 was enclosed for consideration by the Appellant. Mr Burgess disputes receiving the letter, but given our conclusions regarding the evidence in this case we find on balance the evidence of HMRC to be more reliable and conclude that the letter was sent to him.

446. In any event, however, Mr Burgess accepts that Notice 726 was received by him and given the fact that the evidence shows that the notice was included with the letter we are satisfied that both the letter and the notices were received by Mr Burgess.

447. At the time of the disputed deals, HMRC offered taxpayers the ability to validate the VAT status of their customers and suppliers. In essence, a taxpayer wishing to use this service would be asked to send HMRC's office in Redhill, a copy of a letter of introduction relating to the counterparty, a copy of the counterparty's VAT certificate and, if applicable, a copy of the counterparty's certificate of incorporation. HMRC officers would compare the information received with that held on HMRC's systems. If the information matched, HMRC would send the taxpayer a letter confirming this. However, HMRC were at pains to stress that they were simply confirming that the VAT registration had been validated and were not giving any wider "authorisation" to trade with a particular counterparty. HMRC typically did this by including the following paragraph in letters that they sent to taxpayers when validating VAT information:

> "This confirmation is not to be regarded as an authorisation by this Department for you to enter into commercial transactions with this trader and any input tax claims may be subject to sub-sequent verification."

448. However, Mr Burgess did not start to carry out any checks with Redhill until 27 April 2006 despite the advice he had been given. We set out later what Redhill checks he did. They were very limited and generally after the deals in question in this appeal were done.

449. On 30 September 2005 HMRC visited Tradestar's premises. The visit was required because HMRC had received information relating to a transaction involving 5000 units with a value in excess of £1 million of new software involving a company called Micropoint (UK) Limited ("Micropoint), who had purchased from Tradestar, who in turn had purchased from Bullfinch.

450. Mr Burgess explained that Tradestar had been set up to deal with software and applications. He said that Tradestar had been appointed by Bullfinch as a UK distributor of an accounting package developed and owned by Bullfinch called "Web Accountant". He also explained that he had met "Sanjay" from Bullfinch having received a cold call when he had been working at a shipping company. He purchased several small items of hardware from him before being approached to take on board a multi-million pound project dealing with software produced by Bullfinch. He did not really question this further as he already knew Sanjay. He had a sample of the software which he had run but otherwise had failed to carry out any checks into the product or the statement that Bullfinch owned trademarks or copyright.

451. In fact no trademarks or copyright were registered to Bullfinch.

452. Mr Burgess was warned by HMRC's officers that Tradestar may be jointly and severally liable if Bullfinch failed to account for its output tax. He was also told that there were problems in this type of market. Complete records were requested to be provided by 3 October 2005.

453. On 10 October 2005 HMRC visited Tradestar's premises. Mr Burgess said that he had only received payment for 1000 units of the accounting software that he had sold to Micropoint. As he had not been able to pay Bullfinch for more than 1000 units he expected that the remainder would not be activated by Bullfinch. He had not insured the products because insurance was too costly. He explained that Tradestar had no bank finance and that he funded Tradestar out of his own finances.

454. When asked about due diligence Mr Burgess acknowledged that when he had visited Bullfinch's premises he had only found a serviced office building. HMRC took a sample of the software before leaving.

455. On 15 November 2005 HMRC hand delivered a letter at a visit conducted on the same day to Tradestar's place of business. Mr Burgess provided answers to the letter's questions during the visit. However, he was unable to demonstrate the Web Accountant software and said that this was because the office had no internet access. When it was noted by HMRC that the website for Web Accountant did not have contact details, Mr Burgess said that it was a technical website for customers who had activated their products. He said he was surprised by the level of sales, but as long as people were wanting to buy it that was all that he was concerned about and accountants he had spoken to were very pleased with the product.

456. Mr Burgess was also asked about some sales to Mobile Computer World. Those were sales of the Chinese version of Web Accountant. He explained that Tradestar owned the Chinese distribution rights and Bullfinch had put him into contact with Mobile Computer World. He was not concerned about whether stock was activated or not, as long as he was paid for the goods. Mr Burgess was again advised about the joint and several liability rules and the need to verify his supply chains.

457. On 16 November 2005 Mr Burgess wrote to HMRC. He explained that Bullfinch provided technical support to Tradestar's customers. He noted that there would be an additional security feature on the next shipment consisting of a 16 digit encrypted keycode which customers would have to enter to activate the software.

458. On 18 January 2006 HMRC again visited the Appellant's business to verify the return for 11/05 and to view a demonstration of Web Accountant. Mr Burgess said that he had been carrying out some checks because his customers had been receiving letters from HMRC, but it turned out that those checks only involved contacting the International Accounting Standards Board to speak to someone in their legal department about logos used on the packaging and website for Web Accountant.

459. At that meeting Mr Burgess also explained that Tradestar did not need to advertise as the distributors would come to it. The plan was only to deal with distributors and not end-users as a result of the problems that the end-users could have. HMRC were told that as cash flow was limited the office was closing. At the time Tradestar had no employees. Mr Burgess' father helped him in the business, but HMRC were told that he was not an employee and he was not a director.

460. A repayment of more than £200,000 was authorised by HMRC for the quarter ended 11/05. This was approved on the basis of credit notes which had been issued for returned goods by a UK customer of Tradestar.

461. On 16 February 2006 the Appellant's lawyers, Dass Solicitors, wrote to HMRC saying that Tradestar was being prevented from selling the Web Accountant software as a result of HMRC's "allegations and insinuations". It was said that it was understood that HMRC had obtained an independent report on the software, but this was not queried as HMRC would have needed to register with Bullfinch and obtain the 16 digit code to enable them to download upgrades and patches. Bullfinch said that this had not occurred.

462. In a letter dated 24 February 2006 HMRC confirmed that there was no independent report. On 15 March 2006 HMRC asked for the activation code to be provided. Mr Burgess replied and explained that in order to expedite the testing process he had contacted Bullfinch and had been given five activation codes for the five sample units taken by HMRC.

463. On 2 May 2006 HMRC wrote to Tradestar to inform it that Tau Aspects had had its VAT registration number cancelled and any input tax claimed in relation to transactions with that company may fail to be verified.

464. HMRC Officer Davidson asked for the box and lot numbers for the CPUs which had been bought and sold in the period 02/06. She was provided with the box numbers but has not been provided with the lot numbers.

465. On 10 May 2006 HMRC officers met with Mr Burgess again. He explained that he had purchased a further 10,000 units of the Chinese version of Web Accountant. Some had been sold to Mobile Computer World and 6000 Units had been sold to Aymaksan, based in Turkey. Aymaksan had approached Mr Burgess.

466. At the same meeting Mr Burgess said that he started to trade in CPUs because HMRC were not releasing his VAT repayment and because of the questions raised about Web Accountant. He had paid Bullfinch for Web Accountant and as the money had not been refunded it was used to fund the transactions in CPUs. Sales had been made to Mezinarodni, the details of which had been given to him by Aymaksan. A fax dated 17 February 2006 shows Mr Burgess agreeing with Aymaksan that as a result of the "complexity involved in shipping" CPUs Tradestar would deal directly with Aymaksan's customer, Mezinarodni, with payments being made by Aymaksan.

467. Around this time Mr Burgess confirmed that Tradestar was only dealing in CPUs and software. However, this was incorrect. By May 2006 it was also trading in iPods, MP3s and MP4s.

468. On 19 May 2006 HMRC wrote to Tradestar and identified a series of questions including questions about the fact that it appeared that Aymaksan was operating the FCIB bank account that Tradestar was using.

469. Further correspondence continued between HMRC and Tradestar in 2006 and 2007 prior to the decisions taken by HMRC to deny Tradestar its input tax reclaims.

Due diligence by Tradestar

470. We bear in mind the advice of Moses LJ in *Mobilx* that tribunals should not focus unduly on due diligence. Nonetheless, Tradestar's due diligence is part of the factual matrix which needs to be taken into account.

471. We identify the Redhill checks made by Tradestar. However, none were made contemporaneously with the disputed deals and no explanation for this mismatch has been provided by Tradestar.

Bullfinch (the supplier for all relevant deals in the period 02/06 and for one software deal in the period 05/06)

472. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: photographs of a residential property and of a Web Accountant stand at a trade fair; evidence of an FCIB account; a VAT certificate; a certificate of incorporation; a copy of Mr Pandya's British passport; abbreviated annual accounts to 31 August 2005; and a copy of a Web Accountant Software Distribution Agreement giving Tradestar a non-exclusive licence to sell/distribute the software in the UK.

473. In addition, Mr Burgess provided a copy of Europa VAT checks, but these were dated 4 May 2006 and 31 August 2006, sometime after Tradestar had started trading with Bullfinch and after the VAT period ended 02/06. Similarly, he provided credit reports on Bullfinch, but these are also sometime after the arrangements commenced, dated 1 September 2006 and 23 January 2007. The reports conclude that the trader was of "average risk" and confirmed that its registered office was the same as Mr Pandya's home address.

474. Tradestar did a Redhill check on Bulfinch on 1 September 2006, more than 6 months after it first started trading with it.

Mezinarodni (the customer in all nine CPU deals)

475. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: an undated letter of introduction from the director of Aymaksan; a VAT registration certificate; company incorporation information; and a Czech tax office certificate of registration.

476. Mr Burgess told HMRC in a visit that no credit checks were carried out into Mezinarodni because goods were not released until payment was received. Mezinarodni had no website, but Mr Burgess told HMRC he was not concerned provided the company paid for the goods.

477. Mr Burgess also supplied Europa VAT number checks, but these were dated 20 March 2007, 1 February 2007, 12 October 2006 and 4 May 2006. The first was therefore nearly a year after Tradestar had started conducting business with Mezinarodni. In addition, he supplied a Redhill check dated 13 October 2006, but similarly this was after the deals took place.

478. Mr Burgess had also sent a fax to HMRC on 12 October 2006 asking for verification of Mezinarodni. HMRC confirmed on 13 October 2006 that the VAT registration was valid, but commented that this was not to be regarded as an authorisation to enter into commercial transactions and that any input tax claims may be subject to subsequent verification. Again this post-dated the deals and is not due diligence performed in relation to them.

Aymaksan (the customer in deal 5 in which Tradestar sold Web Accountant software)

479. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: a Google email from the freight forwarders confirming the goods had insurance and confirming payment had been made; a letter of introduction from a person stating to be the foreign trade manager for Aymaksan; an internet printout confirming Aymaksan's address; a Turkish Chamber of Commerce business report on Aymaksan noting that it employed 120 people and represented Olivetti, Tecnost and Proview in Turkey; a printout of an Aymaksan internet site with further company information; and a photocopy of a Aymaksan shareholder's passport.

480. Mr Burgess also provided an exchange of emails dated February 2007 with Olivetti confirming that Aymaksan was its distributor of office products since 1995, a "solid and efficient business" with no "irregularity in financial issues". However, this is clearly not evidence of due diligence undertaken before the relevant deals.

481. In a meeting with HMRC Mr Burgess said that the due diligence consisted of a copy of the homepage of the company from its website. Mr Burgess said that he was happy to deal with Aymaksan as they had dealt with one of his customers and because he did not ship the goods until he was paid. The fact that the goods were to be shipped to Bulgaria and not Turkey did not trouble him as long as he received payment. He later provided documents which showed that Aymaksan explained that it carried out its "import-export operations" through a subsidiary in a free zone in Bulgaria.

Taurus SA (the customer in Reynolds WS para 111

482. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: a Redhill check carried out on 21 July 2006 (so after the disputed deals with Taurus in May 2006); two Europa VAT checks dated 23 May 2006 and 1 September 2006; a bank consent form and company bank details form but no evidence that these were followed up by Tradestar seeking any trade references from the bank; and trade references from a freight forwarder, a French supplier and the company's accountant.

483. In addition, Mr Burgess provided an introduction letter dated 23 May 2007 with company details and documents such as a copy of the VAT certificate and a Dun & Bradstreet report dated 1 June 2006 stating there was insufficient information to offer a credit opinion and identifying a significant level of risk. While these documents clearly were not evidence of due diligence undertaken before the relevant deals which took place on 31 May 2006, Tradestar also took part in disputed deals with Taurus on 22 June 2006 and 9 August 2006. There is no evidence that Tradestar took any action in response to the warnings in the report.

Universal Traders Ltd (the supplier in deals12-18)

484. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: photographs of premises; an office bill confirming the principal place of business as serviced office accommodation; an undated introduction letter from Universal Traders Limited; a copy of their VAT certificate dated 1 August 2005; bank details showing on FCIB account; two Europa VAT validations dated 20 April 2006 and 1 September 2006; a form showing the details of two people to contact as trade references, but no evidence of any contact having been made; credit reports dated 20 April 2006 and 1 September 2006 concluding that the company is of above average risk; a form described as a supplier declaration signed by the director of the company confirming it has no grounds to suspect that the relevant VAT on the goods supplied to Tradestar has not been paid by the company suppliers and confirming the relevant VAT would be declared on all their sales to Tradestar; an uncompleted bank consent form for bank references; and details of two trade references but no evidence of those being followed up.

485. In addition, Mr Burgess provided a Redhill check dated 21 July 2006 which post-dated the disputed deals.

Linbar Ltd (the supplier in deal 19)

486. The exhibits to Officer Reynolds' Witness Statements show that the core elements of Tradestar's due diligence consisted of: photographs of a building; a letterhead with supplier details; a supplier declaration (as provided by Universal Traders Limited) completed by its director dated 24 July 2006 (so after the deal); an account form prepared by Tradestar and completed by the company's director identifying that it had four employees; a form showing names of trade references; a bank consent form for an FCIB account dated 24 July 2006, so after the deal and with no evidence this was followed up; a copy of its VAT certificate; headed paper with company details; an introduction letter dated 18 July 2006; and a credit report dated 21 July 2006 identifying its activity as "retail sale of clothing" as well as saying it should not be given credit of more than £5500 (whereas the deal was for £1.7 million).

487. One trade reference was followed up but not until after the deal. Two letters were sent to Mr Burgess on 20 September 2006 by the same person stated to be director of the freight forwarder identified as the referee.

488. A Redhill check was conducted by Mr Burgess on 21 July 20016. The result was "no" on the basis that HMRC had no documents for the company. No attention was paid to that result.

489. In addition, Tradestar obtained Europa VAT confirmation on 24 August 2006.

MVS Digital Ltd

490. MVS Digital Ltd was a customer in buffer transactions addressed in Annex 3. The due diligence consisted of a digital certificate of registration, a copy of Companies House certificate, a Europa VAT number check and bank details. The credit check showed a credit rating of "not good", but Mr Burgess told HMRC that he had been provided with accounts by

the company and details of it having agreements with Sony, although he did not have copies of the agreements or the accounts.

491. A Redhill check was conducted by Mr Burgess on 27 April 2006.

Conclusions about due diligence

492. We conclude that the due diligence conducted by Tradestar was at the most basic of levels at best. Much of the due diligence was formulaic (incorporation details, VAT registration details, names of directors etc.). Many of the checks were carried out after the relevant deals and therefore did not constitute due diligence for the deals. It could have provided no assistance in Tradestar's decision whether to deal with the parties concerned. Indeed a negative Redhill check for Linbar had no effect. Credit reports which identified risks were not followed up and even when it was clear that one of the companies (Linbar) did not even have a business activity in computing no further steps were taken.

493. Mr Burgess told HMRC that all that mattered was that Tradestar was paid. This is consistent with the minimal due diligence. In contrast, his comment in a Witness Statement that he took precautions because of his knowledge of problems in the IT and mobile phones sectors is not supported by the evidence of due diligence.

Tradestar's turnover

494. Tradestar estimated its annual turnover to be £1 million at the point of VAT registration. This was broadly correct for its first VAT period (08/05) in which its turnover was approximately £1.3 million. However, the turnover in the next two VAT periods was nearly £9 million and £7 million before becoming £52 million in the two subsequent VAT periods. Within the first year of trading Tradestar achieved a sales turnover in the sum of £74,389,843.00.

Common features in the 19 disputed deals

495. Every deal chain had all purchases and sales within it taking place on the same day.

496. All of the non-software deals perfectly matched sales and purchases through the chains.

497. All of the payments were invoiced and made in sterling including by Aymaksan, Mezinarodni and Taurus. (We address the use of sterling beyond the invoice chains later when we address money flows.)

498. All of the participants used FCIB accounts until some payments made by Tradestar to Linbar in relation to deal 19 in October 2006 which were made from another account. FCIB had been closed the previous month and was no longer available for Tradestar to use.

499. Every non-software deal in 05/06 commenced with 3D Animations Limited, followed by the same four traders in the same positions within the deal chain. Those companies each make tiny mark-ups and those mark-ups are remarkably consistent in pence terms regardless of the initial purchase cost at the start of the chain. Repeatedly the same company charged a 10p or 20p mark-up on its sales in the chains, while Tradestar charged an extraordinarily high mark-up in comparison (addressed further later).

Repeated sales of the same CPUs

500. Officer Dean has provided detailed evidence about the tracing of CPUs. He was not required by Tradestar to attend the hearing and his evidence was therefore taken as read. His evidence shows that box numbers are treated as being unique to each individual box. The manufacturer (in this case Intel) fixes labels to the exterior of each box it manufactures which displays an eight digit alphanumeric sequence of letters and numbers. Officer Reynolds has prepared spreadsheets identifying the box numbers for CPUs sold by Tradestar.

501. Officer Reynolds has provided evidence showing that 154 of the CPU box numbers provided by Tradestar were the same box numbers provided by other traders in other transaction chains. He has provided examples where CPUs sold by Tradestar were traded by six other traders and examples where CPUs were traded by another company in a separate chain before and after they were sold by Tradestar. This is relevant because the intended end-users of the CPUs are computer manufacturers. It would therefore be expected that a deal chain would ultimately end with a sale to one of those manufacturers and the box of CPUs would be taken out of circulation. Instead, the boxes appear to be recirculated through transaction chain after transaction chain.

502. For example, one box (which in fact was one of the ones sold to Mezinarodni in the disputed deals) was sold by Tradestar to Mezinarodni on 27 February 2006, by LTL Communications to Giga Asia Pte Ltd on 14 March 2006, by Enta Technologies Ltd to ICC Handles GmbH on 4 April 2006, by Chadwick Associates Ltd to Compagnie Internationale De Paris on 21 April 2006, by PGT (UK) Ltd to Incoparts BV on 28 April 2006 and by PGT (UK) Ltd to Tradius GmbH.

503. Those repeated transactions take place quickly. Notably each sale is by a UK company to an EU one.

504. On occasions one box would be sold by Tradestar itself on more than one occasion. For example one box was dispatched by Tradestar on 27 February 2006 and the same box was then apparently sold by Tradestar on 28 April 2006 to Mavisat.

505. We recognise that goods could be returned and then be resold. However, Tradestar has not responded to this evidence to show that happened despite the ease with which it should have been possible to identify documents such as credit notes and freight company instructions.

506. The spreadsheet provided by Officer Reynolds shows that his happened on many occasions over the course of the period from December 05 to December 06. The multiple trades of a box took place within a few months on each occasion.

507. Mr Burgess sought to have evidence admitted showing the recording of box numbers, but this only related to a time after the disputed deals. In his Witness Statements he says that he was only concerned that goods existed and therefore it was sufficient to have this confirmed by the freight forwarder. There was no recognition of the relevance of checking whether goods were re-circulating.

Tradestar's business more widely

508. HMRC has conducted a wider exercise verifying all of the transaction chains involving Tradestar.

509. In submissions HMRC say that 101 other deals transacted by Tradestar in the relevant periods, but which have not been the subject of this appeal are "buffer deals" which can be traced back to fraudulent defaults.

510. We have concluded that the evidence shows that all of the deals are traced back to fraudulent defaulting traders.

511. We heard evidence from Officer Reynolds, who had produced the deal sheets tracing all of the alleged buffer deals, as well as the evidence of the HMRC officers responsible for Vision Soft and Computec. Mr Burgess did not attend for their evidence. As explained earlier, the evidence of Officer Stock (Tau Aspects Ltd), Officer Patterson (Zenith Sports and Goodluck Enterprises), Officer Lam (West 1 Facilities) and Officer Lewis (Heathrow Business Solutions) was taken as read.

512. We have given full weight to all of that evidence which is unchallenged (save in respect of the general fabrication allegations made by Mr Burgess which we have dismissed and a few specific points addressed in the context of the companies to which they relate).

513. In each case the evidence clearly proves that the defaulting trader in question had fraudulently evaded VAT. We set out the core findings which lead to this conclusion in Appendix 3. In short, we find features in the activities of each defaulting trader which demonstrated that the losses were occasioned by fraud. The features included, amongst others, significant differences in the actual trades conducted from the information supplied in the VAT 1 registration, excessively high turnovers achieved in short periods of time, non-payment of assessments, non-declaration of VAT and failure to submit returns, disqualification of company directors, and disappearing without trace

514. We therefore find that HMRC suffered tax losses from the fraudulent evasion of VAT by Bullfinch, 3D Animations, Good Luck Employment Services, Zenith Sports, Computec, Tau Aspects Ltd, West 1 Facilities Management and Vision Soft.

515. We also find specifically that it has been shown that those losses included losses in buffer chains in which Tradestar participated in relation to all of those companies as set out in Appendix 3.

516. However, even though Tradestar has not challenged the evidence regarding the buffer deals beyond the general challenges to evidence we addressed earlier, we have considered it incumbent on us to scrutinise the evidence to determine the extent to which the buffer deals are shown to be connected to fraudulent VAT losses.

517. We have concluded that the following 82 (out of the 101 deals in the relevant periods) have been shown to be buffer deals not only traced back to fraudulent defaulting traders, but also in respect of which fraudulent tax losses have been specifically identified:

(1) 1 wholesale supply of CPUs to UK companies in period 05/06 has been traced back to the defaulting trader Bullfinch;

(2) 26 wholesale supplies of CPUs to UK companies in period 05/06 and 08/06 by Tradestar have been traced back to the defaulting trader 3D Animations Ltd;

(3) 3 wholesale supplies of CPUs to UK companies in period 05/06 by Tradestar have been traced back to the defaulting trader Goodluck Employment Services Limited;

(4) 15 wholesale supplies of CPUs to UK companies in periods 05/06 and 08/06 by Tradestar have been traced back to the defaulting trader Zenith Sports (UK) Ltd;

(5) 7 wholesale supplies of CPUs to UK companies in period 05/06 by Tradestar have been traced back to the defaulting trader Computec Solutions Ltd;

(6) 8 wholesale supplies of CPUs to UK companies in period 05/06 by Tradestar have been traced back to the contra trader, Tau Aspects Limited. Tau Aspects Limited's broker deals have themselves been traced back to defaulting trader, Bullfinch Systems Limited;

(7) 4 wholesale supplies of CPUs to UK companies in period 08/06 by Tradestar have been traced back to defaulting trader West 1 Facilities Management Ltd;

(8) 15 wholesale supplies of CPUs to UK companies in period 08/06 by Tradestar have been traced back to defaulting trader Vision Soft UK Ltd; and

(9) 3 wholesale supplies of CPUs in period 08/06 by Tradestar have been traced back to the defaulting trader Heathrow Business Solutions.

518. As explained at Appendix 3 these deals have been traced back to a tax loss either directly or via a contra trader.

519. At times in the submissions of Mr Burgess he has queried and challenged reference to evidence of chains in which Tradestar is said to have been a "buffer", suggesting that such references indicate that Tradestar was not directly connected to the transaction chain, or that if contra trading was occurring, it was impossible for Tradestar to respond. The reference to Tradestar being a buffer in chains does not mean Tradestar was not directly connected to the chain. It simply means that Tradestar was in the midst of a chain and was neither the defaulter nor the "broker". As explained at the start of this decision, buffers will often be seen in transaction chains as a way of making the chain more difficult to trace. The relevance of the evidence about the alleged buffer transactions is that HMRC claim that it is a further element to be taken into account in considering the circumstances of Tradestar's trading at the time and the allegation of orchestration.

520. The result of our findings regarding not only the disputed deals but also the buffer transactions is that a very large number of deals in which Tradestar was involved in periods 05/06 and 08/06 has been traced back to a tax loss either directly or via a contra trader.

521. We therefore conclude that Tradestar's business has been shown to be repeatedly connected to fraudulent VAT defaults for most, if not all, of its dealings in 05/06 and 08/06.

Common features in the buffer deals

522. All of the participants in the chains used FCIB accounts.

523. The transactions were back to back.

524. Nearly every payment was made in sterling, despite the fact that a number of the traders involved were established in the EU and might, therefore, be expected to wish to receive payment in euros.

525. The payments were made at some speed as we address below.

Money flows

The disputed deals

526. The evidence from Officer Birchfield (including his adoption of Officer Mendes' evidence) is relied upon by us to make the following findings. We have not set out each step of the money flows for each transaction but describe them more generally and have identified some examples in more depth. However, we are satisfied that all of the money flows for the disputed deals have been shown to be circular, starting and ending with Metalix.

527. In addition to tracing the flows of the money for the chains in which Tradestar's transactions fell, Officer Mendes traced two Crestar deal chains at random. We have found those deal chains to be connected to Tradestar's deal chains through Crestar acting as contra trader. Both of the deal chains traced by Officer Mendes and updated by Officer Birchfield start and end with Metalix.

528. The evidence shows a highly complex web of money flows. It is not simply the case that the flows reflect the transaction chains set out earlier. There are multiple overlapping and intersecting loops of money each of which start and end with Metalix. For example, in the case of deal 1, there are four loops of money involved in connection with the fund flows for the transaction chain.

529. The analysis of the loops involved in deal 1 is an example of the speed of fund flows in nearly every deal: loop one took 42 minutes to circulate through six accounts including Tradestar; loop two took one hour and 47 minutes to circulate through four accounts

including Tradestar; loop three took 24 minutes to circulate through four accounts including Tradestar; and loop four takes 30 minutes to circulate through four accounts including Tradestar, in each case before being repaid to Metalix.

530. Therefore these loops of money all moved very quickly. The evidence shows that nearly every loop for every disputed deal circulated through multiple accounts. Despite this the loops were often completed in less than an hour and otherwise generally in one to two hours, with the exceptions out of all deals that in one of eight loops in the context of the payment flows for deals 14-17 took more than one day, and some of the loops for deals 18 and 19 took more than a day.

531. Tradestar consistently receives and pays out funds within a matter of a few minutes in all of the loops in which it was involved, including those identified as taking more than a day, with the exception of payments made in deal 18. At times the gap between receipt and payment is only three minutes, which, based on the evidence of Mr Mortlock, we find is the minimum period that would be shown as the system would only update every three minutes.

532. We set out below the core line of funds identified for each disputed deal and give some examples of connected loops and the speed of the flows.

Deals 1 and 11

533. The core line of the funds was:

> Metalix =>Aymaksan => Tradestar=>Bullfinch => Labdhi =>Metalix.

534. However, in the case of deal 1 funds were also routed via PPUH between Metalix and Aymaksan; and in a route from Bullfinch to Crestar to Komidex to Metalix.

535. In the case of deal 11, Metalix made the first payment in the first loop in the chain at 14:57. The funds involved 10 transfers before returning to Metalix at 15:57. Tradestar received and then paid monies in two tranches in the first loop three and six minutes apart.

536. A second loop went through the same companies starting at 14:57 and returning to Metalix at 15:27 after seven fund transfers. Tradestar received and paid monies at the same time in two tranches three minutes apart.

Deals 2-10

537. The core line of the funds moved:

> Metalix => PPUH => Aymaksan=> Tradestar => Bullfinch => Crestar => Komidex => Metalix.

538. To take the example of deal 6, the first movement of funds was made at 13:54. There were two loops of money involved; the first was used by Metalix to start the second. In the first loop there were eleven transfers (taking into account split payments) before the monies returned to Metalix at 14:33:

(1) From Metalix to PPUH at 13:54 and 14:42

(2) From PPUH to Aymaksan at 14:00 and 14:45

(3) From Aymaksan to Tradestar at 14:09 and 15:03

(4) From Tradestar to Bullfinch at 14:12 and 15:06

(5) From Bullfinch to Crestar at 14:21

(6) From Crestar to Komidex at 14:27

(7) From Komidex to Metalix at 14:33.

539. The second loop took 35 minutes to circulate through six accounts including Tradestar's before repayment to Metalix.

540. In the cases of deals 8, 9 and 10 Crestar also sold the same number of CPUs (32,130) to Komidex.

541. For that chain the funds moved Metalix=> Komidex => Crestar.

542. After receiving payment for the CPUs in the Appellant's chain, Crestar paid its supplier for the sale of the corresponding number of CPUs to Komidex. That supplier was Bluestar.

543. The funds then moved:

> Crestar=> Bluestar =>PC Mac IT Solutions =>Metalix

544. The fund movements involved 42 transfers between 15:51 and 19:12 on the same day.

Deal 12-17

545. The funds moved:

> Metalix => PPUH => Taurus => Tradestar => Universal Traders => Capital Distribution => Linbar => Globaltech => 3D Animations => Nordic Telecom =>Komidex =>Metalix

546. The payments made to 3D Animations were split between payments to its directors - Farouk Ahmed and Kalidas Gopal.

547. The fund flows were split into multiple payments over the course of several days: 3 and 5 June and 21 and 22 June 2006.

Deal 18

548. The core funds moved:

> Metalix => PPUH => Taurus => Tradestar => Universal Traders => Capital Distribution => Linbar => Globaltech => Vision Soft => Nordic Telecom => Komidex => Metalix.

549. There was also another loop which fed into that from Linbar => Neon (Leicester) => Zenith Sports => Southern Phonecare => Proxi Partners => Komidex => Metalix.

550. These loops were unusual in that the monies moved more slowly. Payment was made in two tranches, one on 22 June 2006 and one on 13 July 2006. Tradestar received payment at 3: 15 for the first and 14:06 for the second and did not pay the monies out until 18:36 on 13 July 2006 and 18:39 on 14 August 2006.

Deal 19

551. The core fund flows were:

> Metalix => Komidex =>Agrupacion =>Taurus => Tradestar => Universal Traders => Capital Distribution => Linbar => Global Tech => Mohammed Shafiq (through Visionsoft's account) => Nordic Telecom => Komidex => Metalix

552. There was also a loop which ran from Linbar through Zenith Sports, Imjan Sami (through the account of Southern Phonecare Limited) and Proxi Partners to Komidex.

553. As with deal 18 there are greater gaps between receipt and payment by and from Tradestar on occasions. One set of payments is received on 13 August 2006 and not paid out until 28 hours later on 14 August 2006. Another payment is received by Tradestar and paid out by it nearly 4 ½ hours later.

The buffer deals

554. Officer Reynolds has traced all 101 of Tradestar's deals in the periods 05/06 and 08/06 back to defaulting traders. He has also carried out an analysis following the money flows for 83 of Tradestar's deals. 79 are traced to show a loop starting and ending with Metalix and 4 with a loop starting and ending with Komidex.

555. The same findings are made as we have made for the money flows in the disputed deals in relation to the speed of movement of funds in those deals (including the repeated very quick, and at times almost instant, transfer of funds after receipt by Tradestar) and the complexity of the web of transactions.

Common IP addresses used in disputed and buffer deals

556. The IP address evidence was only available from 1 May 2006. It therefore does not directly affect the first 11 deals disputed in this appeal.

557. The fund flow analysis conducted by Officer Mendes identified the IP addresses used by money chain participants for the disputed deals after 1 May 2006. His analysis shows that Tradestar repeatedly used the same IP address as other participants in the fund loops.

558. Officer Birchfield also analysed the use of IP addresses in a sample of the buffer deals involving Tradestar after 1 May 2006. He sampled 34 loops out of the 62 loops which post-dated 1 May 2006. Tradestar only used a common IP address with other account holders in two of the first 11 loops, but then did so in all but one of the remaining loops.

559. We have relied upon his evidence to identify the use of common IP addresses by chain participants which we set out in Appendix 2.

560. In every chain sampled the same IP address has been used by more than one company in the chain, and a number of IP addresses appear more than once in multiple chains: 64.34.166.88 (five times, including by Tradestar), 66.139.77.214 (two times, including by Tradestar), 66.139.76.153 (six times five of which included Tradestar) 217.112.85.35 (four times) and 194.165.130.93 (four times including three by Tradestar)

561. In each case where Tradestar has used the same IP address as other participants that is with at least three others in the chain (except in one instance where only one other participant shared the same address).

562. The IP address was frequently shared by Tradestar with Metalix in Dominica and Komidex in Poland. In addition, Tradestar used the same IP address as varying chain participants including its suppliers Universal Traders, and Linbar, Capital Distribution, 3D Animation, Mavisat, Nordic Telecom, Vision Soft and Zenith Sports.

563. At times a common IP address used by Tradestar and other participants for one or more deals would then be used by participants other than Tradestar in one or more other deals, at which point Tradestar would share a different IP address with participants.

564. To take the example of deals 12-17, Tradestar and the other participants in the movements of funds each used the same IP addresses (66.139.76.153, 66.98.164.40 and 66.98.180.53) when the payments were authorised. In particular, Tradestar used the same IP address as Universal to whom it paid money and Taurus who paid it.

565. We note that the first two of those IP addresses are also addresses identified as being used by Tradestar and other participants in other transaction loops as detailed in Appendix 2 of this decision.

566. In relation to deal 18, Tradestar made payments to Universal Traders on 13 July and 14 August 2006. On 13 July other payments are made in the chain by Taurus, PPUH, Metalix,

Universal Traders and Capital Distribution. All apart from Taurus used the same IP address: 64.34.166.88. This is one of the IP addresses identified as being used by Tradestar and other participants in other loops and used at other times by further groups of participants excluding Tradestar (see Appendix 1).

567. Similarly, on 14 August 2006 Tradestar, Universal and Capital Distribution used the same IP address: 66.135.33.49 for the transfers made by them on that day for deal 19. That address has also been identified as having been used Tradestar and other participants in a separate transaction loop (see Appendix 2, loop 64)

568. We have relied on the expert evidence of Mr Letherby to identify the possible reasons for the common use of an IP address.

569. In a second report prepared for this case Mr Letherby considered the likelihood of allocation of the same IP addresses to disparate companies by virtue of different causes:

(1) two or more users, each with a device, in the same physical location using a single route. This has not been claimed to have happened by the Appellant;

(2) users connecting remotely to another shared computer and then using the same gateway connection to the Internet. However, arm's-length businesses would not normally transact in this way as it would potentially compromise business confidentiality and security.

(3) Tradestar has referred to the possibility of the traders using "hosting services". However, on the basis of Mr Letherby's evidence we find that a business or person has to make an active choice to use a hosting company, for which there would usually be a fee. Use of a hosting company does not happen by chance. Therefore if Tradestar was in fact using a hosting company it would have been incumbent upon it to have provided evidence of the use of such a service. In addition, Mr Letherby's evidence shows that given the number of shared hosting providers it is improbable that two companies in disparate geographic locations would end up using the shared hosting by coincidence. In addition, many hosting companies have a block of IP addresses, not just one and therefore the possibility that two companies might be allocated the same address even if using the same hosting company reduces further;

(4) proxy servers including virtual private networks or "VPNs". These have to be deliberately engaged. Some are free but usually there is a cost and the user of the proxy service has to make specific changes on their own computer to enable it. For each user to have randomly selected the same third-party proxy would require significant coincidence as there are many hundreds if not thousands of proxy servers available;

(5) connecting using a mobile data connection. Each user does not obtain an individual IP address. Instead the telephone company uses the mobile phone identification number within its records to identify which device requested information. At any given time many thousands of users can be connected to one of the servers and any request made by one of those users may appear as originating from the same IP address, but on the basis of Mr Letherby's evidence we find that it is unlikely that a company overseas would have a UK mobile data device as its regular Internet connection device because the availability of such UK devices in other countries is limited as devices tend to be regionally sold. In addition the connection cost of international data connection is comparatively high compared to the domestic rates for the same service. Therefore it would make no economic sense of an overseas user to use a UK data device overseas in preference to a locally acquired device;

(6) pure coincidence which was described by Mr Letherby as being a one in a million chance times one in a million chance order of magnitude. This is because IP addresses are typically issued for a given period of 3 to 5 days. A user can manually release the address and request a new IP address is assigned. In order that separate users in multiple locations could coincidentally achieve the same IP address consecutively each user would need to manually release the IP address and the next user would need coincidentally to be using the same Internet service provider and then be randomly allocated that recently released address. Other evidence which return to later shows that IP addresses have been shared across multiple sessions multiple times within minutes of each other.

570. Mr Letherby has also addressed the claim made by Tradestar that its transactions were handled via an intermediary Transworld Payment Systems/Solutions Ltd (TWPS") based in Bermuda which is an affiliated company of FCIB. He visited the offices of TWPS in London on 5 September 2006 and noted that it had a virtual private network connection to the Paris offices of TWPS. That access appeared to have been used for internal back-office communications. FCIB's Paris server was located in TWPS' Paris office, but Mr Letherby was clear that the server retrieved was that of FCIB and not TWPS.

571. When TWPS staff accessed the Bankmaster server via the VPN the entries are evident as having been separately accessed by them. If it was used as an automatic proxy for any kind of direct customer interaction a different, internally routable, IP address would have been shown rather than the Internet routable IP addresses which were seen. In order for TWPS to have acted as an intermediary on behalf of customers the customer would need to register TWPS as an authorised user of the account or share the customer's own online banking username and password as well as disclose the test key (the one time security key issued by FCIB in order to authenticate transactions). In doing so this would provide the third party with full access, risking theft and fraud. Tradestar has provided no evidence that it authorised TWPS in this way or provided the required banking details to that company, or, indeed, to any bank staff at FCIB.

572. This tribunal operates on the basis of what is shown on the balance of probabilities. Once the options requiring specific steps to be taken such as the use of a VPN or the use of a router from the same physical location are excluded because Tradestar has not provided any evidence in response to the assertions made by HMRC, we are left with the highly unlikely options noted above or one or more persons carrying out the transactions for multiple participants.

573. We therefore conclude that the use of a common IP address leads to the conclusion that many of the transactions were being conducted centrally using one computer.

574. HMRC recognise that it is not possible to say to whom a particular IP address was assigned at the relevant time. This is because to the extent that any relevant IP address was issued by UK Internet service provider, such records are typically only retained for a period of up to 6 months and occasionally up to 12 months. However, the Paris server was not available to HMRC for review until September 2009 which was some three years after the last transaction recorded in the server.

575. We agree that the identification of the actual person to whom a particular IP address was assigned is not the key issue. Instead, it is the fact of the commonality of IP address used by the different traders in the transaction chains.

576. Therefore either Mr Burgess made all payments for participants linked by a common IP address in a given chain, or he surrendered Tradestar's banking information to others in the

chain for payments to be made from Tradestar's account by them. We conclude having regard to the evidence overall that the latter is more likely.

Tradestar's methods of transacting: negotiations, pricing, insurance, contractual documents.

577. Mr Burgess was told by Bullfinch that he had to open a FCIB account so that money could be moved quickly. He did so without any apparent hesitation or queries. All of the participants in all of the disputed deals and the broker deals used FCIB accounts (although as noted in the case of 3D Animations this was via individuals' accounts).

578. Tradestar did not have any written contracts with any customers or suppliers except for the contract with Bullfinch in respect of the Web Accountant software. The documentation does not refer to any terms and conditions. Although Tradestar's invoices state that the title in the goods remains with Tradestar until it is paid in full there is no identification who takes the risk of transportation. Invoices for sales overseas do not state whether sales are "cif" or "fob". This question of risk has been identified by Officer Reynolds as an issue for Tradestar for some years in his Witness Statements and yet there is no adequate response by Tradestar.

579. Tradestar has not provided any evidence of negotiation of the terms of deals such as emails. Its mark-up on the 17 non-software deals transactions in which it engaged was remarkably constant:

(1) in 02/06 every broker deal in which Tradestar engaged concerning one type of CPU gave Tradestar a mark-up between 4.98% and 5.55%;

(2) in the same period every broker deal in which Tradestar engaged concerning another type of CPU gave Tradestar a mark-up between 3.05% and 3.40%.

580. In each case the mark-ups were applied irrespective of the value of transactions which ranged from just over £470,000 to more than £1 million. It bore no relationship to the unit price (see for example deals 5 and 6); and was far in excess of the mark-ups charged by previous participants in chains who were consistently charging 10p or 20p per unit compared to Tradestar's mark-up of between £6.50 and £13 on the straight line deals and between £2.25 and £4.75 in the contra deals. Tradestar has provided no evidence for the basis of the mark-ups or their negotiation.

581. Tradestar never made a loss in any of its deals including not only the disputed deals but the very large number of buffer deals. With the exception of the software deals, all of its purchases and sales were perfectly matched with no purchases being split between two or more customers and no customer having goods sourced from two or more suppliers.

582. The transactions in which Tradestar bought and sold CPUs and iPods always took place on the same day and frequently within minutes of each other (even though the money flows for deals 18 and 19 were not on the same day). We find the fact that this happened consistently and repeatedly throughout the three VAT periods considered in this case in both the broker and buffer deals is notable, particularly as Tradestar's counterparties varied.

583. Tradestar had no working capital. It was entirely dependent on receipt of funds from its customers to pay its suppliers. Therefore if a customer had defaulted or simply changed its mind about the purchase Tradestar was fully exposed to its supplier without funds to pay. This was an obvious issue in relation to deals with Taurus given the credit report. If the goods were faulty or did not meet the order in some way we recognise that Tradestar would be expected to be able to withhold payment to its supplier; but we are concerned here with the situation where there was no problem with the goods and a customer simply defaults. Tradestar has not addressed what would happen in that situation.

584. Tradestar provided evidence of insurance to HMRC which consisted of a policy issued on 18 July 2006 for the period 20 June 2006 to 20 June 2007. This therefore means that the deals carried out in the periods ended 02/06 and 05/06 were not insured by that policy.

585. The premium for that policy was £32,000 (based on estimated annual "sendings" of £40 million) for which Tradestar took out a loan. The conditions of the policy limited the maximum sum insured to £1 million per vessel which was not sufficient for the June or August 2006 exports. If a single consignment was in excess of £350,000 (the case for both of the deals) then the insurer required that there should be a written agreement with the freight forwarder confirming five further security conditions applied such as satellite tracking devices in the vehicles and double manning of vehicles. There is no evidence of any such agreement.

586. As a result of these findings we conclude that the insurance policy offered no real protection for the Appellant.

587. Tradestar has also provided an email from a freight forwarder confirming that the goods consigned to Aymaksan had CMR insurance covering them for loss or damage to a maximum value of £18,216, a tiny fraction of the value of the consignments made in the periods 02/06 and 05/06.

Alleged dishonest freight forwarder

588. HMRC have alleged that the freight forwarder used by Tradestar for some of the transactions (deals 7-10) was dishonest.

589. The evidence relied upon by HMRC is set out in a Witness Statement from Officer Parker. Tradestar has not at any stage required Officer Parker to attend in order to be cross-examined. Officer Parker's evidence was taken as read and has not been challenged by Tradestar. We therefore make the following findings relying upon that evidence.

590. The freight forwarder, Boston Freight Ltd ("Boston") used by Tradestar was the subject of a criminal investigation. Ultimately, the owner of the company and an employee pleaded guilty of being knowingly concerned in the fraudulent evasion of VAT and was sentenced to custodial sentences.

591. HMRC say that either Tradestar did no checks on Boston or knew that Boston shipped goods around as part of VAT fraud. Tradestar has provided no evidence to show that it carried out checks on Boston and we therefore conclude that no due diligence took place.

592. However, the fact that a freight forwarder's directors committed a crime in being concerned in fraudulently evading VAT does not in itself have any implications for Tradestar's knowledge at the time of the disputed deals.

Web Accountant

593. Officer Parikh has provided a Witness Statement addressing the evidence about Web Accountant. At the start of the hearing Mr Burgess decided that Officer Parikh was not required to attend and therefore her evidence was taken as read.

594. The evidence provided by Officer Fyffe and Officer Parikh shows that:

(1) Web Accountant claims on its packaging to have been endorsed by various organisations, but,

(a) despite bearing a Microsoft logo and Microsoft confirming this could only occur under a licence or agreement with that company, correspondence shows that Web Accountant has never been approved to use the logo;

(b) despite bearing the logo of the International Accounting Standards Committee Foundation, that organisation confirmed that it had never heard of Web Accountant. When the organisation attempted to install software it could not be made to work;

(2) further testing carried out by HMRC showed that the software is not a finished product and various aspects of its functionality were stated when running to be "under construction". HMRC found overall that the software was unfit for use. For example, the default company could not be changed so that invoices could not be produced by a customer with its own details shown;

(3) the product does not appear in a listing of the 40 most popular accountancy software packages. It could not be found on the Accounting software.com site;

(4) Sage UK Ltd told Officer Parikh that it would buy competitor's products to test, but no one in the organisation had heard of Web Accountant;

(5) Web Accountant is not a registered trade name or trade mark registered at the Patent Office;

(6) a licence agreement stated to be between Bullfinch and a company called Labdhi International FZE said to be based in the UAE was made available to HMRC by Bullfinch, but it has not been possible to identify a company called Labdhi in UAE, or indeed anywhere, as a manufacturer of software.

595. Even as late as January 2006 when HMRC visited Tradestar's premises to view a demonstration of the software Mr Burgess explained that it was not fully functional because it had not been set up for a specific company, was not available for retail sale and there was no live technical support available.

596. In his Witness Statements Mr Burgess challenges some of the facts we have found above in reliance on Officer Parikh's Witness Statement. He did not choose to challenge her evidence at the hearing and we have reduced the weight given to his evidence. Furthermore he makes assertions in his Witness Statement without supporting evidence even where such supporting evidence could be expected. For example, he asserts that Web Accountant was compliant with the requirements of various organisations whose logos were displayed on its packaging and this was sufficient for those logos to be used. There is nothing from the organisations to show this is the case.

597. Similarly, he challenges the evidence that no company by the name of Labdhi could be found as a manufacturer of software on the basis that there was an agreement between that company and Bullfinch. The fact that an agreement shows a name of a company does not in itself prove the company exists. Tradestar could be expected to provide evidence to rebut HMRC's evidence about Labdhi.

598. We have therefore made our findings by placing greater weight on the evidence of Officer Parikh.

599. Tradestar's own evidence of purchases of the software shows that on each occasion the serial numbers for the items bought started perfectly at a 0001 figure; i.e. the first purchase of 5000 made in August 2005 started with 50001; the next purchase started at 55001, the next 5000 at 65001 and so on. This is obviously strange in a context where Mr Burgess told HMRC that Mr Pandya had told him that this was a very successful product selling well around the world, in the context of being told that Tradestar would have non-exclusive rights to sell the product. If it was as outstanding a product as Mr Burgess says he was led to believe, why were there not other sales cutting across those to Tradestar?

600. Finally, in the context of considering Web Accountant we rely on Mr Burgess letter to HMRC dated 16 November 2005 to conclude that the sales of the remaining packs after those sold to Aymaksan in the disputed deals were made to customers referred to Tradestar by Bullfinch. Those customers, Micropoint and Mobile Computer World were UK companies and therefore Tradestar had no VAT to reclaim as a result of those deals. However, there was no reason for Bullfinch to provide Tradestar with the customers rather than sell directly.

CONCLUSIONS RESULTING FROM OUR FINDINGS OF FACT

601. We are satisfied that the evidence of the money flowing in circles points to the deal chains being contrived. This conclusion is emphasised by the extraordinarily complex web of money flows which has been pieced together by HMRC's officers, all of which move in a circle, often with monies being split or amalgamated at different points.

602. The contrived nature of the deal chains does not though, without more, show knowledge on the part of Tradestar. However, we also take into account:

(1) The speed with which, in nearly all of the deals, funds moved around the circle which suggests a considerable degree of coordination. Repeatedly Tradestar moved monies almost instantly on receipt and did so within long series of payments made quickly by others;

(2) Every transaction (except the software deals) was a back-to-back deal, i.e. the parties sold the same quantity that they had bought. This was the case in not only the disputed deals, but in all of Tradestar's non-software deals in the relevant periods which amounted to more than 100 hardware deals. This is not what we would expect in genuine arm's-length commercial trading;

(3) Tradestar was never left with unsold goods and none of the goods was sold at a loss by Tradestar*;*

(4) Despite the fact that there were a number of traders in deal chains outside the UK all of them had FCIB accounts in sterling which they used for these transactions. There is no reasonable explanation offered for this. HMRC allege that it permitted the monies to be transferred quickly and easily without the need to change currency and in the absence of any other reason we agree with this as a reasonable inference in the context of the circularity of money flows and the speed of money flows;

(5) The volume of turnover and the size of repayment claims in the period February - August 2006 increased very markedly when compared with earlier periods. There is no obvious reason for the dramatic increase in the volume of trading;

(6) The repeated high level of mark-up which Tradestar was able to charge with no evidence supporting its ability to do so in the context of chains consistently involving a mark-up of a few pence between the prior participants. Tradestar's mark-up is particularly notable in a highly competitive market where the participants in deals would be purchasers at one point and suppliers at another point. In the context of the non-software deals in markets where traders regularly advertised and contacted each other via the websites, according to Mr Burgess' own Witness Statements, there was no good reason provided by the evidence why Tradestar's customers would repeatedly buy from Tradestar rather than source the goods (more cheaply) from suppliers higher up the chain, unless there was a contrived scheme operating;

(7) Every one of the disputed deals has been found by us to be connected to the fraudulent evasion of VAT. In addition, we have found every deal conducted in the periods 05/06 and 08/06 to have led back to a fraudulent defaulter and 82 "buffer" deals to have been connected to a fraudulent VAT loss. The observations, already quoted, of

Christopher Clarke J in *Red 12* are particularly relevant. So to apply those observations in this case, the same transaction may be viewed differently if it is in a line of a chain of transactions all of which have commercial features such as mark-ups made by the appellant trader who has practically no capital as part of a huge and unexplained turnover with no leftover stock and mirrored on numerous occasions in chains in which there has been found to be a defaulting trader. We do indeed find it unlikely that the fact that so many transactions can be traced to tax losses is a result of innocent coincidence*;*

(8) the absence of evidence of the kind of negotiation with suppliers and customers that would characterise ordinary commercial relationships;

(9) the fact that Tradestar's customer Aymaksan is supposed to have asked Tradestar to deal directly with its customer, Mezinarodni. In a highly competitive market such as that for CPUs, it makes no sense for a company to put its supplier in contact with its customer;

(10) the lack of insurance which is indicative of Tradestar realising it was not really at risk as it was merely a participant in a contrived set of transactions;

(11) Tradestar's due diligence was manifestly inadequate. It is hard to avoid the conclusion that Tradestar was simply going through the motions of due diligence rather than taking substantive care that it was doing business with suitable trading partners such that the integrity of its supply chain could be demonstrated. A significant proportion of due diligence materials were obtained after the deals in question had been entered into and, therefore, can have provided Tradestar with no assistance in deciding whether to trade with the particular counterparty. Those materials which identified concerns (including a Redhill check) were ignored. We find Mr Burgess' comments to HMRC on more than one occasion that Tradestar did not care so long as it was selling goods and getting paid reflected his attitude to due diligence;

(12) There is a significant degree of repetition in the trading partners with whom Tradestar dealt in the periods under appeal. We recognise that consistent dealing with longstanding trading partners is a normal feature of business, but such repetitious dealing both as regards supplier and customer on the same day as is evident from Tradestar's transactions is not normal. There is no explanation for why nine purchases of CPUs from Bullfinch were perfectly matched by nine sales of them to Mezinarodni on one day;

(13) The repeated sales of the same CPUs as shown by the evidence of the box numbers with no evidence to show that customers had returned goods for them to be resold;

(14) the number and kind of connections between the various traders in all of the chains undermine the plausibility of any suggestion that all of these transactions were *bona fide* transactions between arm's length traders. Looking at both the transaction chains and the money flow chains we have set out the same participants appear repeatedly; and

(15) The evidence from 1 May 2006 of Tradestar using the same IP address as other participants in deal chains. We recognise that HMRC have not shown that this occurred before 1 May 2006 (because the data for the IP addresses is not available) and that even after that date Tradestar did not share its IP address when conducting every deal in which it participated. However, it is particularly notable that in the case of deals 12-17 Tradestar used the same IP address as Universal to whom it paid money and

Taurus who paid it. In the case of deals 18 and 19 payments were made by Tradestar to Universal using the same IP address as Universal used. We have found that the common IP address means that the transactions were being conducted centrally using one computer and that Mr Burgess surrendered Tradestar's banking details to others to enable that to happen.

603. We have considered whether the fact that the deals involving the Web Accountant software have some different characteristics leads us to a different conclusion for deals 1 and 11. Those deals were not back to back although Tradestar was able to find a second UK customer for the amounts not covered by the disputed deals and Tradestar was left with no surplus stock. However, the circularity of the funds remains as well as our findings regarding the fundamental problems with the product, its lack of patents or registration with any of the bodies purportedly endorsing it, the lack of due diligence by Tradestar when dealing with Bullfinch, the issues regarding the serial numbers of the products bought by Tradestar when the product was apparently selling well elsewhere, the introduction of Micropoint and Mobile Computer World and our findings regarding Bullfinch.

604. We have also taken into account the fact that Tradestar's deals 2-10 were conducted in clean chains with Crestar. The evidence does not show that one or more IP addresses was being shared by Tradestar with other participants in February 2006. However, the remainder of the factors listed above are present (save for number (8)).

605. It seems unlikely to us that those organising the circular flow of funds would risk the inclusion of an outside party who was unaware of which supplier it had to buy from and to which customer it had to sell, particularly given the timing of nearly every payment in the straight line chains, as well as the contra trading. Indeed, the speed of those payments was particularly notable in the context of the contra trading as we have described earlier.

606. In fact, however, Mr Burgess has not sought to argue that he was an "innocent dupe" in the transactions. Instead, he has sought to avoid answering questions about them by seeking to have HMRC's evidence removed and then by disengaging with cross examination. HMRC have provided ample evidence for their case that Tradestar, acting through Mr Burgess, knew about the connection to fraud and Mr Burgess has not taken the opportunity to rebut that case.

607. We therefore conclude having regard to all of the factors we have identified, together with the adverse inference resulting from Mr Burgess' decision to disengage with his cross examination, that it was more probable than not that Tradestar was aware of the contrivance involving the disputed deals.

608. However, even if we had not concluded that Tradestar knew that its transactions were connected with fraudulent evasion of VAT, we would have concluded that it should have known of that connection.

609. A reasonable businessman trading wholesale in software and CPUs, in particular, would have been well aware of the prevalence of MTIC fraud in that industry, not least since HMRC took steps to inform Tradestar of that fact in Notice 726 and other communications. A reasonable businessman would have noticed that the transactions in this appeal enabled Tradestar to make significant profits, despite adding no value to the goods it acquired and that repeated purchases and sales with the same counterparties (and at times for the same goods) took place on the same day. Further checks would have been carried out into the Web Accountant software and the issues with it identified. The only reasonable explanation for those transactions, which were being carried out in an industry in which fraud was rife, and their surrounding circumstances was that they were all connected with fraudulent evasion of VAT and this is something Tradestar should have known.

OVERALL CONCLUSION

610. The Tribunal's conclusions are therefore as follows:

(1) There was a VAT loss in deals 1 and 11-19 entered into by Tradestar which were directly attributable to a fraudulent default by the following traders: Bullfinch, 3D Animations, Vision Soft, and Cybersol;

(2) The tax losses occasioned by Bullfinch, 3D Animations, Vision Soft, and Cybersol in relation to Tradestar's deals described those deals were fraudulent;

(3) in the case of the 9 contra trading deals 2-10:

(a) Crestar operated as a contra – trader;

(b) PC Mac was a fraudulently defaulting trader who engaged in deals which are traced to Crestar and which through Crestar link to the chains in which Tradestar's deals 2-10 took place;

(c) Crestar entered into the transactions in the dirty chains with PC-Mac knowing that those chains would generate VAT liabilities for PC-Mac which would not be paid;

(d) Tradestar's deals 2-10 can be traced back via Crestar and thereby connected to the fraudulent tax losses.

(4) Each of Tradestar's disputed deals was therefore connected to a fraudulent tax loss;

(5) Tradestar knew at the time that it entered into each of the 19 deals that each deal was connected with fraud.

COSTS

611. During the hearing the matter of costs arose given that this is a case in which the Notices of Appeal were lodged prior to the establishment of the First-tier Tribunal. After the hearing Judge Bowler set out the chronology shown by the correspondence files and invited submissions.

The chronology

612. On 30 March 2012 HMRC submitted a Notice of Application for Rule 29 of the VAT Tribunal's Rules 1986 to apply to the appeals.

613. That application was emailed to Tradestar's then representatives (Chinnery & Co) on 30 March 2012 by HMRC. It was also sent by post to Tradestar's representatives on 20 April 2012.

614. On 3 May 2012, Tradestar's representative, Stephen Chinnery, wrote to the tribunal to notify that the firm of Urban Thier Federer & Chinnery Limited were the successor firm to Chinnery & Co..

615. On 22 May 2012 HMRC applied for the appeals to be struck out. The application included an application for costs.

616. On 31 May 2012 Judge Raghavan issued an unless order directing that unless Tradestar notified HMRC and the tribunal that it intended to continue with the appeal and details of its representation by 20 June 2012 the proceedings may be struck out.

617. On 4 July 2012 a non-compliance/directions hearing on 13 August 2012 was notified to the Urban Thier Federer & Chinnery Limited and HMRC.

618. On 10 August 2012 Stephen Chinnery emailed the tribunal to say that Urban Thier Federer & Chinnery Limited was no longer instructed, but Tradestar intended to proceed and was making alternative arrangements for representation.

619. On 14 August 2012, after the hearing of 13 August 2012 which took place in the absence of Tradestar or its representatives, the decision of Judge McKenna was issued in which she:

(1) referred to the application made by HMRC in March 2012 for a direction as to the applicable costs regime, noting that Tradestar had not responded to the application;

(2) decided that the appeals should be struck out unless Tradestar made representation showing why such action should not be taken within 28 days;

(3) decided that the applicable costs regime for the appeal was Rule 29 of the VAT Tribunals Rules 1986 ("the Rule 29 direction");

(4) gave HMRC permission to apply for its costs in writing within 28 days.

620. On 23 August 2012 Mr Burgess wrote to the tribunal acknowledging receipt of the 14 August 2012 decision, but stating that Tradestar was not aware of HMRC's applications dated 2 April 2012 and 22 May 2012, correspondence in May and June between the tribunal and Mr Chinnery and the hearing on 13 August 2012 before Judge McKenna. There is no application dated 2 April 2012 on the file and we therefore assume that Mr Burgess was referring to the letter dated 20 April 2012 sent to Chinnery & Co with the application for costs. Mr Burgess said that Tradestar would be making representations to the Tribunal showing reasons why the appeal should not be struck out.

621. On 3 September 2012 HMRC applied for a direction that Tradestar be ordered to pay HMRC's costs occasioned by the application for the appeals to be struck out. No representations had been made by or on behalf of Tradestar in response to Judge McKenna's decision of 14 August 2012 beyond the letter of 23 August saying that representations would follow.

622. On 6 September 2012 Tradestar's new representatives, Morgan Rose wrote to HMRC and the tribunal confirming instructions to act for Tradestar. It was noted that written representations in respect of the 14 August 2012 directions would be filed the next day.

623. On 7 September 2012 Morgan Rose submitted representations to the Tribunal in response to the decision of 14 August 2012. In those submissions it was said that Tradestar was not aware of the hearing on 13 August 2012. It was submitted that the appeals should be permitted to continue and proposed directions were identified for that purpose, but there was no comment on the Rule 29 direction or request to consider it afresh.

624. On 28 September 2012 HMRC submitted representations in relation to Judge McKenna's striking out decision. It was noted that the applicable costs regime was that under Rule 29 of the VAT Tribunals Rules 1986. HMRC maintained their application in respect of their costs filed on 3 September 2012, but in the alternative submitted that the costs of the application be costs in the appeal.

625. A notice of hearing was issued by the Tribunal on 4 December 2012 for consideration of "a strike out and costs application" on 15 February 2013.

626. On 18 February 2013 a Notice of Decision and Directions was issued by Judge Raghavan, following the hearing on 15 February 2013 attended by counsel appearing for both parties. Judge Raghavan decided that:

(1) the appeals were not struck out;

(2) Tradestar should pay HMRC's costs of the hearing on 13 August 2012;

(3) costs of the hearing on 15 February 2013 would be costs in the appeal.

627. There was no other reference to costs and no indication that an application had been made for the decision made by Judge McKenna on 14 August 2012 to be amended.

Tradestar's submissions

628. In summary, Mr Burgess says in written submissions that:

(1) HMRC prolonged the litigation by its omissions, errors, lack of disclosure and provision of misleading information so that the costs increased unfairly;

(2) HMRC have considerable manpower, legal and financial advantages compared to Tradestar and account should be taken of the unusual circumstances of this case which HMRC are hiding from the Tribunal:

(a) Tradestar's representative, Mr Chinnery, had a history of mental illness which had started around March 2012, of which Tradestar was unaware at the time;

(b) Tradestar only became aware of Mr Chinnery's illness around August 2012;

(c) The Tribunal was only told about Mr Chinnery's mental illness in the hearing before Judge Raghavan on 15 February 2013 in which Judge Raghavan decided to permit the appeals to continue;

(d) HMRC are trying to take advantage of the unfortunate circumstances which led to the uncontested costs application succeeding. Tradestar would have challenged the application had it been aware of it.

HMRC's submissions

629. In summary, HMRC submits in written submissions from Ms Robinson and Mr Carey:

(1) The Tribunal has no jurisdiction to set the Rule 29 direction aside. That could only take place following a successful appeal by Tradestar to the Upper Tribunal. No appeal or representation about the Rule 29 direction was made despite the subsequent legal representation of Tradestar.

(2) If as Mr Burgess writes, Tradestar became aware of Mr Chinnery's health and immediately took control in August 2012, it would also have been aware of the Rule 29 direction and could have responded immediately;

(3) The case of *Revenue and Customs Commissioners v Katib* [2019] STC 2106 is relied upon to submit that Tradestar cannot rely on its representatives' failings for not challenging the Rule 29 direction; and

(4) There is no sensible basis to assert HMRC misled the Tribunal.

Our decision as to costs

630. We do not have the jurisdiction to set aside the decision of Judge McKenna. In order for that decision to be challenged Tradestar needed to apply to Judge McKenna for the decision to be set aside and, if she had refused to do so, to then seek permission to appeal the Rule 29 direction in the Upper Tribunal. None of those steps has occurred in more than 9 years since the direction was issued.

631. In particular, when Morgan Rose submitted representations to the Tribunal on 7 September 2012 in response to the directions of 14 August 2012 which included the Rule 29

direction, there was no comment on the Rule 29 decision or request to consider that decision afresh.

632. Therefore the Rule 29 direction made by Judge McKenna continues to apply.

633. We note, for the avoidance of any doubt, that there is no basis for Mr Burgess' accusations that HMRC has sought to take advantage of Mr Chinnery's circumstances, or in some way misled the Tribunal about that situation.

634. Accordingly, if HMRC wish to apply for costs, an application must be made within 56 days of this decision, in which event the matter shall be determined (in default of agreement) by a costs judge.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

635. 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.

TRACEY BOWLER
TRIBUNAL JUDGE

Release date: 06 JANUARY 2022

APPENDIX 1 – PARTIES REFERRED TO

636. We list the companies referred to in our decision below. Most of the companies participated in various ways in various deals and we therefore only list the main link to Tradestar in each case.

3D Animations – 3D Animations Ltd; a defaulter in deals 12-17

Aymaksan – Aymaksan Tic Ve, Buro. Mak.Im.Paz Ltd, a Turkish company, customer of Tradestar in deals 1 and 11 and participant in money flow chains

Bluestar – Bluestar Trading UK Ltd, PC Mac's customer

Bullfinch – Bullfinch Systems Ltd, Tradestar's supplier of Web Accountant

Computec – Computec Solutions Ltd, a defaulter in buffer trades

Crestar – Crestar Global Ltd, a contra trader in deals 2-10

Cybersol – Cybersol UK Ltd, a defaulter in deal 19

Goodluck – Goodluck Employment Services Ltd, a defaulter in buffer deals

Heathrow or Heathrow Business Solutions – Heathrow Business Solutions Ltd, a defaulter in buffer trades

Komidex – Komidex Spolka Z Ograniczona Odpowiedzialnoscia, a Polish company at or near to the start of the money flows

Labdhi – Labdhi International FZE based in Dubai. A participant in money chains.

Linbar – Linbar Limited, Tradestar's supplier in deal 19

Metalix – Metalix Corporation, a company based in Dominica and at the start and end of most of the money flows

Mezinarodni - Mezinarodni Velkboobchod SRO, a company based in the Czech republic and the customer of Tradestar in deals 2-10

PC Mac – PC Mac IT Solutions Ltd, the defaulter in Crestar's dirty chains

PPUH Kamar – a Polish company who supplied PC Mac

Tau Aspects – Tau Aspects Limited, a contra trader in buffer deals whose broker deals were traced back to Bullfinch

Taurus – Taurus SA, a company based in France and Tradestar's customer in deals 12-19

Universal Traders – Universal Traders Limited, Tradestar's supplier in deals 12-17

Vision Soft – Vision Soft (UK) Limited, a defaulter in deal 18 and buffer trades

West – West 1 Facilities Management Ltd, a defaulter in buffer trades

Zenith – Zenith Sports (UK) Ltd, a defaulter in buffer trades.

APPENDIX 2 COMMONALITY OF IP ADDRESSES USED BY TRADESTAR AND OTHER COMPANIES

1. In this appendix we identify from the evidence provided by Officer Birchfield the occasions in the loops traced by him where Tradestar is shown to have accessed its FCIB account with the same IP address as one or more other companies. Officer Birchfield has also identified other loops involving Tradestar where the same address was used by other companies, but not Tradestar. We consider that is more circumstantial and focus on those situations where Tradestar's IP address is the same as others.

2. In each of the following transaction loops we list the companies sharing the same IP address as Tradestar.

3. We also set out where an address used on one or more occasions by Tradestar and other participants is also used by another group on other occasions.

4. For ease of reading we have given each IP address used on multiple occasions a number as follows:

(1) IP address 1 - 66.98.164.40;

(2) IP address 2 - 217.112.85.35;

(3) IP address 3 - 66.139.76.153;

(4) IP address 4 - 66.98.180.53;

(5) IP address 5 - 64.34.166.88;

(6) IP address 6 - 66.139.76.245;

(7) IP address 7 - 66.135.34.11;

(8) IP address 8 - 66.139.76.17;

(9) IP address 9 - 66.135.33.49;

(10) IP address 10 - 66.98.134.34;

(11) IP address 11 - 194.165.130.93

(12) IP address 12 - 64.34.168.29

Loop 25 IP address 1: MVS Digital, Universal Traders, Capital Distribution, Zenith Sports, Aboobacker Umermoide, Proxi Partners, Komidex. 8 out of 14 participants. 2 other participants used IP address 2

Loop 27 - IP address 64.34.193.106 Universal Traders, Capital Distribution, Zenith Sports, Aboobacker Umermoide, Proxi Partners, Komidex. 7 out of 13 participants. Three other participants used IP address 1

Loop 41 - IP address 3: Capital Distribution, 3D Animation, Komidex, Metalix. 5 out of 12 participants. 6 of the remaining participants shared IP address 4.

loop 42 – IP address 3: Capital Distribution, 3D Animation, Komidex and Metalix. 5 out of 12 participants. Six of the remaining participants shared IP address 4.

Loop 43 IP address 3: Capital Distribution, 3D Animation, Komidex and Metalix. 5 out of 12 participants. Six of the remaining participants shared IP address 4.

Loop 44 IP address 3: Capital Distribution, 3D Animation, Komidex and Metalix. 5 out of 12 participants. Six of the remaining participants shared IP address 4.

Loop 45 IP address 3: Capital Distribution, 3D Animation, Komidex and Metalix. 5 out of 12 participants. Six of the remaining participants shared IP address 4.

Loop 46 IP address 5: Capital Distribution, Linbar, Globaltech, Nordic Telecom. 5 out of 13 participants. Four others shared another IP address 1

Loop 47 IP address 6: Universal Traders, Capital Distribution, Globaltech, 3D Animation, Nordic Telecom 6 out of 16 participants. Another four others shared another IP address 7

loop 48 IP address 6: MVS Digital, Capital Distribution, Globaltech, Nordic Telecom, Komidex. Six out of 16 participants. Three others use the IP address 3

loop 49 IP address 8: Mavisat, Capital Distribution, Globaltech, Nordic Telecom 5/12 participants. Another five shared the IP address 5 previously used by the Appellant.

Loop 50 IP address 8: PPUH, Mavisat, Universal Traders, Capital Distribution, 3D Animation, Komidex. Another four shared the IP address 5 previously used by the Appellant.

Loop 61 IP address 7: Universal Traders, Capital Distribution, Linbar, Globaltech, Heathrow Business, Nordic Telecom, Komidex. 8/15 participants

loop 62 IP address 66.98.226.42 Universal Traders and Capital Distribution. 2 out of 18 participants. Another 10 shared the IP address 5 previously used by the Appellant.

Loop 63 IP address 5: Metalix, PPUH, Universal Traders, Capital Distribution. 5 out of 11 participants. Another five shared IP address 2

loop 64 IP address 9: Nordic Telecom, Metalix, Mavisat, Universal Traders, Capital Distribution, Vision Soft, Komidex. 8 out of 14 participants

loop 65 IP address 212.227.102.5 Komidex, Universal Traders, Linbar, Nordic Telecom. 5 out of 13 participants. Another five shared the IP address 10

loop 66 IP address 11: Eurovision, Linbar, Vision Soft 4 out of 11 participants. Three others shared the IP address 10

loop 67 IP address 11: Eurovision, Linbar, Vision Soft 4 out of 11 participants. Another two shared the IP address 10

loop 68 IP address 11: Eurovision, Linbar, Vision Soft 4 out of11 participants. Another three shared the IP address 10

loop 69 IP address 10: Metalix, Komidex, Capital Distribution, Globaltech, Nordic Telecom, Komidex. 7 out of 14 participants. Another six shared the IP address 11.

loop 70 IP address 12: Mavisat, Universal Traders, Capital Distribution. 4 out of 14 participants. Another five shared IP address 2

loop 81 IP address 9: Universal Traders, Capital Distribution, Linbar, Neon Leicester, Zenith Sports, Major Singh. 7 out of 19 participants. Another five shared the IP address 66.98.162.34.

Loop 82 IP address 12: Linbar, Neon Leicester, Zenith Sports, Sami Injasy, Proxi Partners, Metalix, Komidex. 8 out of 13 participants. Another two shared IP address 2

APPENDIX 3 KEY FINDINGS ABOUT THE DEFAULTING TRADERS IN TRADESTAR'S BUFFER DEAL CHAINS

1. These findings are based on the evidence provided by specific witnesses for each of the company's together with the evidence of Officer Reynolds who has addressed Tradestar's alleged buffer deals overall.

Goodluck Employment Services Ltd ("Goodluck")

2. Its main business activity in its VAT registration document was supplying labour force to various employers. That was later amended to include "marketing, sales and promotion etc."

3. Its estimated turnover was said to be £500,000.

4. The company's director denied any intention of dealing in mobile phones when visited on 13 March 2006. However HMRC received information on 19 and 20 March 2006 that the company was doing just that. None of its transactions were declared on its VAT returns.

5. In May and August 2006 HMRC issued VAT assessments for more than £39 million. Those assessments were never disputed or paid.

6. On 24 January 2007 the company was placed into liquidation. The VAT claim notified to the insolvency practitioner was only just over £17 million. Correspondence sent both to the company and to its director was returned to sender in August 2007.

7. Officer Patterson's Witness Statement identifies the three deal chains in which Tradestar was involved and which are traced back to Goodluck:

(1) 9450 CPUs were transacted in a chain back to back between 6 companies including Tradestar over the course of 19 and 20 April 2006;

(2) 10080 CPUs were transacted in a chain back to back between seven companies including Tradestar on 25 April 2006;

(3) 10395 CPUs were transacted in a chain back to back between six companies including Tradestar on 25 April 2006.

8. HMRC has therefore shown that Goodluck is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated in each case buying from the UK company, Universal Traders, and selling to another UK company MVS Digital Ltd. The circumstances concerning Goodluck are sufficient to show that the losses were fraudulent VAT losses.

Zenith Sports ("Zenith")

9. The company was registered for VAT on 15 August 2005 but did not indicate that it would be buying or selling from and to the EU. Estimated turnover was £100,000, but within 12 months of registration it had undertaken transactions worth nearly £200 million.

10. On 27 March 2006 HMRC was told that the main activity for the business was sportswear and sports accessories. The subsidiary aspect of it was intended to be electrics and wholesale mobile phones but it had not completed any deals.

11. Zenith was warned to make Redhill checks and was sent letters about deregistration of various suppliers.

12. An inspection by HMRC on 13 June 2006 disclosed outputs of £122 million and inputs of £125 million.

13. On 21 July 2006 HMRC issued an assessment in the sum of £1,717,527 for the period ended 05/06.

14. The company ceased trading at the end of August 2006 although it did not inform HMRC of that at the time. HMRC visited the company on 13 December 2006 and found that it had vacated its premises. No further contact was made with it or its director.

15. On 21 December 2006 HMRC deregistered Zenith.

16. On 25 May 2007 HMRC informed Zenith that it was required to pay output tax of nearly £1.5 million. That notification was returned to sender.

17. Two further assessments were issued to Zenith such that by 24 August 2007 HMRC issued a notice of demand for more than £1.7 million.

18. Further outstanding VAT was identified for the VAT periods 06/06 and 07/06 in letters which were returned to sender.

19. The company at no stage submitted a VAT return for the periods 05/06, 08/06 and 09/06.

20. A winding up order was issued by the High Court on 16 January 2008.

21. On 9 February 2010 the insolvency service imposed director's disqualification for 11 years on the company's director on the basis that she had caused or allowed Zenith between 31 March 2006 and 31 August 2006 to become involved in missing trader fraud. The insolvency service noted that there was a VAT debt of £128 million. The director signed the disqualification form to which a statement was attached setting out the matters which were not disputed by her. Those included confirmation that she either knew or was reckless or grossly negligent as to whether Zenith was concerned in missing trader fraud.

22. Officer Patterson's Witness Statement identifies the deal chains in which Tradestar was involved and which are traced back to Zenith:

(1) 3 wholesale supplies of CPUs back to back on 25 July 2006,

(2) 3 wholesale supplies of CPUs back to back on 26 July 2006;

(3) 2 wholesale supplies of Nokia phones back to back on 27 July 2006;

(4) 1 wholesale supply of Nokia phones back to back on 28 July 2006;

(5) 2 wholesale supplies of CPUs back to back on 28 July 2006;

(6) 2 wholesale supplies of Nokia phones back to back on 31 July 2006;

(7) 2 wholesale suppliers of CPUs back to back on 31 July 2006.

23. HMRC has therefore shown that Zenith is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated as a "buffer". The circumstances concerning Zenith are sufficient to show that the losses were fraudulent VAT losses.

West 1 Facilities Management Ltd ("West")

24. The company was sold around 2003 to Mr McGrath. On 7 October 2005 HMRC visited an associated business of Mr McGrath's and noted that West had started buying and selling mobile phones.

25. A visit report for a visit to West on 9 February 2006 shows that Mr McGrath confirmed that he did not carry out inspections on the goods he transacted, did not insure

goods, did not carry out credit checks, traded on a back-to-back basis, did not advertise and did not attend any trade fairs.

26. On 28 February 2006 Mr Foley took over from Mr McGrath as director.

27. In February and March 2006 West was told by HMRC about numerous transactions being traced to tax losses.

28. On 15 May 2006 HMRC received the 03/06 VAT return showing a repayment claim of nearly £165,000. No EU acquisitions were declared. On verification it was changed from a repayment claim to a payment claim showing a liability of nearly £49 million.

29. HMRC issued a Regulation 25 Notice reducing the period of time for the next VAT return.

30. The company was deregistered with effect from 22 June 2006.

31. Between 18 October 2006 and 17 December 2007 HMRC issued assessments with a total value in excess of £126 million for transactions that West had failed to declare to HMRC. None of the assessments have been paid.

32. No VAT return was ever submitted for 06/06.

33. On 31 October 2007 HMRC denied West its input tax on transactions for the period 03/06 on the basis that HMRC were not satisfied that the transactions had taken place. This denial was not appealed. No documents were provided to substantiate the import or export of goods in the 03/06 and 06/06 periods.

34. On 7 September 2009 Mr Foley accepted an undertaking to the Insolvency Service that he would not be a director of a company as a consequence of the fact that between 3 April 2006 and 21 June 2006 he had knowingly caused West to undertake MTIC fraud.

35. Officer Lam's Witness Statement identifies the deal chains in which Tradestar was involved and which are traced back to West. Invoices are traced from Tradestar back to West. The purchases and sales were entered into by West on 9 June 2006 and 12 June 2006. West bought from EU based suppliers and sold to UK-based companies, but the VAT on those the transactions was never declared by West on a VAT return.

36. HMRC has therefore shown that West is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated as a "buffer". The circumstances concerning West are sufficient to show that the losses were fraudulent VAT losses.

Bullfinch

37. We refer to the findings earlier in the decision about Bullfinch.

38. We are satisfied that Bullfinch is a defaulting trader and that fraudulent VAT losses can be traced to transactions with it.

39. Officer Reynolds' Witness Statements and the verification sheets attached thereto have enabled us to identify one deal of CPUs in May 2006 which is traced back to Bullfinch.

40. We therefore conclude that HMRC have shown that at least one buffer deal described by them involving Bullfinch as the defaulting trader took place.

3D Animations

41. We refer to the findings earlier in the decision about 3D Animations.

42. Officer Evans has set out in his Witness Statement details of the alleged buffer transactions involving Tradestar. On the basis of that Witness Statement and the exhibits thereto we find that:

(1) on 16 January 2007 HMRC issued an assessment on 3D Animations for almost £45 million. The transactions to which such assessment related have been listed in a schedule and 26 sales by 3D Animations to Globaltech Services Ltd have been identified where Tradestar has been noted to have participated in the transaction chains as a buffer.

(2) That assessment was subsequently adjusted and the adjustments included ones made in relation to 2 sales in transaction chains featuring Tradestar.

(3) On 15 May 2008 a further assessment was issued for almost £0.5 million which included two sales traced through transaction chains featuring Tradestar as a buffer in June 2006.

Computec

43. Computec was VAT registered from 1 November 2004. It stated that there was no expectation of buying and selling from and to the EU, yet evidence from a freight forwarder, which led to the start of HMRC's investigations into the company, showed that it was acquiring goods from Europe.

44. Its declared business did not include the mobile phones in which it later traded. It submitted and declared no returns for tax periods upturn including 02/06. No VAT return was submitted for its final tax period covering 1 March 2006 to 9 May 2006.

45. Between July 2006 and April 2008 a series of tax assessments were issued by HMRC in relation to VAT due on invoices issued by Computec. The total debt resulting from the assessments was more than £105 million. None of the assessments has been appealed.

46. Computec had issued invoices on 16 days between 3 April 2006 and 9 May 2006 to the value of more than £600 million.

47. Officer Reardon has identified in his witness statement and the exhibits thereto seven supply chains in which Tradestar was a buffer in April and May 2006. That evidence shows that Computec had issued invoices to Zenith Sports, but Computec did not account for the VAT on those transactions to HMRC. The evidence shows that the assessment for more than £24.5 million issued on 25 July 2006 includes amounts in respect of these transactions.

48. Officer Reardon has provided evidence showing the transaction chains in which it is seen that:

(1) on 28 April 2006 12,915 CPUs were sold back to back through a chain including Tradestar;

(2) on 28 April 2006 11,655 CPUs were sold back to back through a chain including Tradestar;

(3) on 28 April 2006 12,285 CPUs were sold back to back in a chain including Tradestar

(4) on 28 April 2006 11,340 CPUs were sold back to back in a chain including Tradestar;

(5) on 28 April 2006 10,710 CPUs were sold back to back a chain including Tradestar;

(6) on 4 May 2006 11,655 CPUs were sold back to back in a chain including Tradestar

(7) on 9 and 10 May 2006 11,970 CPUs were sold back to back in a chain including Tradestar.

49. HMRC has therefore shown that Computec is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated as a "buffer". The circumstances concerning Computec are sufficient to show that the losses were fraudulent VAT losses.

Vision Soft

50. We refer to the findings made earlier in this decision about Vision Soft.

51. Officer Reardon has identified in his Witness Statement and the exhibits thereto:

(1) 7 supply chains traced from Mavisat Ltd to Vision Soft in which Tradestar was a buffer in June 2006 and 1 further chain involving the same companies in July 2006. In each case the transactions take place as back to back transactions of the entire consignment over the course of one day;

(2) 2 supply chains that have been traced from Aria Technology Ltd to Visions Soft in which Tradestar was a buffer in July 2006;

(3) 2 supply chains traced from Enta Technologies Ltd to Vision Soft in which Tradestar was a buffer in July 2006;

(4) 3 supply chains traced from Blue Moon Technologies Ltd to Vision Soft in which Tradestar was a buffer in July 2006.

52. In each case VAT losses attributable to unpaid VAT by Vision Soft have been identified by Officer Reardon.

53. HMRC has therefore shown that Vision Soft is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated as a "buffer". The circumstances concerning Vision Soft are sufficient to show that the losses were fraudulent VAT losses.

Tau Aspects Ltd

54. The Witness Statement of Officer Stock identifies that Tradestar was a customer of Tau Aspects in relation to 8 deals on which output VAT was due of more than £1 million. Those transactions took place in March and April 2006 and concerned CPU units.

55. We rely upon the evidence of Officer Stock in his Witness Statement to find that Tau Aspects was operating as a contra trader and that the dirty chains can be traced back to Bullfinch which was the defaulting trader generating VAT losses.

56. We have therefore concluded that the evidence is sufficient to show that Tradestar's buffer transactions with Tau Aspects are connected to fraudulent VAT losses.

Heathrow Business Solutions Ltd ("Heathrow")

57. The evidence of Officer Lewis was taken as read and has not been challenged by Tradestar. That evidence ties into the evidence of Officer Reynolds in his fifth Witness Statement.

58. The evidence shows that Heathrow was importing goods from the EU and selling into the UK without declaring any of the output VAT resulting from its sales. The total assessments raised by HMRC in relation to the company amount to more than £32 million none of which have been appealed or paid.

59. The company was registered with a business activity of IT software solutions and recruitment. The estimated value of taxable supplies was £50,000 and there was no indication of trade with the EU. Between October 2004 and March 2006 the company only submitted nil VAT returns. A VAT return for the next period to 30 June 2006 was never submitted. An assessment raised by HMRC in relation thereto has never been appealed or paid. All of the company's business (which generated the assessment of more than £32 million) arose in the course of one month in 2006.

60. HMRC visited the company's premises but found no sign of activity on 30 June 2006. It was therefore deregistered on 1 July 2006.

61. Documentation showing trading in mobile phones and CPUs obtained from freight forwarders was inconsistent with the business described on VAT registration for the company.

62. Investigations into the FCIB account for Heathrow show that both Heathrow's account and that for Vision Soft were accessible by one person.

63. Officer Reynolds has provided the deal sheets for the transactions in which Tradestar bought and sold the same specification of CPUs in three separate deals in each case on 26 June 2006. Each of those deals involved Tradestar buying from Universal Traders and Selling to MVS Digital. Each of them has been traced back to Heathrow.

64. Officer Lewis has identified the assessments which arose in relation to those sales by Heathrow at the start of the chains. None of the VAT assessed on Heathrow in relation thereto has been appealed or paid.

65. HMRC has therefore shown that Heathrow is a defaulting trader which has gone missing. The VAT losses include losses generated in chains in which Tradestar participated as a "buffer". The circumstances concerning Heathrow are sufficient to show that the losses were fraudulent VAT losses.