Neutral Citation: [2023] UKFTT 213 (TC)

Case Number: TC08739

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2018/00666

*Value Added Tax Act 1994. Value Added Tax Regulations 1995. Missing trader intra-community fraud. Personal liability notice to individual director under paragraph 19(1) of Schedule 24 to the Finance Act 2007. Whether appellant knew that the transactions were connected with fraudulent tax losses. Held: yes for all but three. Held: no for three transactions because 50:50 and HMRC burden of proof not discharged. Had burden been on appellant, appeal would have been dismissed as to those three transactions too.*

**Heard on:** 7, 8 January 2021, 12 to 19, 27 July 2022
**Judgment release dates:** 10 October 2022 (summary)
17 February 2023 (full)

**Before**

**TRIBUNAL JUDGE RACHEL PEREZ**
**MS GILL HUNTER**

**Between**

**MR RASHPAL SINGH JABBLE**

**Appellant**

**and**

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

**Respondents**

**Representation:**

| | |
|---|---|
| For the Appellant: | Mr Simon Farrell QC |
| For the Respondents: | Ms Karen Robinson of counsel |
| Witness evidence: | For the appellant: appellant and Ms Manveer Bhatti. For HMRC, Officers Paul Cole, David Reynolds, Pankaj Mandalia, Ruth Povey, James Borland, Susan Bradstock, and Mathew Bycroft |

## DECISION

1. The appeal is allowed in respect of three deal chains – numbered 84 to 86 – in which Beer Bhai Cash and Carry Limited sold direct to Drinks Enterprises Limited. The appeal is otherwise dismissed. Pursuant to its power in paragraph 17(2)(b) of Schedule 24 to the Finance Act 2007, the tribunal reduces the amount payable by the appellant by such part of the total as relates to deal chains 84 to 86. We gave a summary decision on 10 October 2022. We now give our full decision at the appellant's request. I apologise for how long it has taken to produce this full decision. It was requested on 24 October. I was unable to turn to it until after 9 December due to other tax decision writing up. Illness then intervened, after which writing up had to be fitted around non-tax judicial work.

## REASONS

### A. INTRODUCTION

2. This appeal is against a Personal Liability Notice issued to the appellant by HMRC pursuant to paragraph 19(1) of Schedule 24 to the Finance Act 2007 on 11 January 2018 in the sum of £383,446.63. It was issued following HMRC's decision to deny input tax of £576,611.51 claimed by Drinks Enterprises Limited ("DEL") of which the appellant is a director. 123 transactions are covered by the denial decisions. The transactions involve the purchase of alcohol by DEL in VAT periods 10/14, 01/15, 04/15 and 07/15. The Personal Liability Notice was based upon tax losses connected to those transactions, which took place from 1 August 2014 to 31 July 2015. DEL is now in liquidation.

3. The appellant had given four witness statements by the time this appeal started to be heard in January 2021. After the appeal had started to be heard, it was adjourned on 8 January 2021, on the appellant's application, to allow for him to inspect documents held by DEL's liquidator. The inspection was done at the liquidator's premises. Following that, the appellant supplied further documents to the tribunal and respondents, and gave two further witness statements, making six in all. His witness Ms Manveer Bhatti also gave a witness statement. The appeal was originally relisted to resume on 23 August 2021. But it was postponed by consent and could not be relisted before 12 July 2022 due to a lack of mutually convenient dates. The parties preferred to keep the same panel despite the wait, rather than start afresh with a new panel and a sooner date.

### B. FACTUAL AND PROCEDURAL BACKGROUND

4. The following background facts were undisputed.

#### (1) DEL's business and family background

5. DEL was incorporated at Companies House on 3 June 1997 under company number 3380566. DEL's directors at incorporation were Kulvinder Singh Jabble and Harbhajan Singh Jabble.

6. DEL applied for VAT registration on or about 2 February 1998. The VAT1 form, completed by Kulvinder Singh Jabble (one of two directors at that time, the other being Harbhajan Singh Jabble), declared the main business activity to be "*wine and beer distribution*", and estimated the value of the taxable supplies in the next 12 months to be £2 million. The application did not indicate any intention to trade with the EU. DEL's principal place of business, according to the VAT1, was Lion House, A2 Bridge Road, Industrial Estate Bridge Road, Southall, Middlesex UB2 4AB. This address was subsequently changed

to Lion House, North Hyde Wharf, Hayes Road, Southall, Middlesex, UB2 5NS. DEL's registered address was the address of the company accountant, JSP Accounting, 1st Floor, 4-10 College Road, Harrow, HA1 1BE. The company was allocated quarterly returns and was, predominantly, a payment trader.

7. DEL was a family business and had been in existence since 1997. It was an alcohol wholesaler and a cash and carry. It had over 350 customers and approximately 200 suppliers. It routinely held stock valued in the region of over £1million. It stocked and supplied thousands of different goods lines, and mainly sold a full range of alcoholic and non-alcoholic drinks. In its 20 years of trading, DEL paid millions of pounds in VAT, corporation tax and other taxes. It traded from Lion House in Southall where it had a warehouse. DEL's customers were retail shops, pubs, clubs and restaurants and these customers came to Lion House. DEL ran a typical cash and carry business but also sold to alcohol wholesalers[1]. DEL's warehouse staff inspected the stock held in the warehouse on a regular basis. New stock would be ordered when required. DEL sold and held in stock a wide range of goods.

8. Members of the extended Jabble family have been involved in running the business over the years.

9. The appellant's father's generation comprised—

(i) Harjinder Jabble (appellant's father's eldest sister);

(ii) Harbhajan Singh Jabble (appellant's father's eldest brother);

(iii) Jagjit Singh Jabble (appellant's father's second eldest brother);

(iv) Makhan Singh Jabble (appellant's father), born 1946. He sadly died about a year and a half before the hearing;

(v) Surinder Jabble (appellant's father's youngest brother); and

(vi) Sharon Jabble (appellant's father's youngest sister).

10. The appellant's father and his father's five siblings came to United Kingdom in the 1960's. The appellant's eldest paternal uncle, Harbhajan, started the alcohol business with a shop in Slough, with his father (the appellant's grandfather). The appellant supposed that, over the years, they decided to open up a wholesale business, at the end of the 70s, early 1980s, so far as the appellant could recall. In the UK recession at the beginning of the 1990s, the wholesale business that the family had created suffered financially, and the family had to start again.

11. DEL's original two directors, Harbhajan Singh Jabble and Kulvinder Singh Jabble (one of the appellant's cousins), resigned on 17 July 1997 and 30 September 2005 respectively.

12. As to the appellant's own generation – that is, the offspring of the six siblings including his father – the appellant said that, off the top of his heard, there were nearly 30 children, maybe a bit more than that.

13. Prior to becoming directors of DEL, the appellant and Ravinder Jabble (another of the appellant's cousins) worked for DEL in other capacities. The appellant started with DEL at around the age of 22, after university, as a van driver, picker and packer. He became a director of DEL on 8 April 2004. His cousin, Ravinder Jabble, became a director shortly after, on 3 June 2004 (Ravinder Jabble is the son of Harbhajan Jabble, who originally started the business). Ravinder Jabble worked alongside the appellant at DEL. Ravinder resigned as director on 1 October 2015.

[1] The appellant said in cross-examination that "*there were a small number of wholesalers as well*" (transcript 14/7/22, page 102), which does not appear to have been disputed.

14. Although the appellant and his cousin Ravinder Jabble were both directors of DEL, the parties differed as to the nature of Ravinder Jabble's involvement in the day-to-day running of DEL. We return to this later. It was however undisputed that the appellant was the one who dealt with HMRC for DEL.

15. The appellant worked full time for DEL throughout the period for which he was a director of DEL[2].

16. The majority of the suppliers to DEL in the 123 deal chains were Gempost Limited ("Gempost") and Just Beer Limited ("Just Beer"). At the times of the transactions in question, the appellant's uncle Jagjit Singh Jabble was director of Gempost, and the appellant's father Makhan Singh Jabble was director of Just Beer. We return later to the suppliers more generally.

17. Due diligence was outsourced by DEL to a company called The Due Diligence Exchange Limited ("The Due Diligence Exchange"), which provided reports. DEL's contact for that at The Due Diligence Exchange was a Mr Mark Curley[3]. The Due Diligence Exchange also provided due diligence for Gempost, the appellant's uncle's company, and for Just Beer, the appellant's father's company. The appellant knew this. DEL engaged the services of tax specialist Vincent Curley and Co Ltd as tax adviser. Mr Vincent Curley's specialist areas included MTIC and carousel fraud.

18. The trading environment in the alcohol industry became increasingly difficult as a result of the Alcohol Wholesale Registration Scheme, which went live in April 2017. In addition, DEL received a number of letters from HMRC, culminating in the issue of a *Kittel* assessment in November 2016. DEL was placed in liquidation on 5 April 2017.

19. In two instances, Jabble family businesses traded with each other despite there being personnel common to both businesses. In 2009, DEL made purchases of alcohol from Barrel Beers Limited[4] ("Barrel Beers") at a time when Ravinder Jabble was a director of both Barrel Beers and DEL[5]. The appellant told the tribunal – and it appeared undisputed – that "*Barrel Beers was provisionally opened for us to be able to sell to the on trade*"[6]. The appellant was aware of Barrel Beers, and of his cousin's role in it. DEL continued to trade with Barrel Beers after receiving a tax loss letter dated 26 May 2011, advising DEL of tax losses in excess of £82,000 relating to 26 purchases made by DEL from Barrel Beers in VAT period 07/09. The appellant himself adduced the invoices which showed those purchases, at pages 856 to 868 of his exhibits. There were 12 invoices in June 2012 (from 6 to 19 June) and one dated 29 August 2012.

20. In July 2013, DEL made purchases of alcohol from Red Dust (Australia) Limited, at a time when Red Dust was a deregistered trader[7]. That was another family company. Kulvinder Singh Jabble, one of the appellant's cousins, was (and is) the director of that company. He was also a keyholder for DEL on 2 June 2011[8], and a letter from HMRC to DEL dated 12 March 2012 was addressed to Mr K Jabble[9].

21. An overdraft facility was extended to DEL on 19 June 2013 (a month before the Red Dust transactions). The facility was supported by guarantees given by (among others)

---

2 Transcript 14/7/22, pages 90 and 91.

3 Transcript 14/7/22, page 94.

4 RWS1/530.

5 AWS/182.

6 Transcript 14/7/22, page 148.

7 RWS1/606.

8 AWS/633.

9 RWS1/555.

Kulvinder Singh Jabble (director of Red Dust) and by Barrel Beers (with whom DEL had traded at least in June to August 2012)[10].

22. A family business called Keyrange Limited rented business premises at Unit A3 Bridge Road to DEL, and – shortly after DEL's departure from those premises – to Phoenix Wholesalers Limited ("Phoenix"), a supplier to DEL in 23 of the deal chains in this appeal.

23. Another Jabble company was BKS Properties Limited, whose directors at the time were Baldip Kaur Jabble, Kiran Jabble and Sheetal Kaur Jabble. It was dissolved on 8 January 2019[11].

**(2) The transactions**

24. The input tax denied related to 123 transactions, all involving DEL's purchase of alcohol. In all but five of the 123 deal chains in which the transactions occurred, there was at least one supplier between the first trader in the chain and DEL. The 123 deal chains are set out in chronological order at **Annex 1** to this decision. They are set out by category at **Annex 2**. Some chains comprised four traders, including the defaulting trader at the start and DEL at the end. Some comprised three, and some just two.

25. At the times of the 123 transactions, the appellant was living with his father.

26. The suppliers to DEL in the 123 transactions were as follows—

- Gempost: deal chains 1 to 18, 77, 79, 80, 82, 110 to 118 (31 deal chains);
- Just Beer: deal chains 19 to 64, 67 to 76, 78, 81, 83, 119 to 123 (64 deal chains);
- Aphrodite Sales Limited ("Aphrodite"): deal chains 65 and 66 (two deal chains);
- Beer Bhai Cash and Carry Limited ("Beer Bhai"): deal chains 84 to 86 (three deal chains);
- Phoenix: deal chains 87 to 109 (23 deal chains).

27. The three purchases by DEL direct from Beer Bhai came after four deals in which DEL had bought from Gempost who had bought from Beer Bhai, and after three deals in which DEL had bought from Just Beer who had bought from Beer Bhai. Beer Bhai was the only supplier, in the 123 deal chains the tribunal is considering, which went from supplying to DEL indirectly via Gempost or Just Beer, to supplying directly to DEL.

28. It was undisputed that each transaction in each deal chain was – in relation to supply down to and including to DEL – "back to back" in the sense that Ms Robinson used that phrase: (i) goods were bought and sold on the same day, (ii) the same quantity of goods was transacted at each step of the chain. The invoices for the steps down to and including supply to DEL were in evidence, and Ms Robinson had helpfully prepared a "deal log" setting out the dates and numbers of the invoices for each step in each chain. In 122 of the 123 deal chains, the dates of the invoices from DEL's suppliers to DEL were the same as the dates of the invoices to DEL's suppliers; and where there were four traders in the chain, even the date of the invoice of the first supplier to the second supplier matched the dates on the invoices from the second supplier to the third supplier, and from the third supplier to DEL. Although it was common ground that the goods in each chain were bought and sold on the same day within each chain, that was not quite shown for one of the chains: for deal chain 104 (07/15-18), the invoice from Phoenix to DEL was dated 21 July 2015 but the invoice from A K Suppliers Limited to Phoenix was dated the following day, 22 July 2015, as was the invoice

[10] AWS/701 to 704.

[11] From Companies House, its company number was 05797546. We point this out to distinguish the Jabble BKS Properties Limited from another BKS Properties Limited, incorporated on 16 April 2021, which as far as we know has no connection with the Jabble BKS Properties Limited.

from Lupt Utama Limited to A K Suppliers Limited[12][13]. Since it was undisputed that, within each chain, the same quantity of goods was transacted at each step of that chain, down to and including supply to DEL, we have not needed to set out the invoices which show that, but they were in evidence and we have looked at them all.

29. Ms Robinson submitted for HMRC that there were nine transactions with Just Beer, and four with Gempost, after HMRC had sent to DEL two tax loss letters in February 2015, saying that DEL's transactions with Just Beer and with Gempost had traced back to a tax loss. We must be counting differently from HMRC because we counted 13 for Just Beer after the date of the 18 February 2015 Just Beer tax loss letter, and eight for Gempost after the date of the 19 February 2015 tax loss letter—

| | **Just Beer** | | | | | **Gempost** | | | |
|---|---|---|---|---|---|---|---|---|---|
| (1) | 23/2/15 | 04/15-8 | Inv no 3756 | RWS1/355 | | 23/2/15 | 07/15-29 | Inv no 3110 | RWS1/438 |
| (2) | 24/2/15 | 04/15-9 | Inv no 3757 | RWS1/357 | | 24/2/15 | 07/15-30 | Inv no 3111 | RWS1/440 |
| (3) | 25/2/15 | 04/15-10 | Inv no 3758 | RWS1/359 | | 25/2/15 | 07/15-31 | Inv no 3112 | RWS1/443 |
| (4) | 26/2/15 | 04/15-11 | Inv no 3759 | RWS1/361 | | 26/2/15 | 07/15-32 | Inv no 3113 | RWS1/445 |
| (5) | 27/2/15 | 04/15-12 | Inv no 3760 | RWS1/363 | | 19/3/15 | 04/15-13 | Inv no 3121 | RWS1/365 |
| (6) | 2/3/15 | 07/15-33 | Inv no 3762 | RWS1/447 | | 20/3/15 | 04/15-15 | Inv no 3122 | RWS1/369 |
| (7) | 3/3/15 | 07/15-34 | Inv no 3763 | RWS1/450 | | 30/3/15 | 04/15-16 | Inv no 3123 | RWS1/371 |
| (8) | 4/3/15 | 07/15-35 | Inv no 3764 | RWS1/452 | | 31/3/15 | 04/15-18 | Inv no 3124 | RWS1/375 |
| (9) | 4/3/15 | 07/15-36 | Inv no 3765 | RWS1/454 | | | | | |
| (10) | 5/3/15 | 07/15-37 | Inv no 3766 | RWS1/456 | | | | | |
| (11) | 20/3/15 | 04/15-14 | Inv no 3768 | RWS1/367 | | | | | |
| (12) | 30/3/15 | 04/15-17 | Inv no 3769 | RWS1/373 | | | | | |
| (13) | 31/3/15 | 04/15-19 | Inv no 3770 | RWS1/377 | | | | | |

We will however use, in the appellant's favour, HMRC's figures of nine for Just Beer and four for Gempost. So DEL made at least nine purchases from Just Beer after receipt of the February tax loss letter about Just Beer, and at least four purchases from Gempost after the February 2015 tax loss letter about Gempost. We say more about tax loss letters later, starting with paragraph 103 below.

30. The defaulting trader in each of the 123 deal chains was as follows—

| **Deal chains** | **Fraudulent Defaulting Trader** | **Deal chain** |
|---|---|---|

[12] Lupt to A K Suppliers, invoice number 1350: RWS8/210. A K Suppliers to Phoenix, invoice number PWL22715: RWS1/417.

[13] Another exception was deal 01/15-17: Invoice number 3718 (RWS1/307) from Just Beer, dated 9.12.15. This was probably intended to refer to 2014 not 2015. It was not suggested that December 2015 was the time of the final transaction between DEL and Just Beer.

| | | **numbers** |
|---|---|---|
| 10/14–1 to 10/14–18 | East Sussex Distribution Limited | 1 to 18 |
| 10/14–19 to 10/14–34 | East Sussex Distribution Limited | 19 to 34 |
| 01/15–1 to 01/15–30 | East Sussex Distribution Limited | 35 to 64 |
| 04/15–1 to 04/15–2 | Aphrodite Sales Limited | 65 and 66 |
| 04/15–3 to 04/15–12 | East Sussex Distribution Limited | 67 to 76 |
| 04/15–13 to 04/15–22 | Beer Bhai Cash and Carry Limited | 77 to 86 |
| 07/15–1 to 07/15–23 | Trader purporting to be Lupt Utama Limited | 87 to 109 |
| 07/15–24 to 07/15–37 | East Sussex Distribution Limited | 110 to 123 |

**(3) DEL's suppliers**

31. Ms Robinson gave a helpfully thorough description of the circumstances and activities of DEL's suppliers. We have extracted from that the following briefer description of each of DEL's suppliers in the 123 deal chains[14]. After the information about the direct suppliers to DEL, we will include information about other suppliers in the chains.

***(a) Aphrodite Sales Limited***

32. DEL bought from Aphrodite in two deal chains: chains 65 and 66. Aphrodite was incorporated under company number 09164737 on 6 August 2014. The company directors were Jay Pittman, Christian Picknell (also director of East Sussex Distribution Limited, one of the other traders in the deal chains in this appeal) and Davey John Geater. The sales classification code applied was 46390, non-specialised wholesale of food, beverages and tobacco.

33. Christian Picknell was appointed a director of Aphrodite on 1 September 2014.

34. Aphrodite applied for VAT registration on 7 August 2014. The VAT1 form declared the principal place of business as 12 Fullwood Avenue, Newhaven, East Sussex, BN9 9SP, and described the main business activity of the company as the "*sale of beauty products*". The estimated turnover in the next 12 months was said to be £240,000. There was no indication on the application that the company intended to buy from or sell to the EU.

35. In Aphrodite's period of VAT registration, Aphrodite traded solely in the wholesale of beers and wines.

36. Following investigations, HMRC on 4 March 2015 deregistered Aphrodite with effect from 5 February 2015. This was on the grounds that Aphrodite had not provided records of trading and that HMRC had reason to believe that an abuse of the VAT system was being perpetrated. (HMRC also deregistered another company of Mr Picknell's, East Sussex Distribution Limited ("East Sussex"), the defaulting trader in 88 of the chains: 1 to 64, 67 to 76, and 110 to 123.)

[14] In alphabetical order, not as to number of transactions.

37. DEL did not pay Aphrodite until DEL had been paid, which was after the goods had left DEL's possession to the purchaser from DEL[15].

*Title passing: Aphrodite*

38. As to when title was to pass in the two deal chains in which DEL purchased from Aphrodite (chains 65 and 66), Aphrodite's invoice to DEL for both deals said—

> "ALL GOODS UK DUTY PAID AND REMAIN PROPERTY OF APHRODITE SALES UNTIL CLEARED FUNDS HAVE BEEN RECEIVED" (RWS1/340 to 343).

***(b) Beer Bhai Cash and Carry Limited***

39. DEL bought from Beer Bhai in three deal chains: chains 84 to 86. Beer Bhai was incorporated on 2 December 2013 under company number 8797913. At the date of incorporation, the company was known as SCD Sussex Ltd. The director at that time was Steven Pittman, 12 Fullwood Avenue, Newhaven, East Sussex BN9 9SP. That address was also the registered address of the company. The same address, 12 Fullwood Avenue, Newhaven, had previously been the principal place of business of Aphrodite, the defaulting trader in two of the deal chains in the present case (deal chains 65 and 66).

40. Beer Bhai applied for VAT registration on 13 December 2013. Mr Pittman submitted the form, and Beer Bhai was granted VAT registration with effect from 2 December 2013. The application for VAT registration declared the main business activity to be "*distribution of wholesale goods*". The company was given the trade classification 46390 "*Wholesale grocer*". The estimated turnover for the next 12 months was declared to be £500,000. There was no indication that the company would buy from or sell to the EU. Beer Bhai was allocated quarterly returns.

41. Beer Bhai's registered office changed three times in just under two months: on 1 December 2014, it changed to 2 Warners Bridge Chase, Rochford, Essex, SS4 1JE; on 20 January 2015, it changed to The Toll House, Sutton Road, Cookham, Maidenhead, SL6 9RD; and on 28 January 2015, it changed to Apex Estate, Lower Eccleshill Road, Darwen, Lancashire, BB3 0RP.

42. On 17 March 2015, the company name changed from SCD Sussex Ltd to Beer Bhai Cash and Carry Limited. A letter of the same date was sent by Terence McGinley to HMRC notifying HMRC of the name change and of the change of address to Apex Estate.

*Title passing: Beer Bhai*

43. For completeness, we record that the Beer Bhai invoices to DEL said nothing about title passing. They said only that "*All stock is delivered or collected from our warehouse in Darwen & UK duty paid*"[16].

***(c) Gempost Limited***

44. Gempost was incorporated on 6 May 1998. It was registered for VAT with effect from 5 June 2000. The application for VAT registration, submitted by Jaspal Singh Jabble, declared the main business activity to be "*wholesalers of alcoholic related products*" and

[15] Transcript 15/7/22, page 54.

[16] RWS1/379, 380 and 381.

estimated the value of taxable supplies in the next 12 months to be £1,000,000. Mr Jaspal Singh Jabble was director of the company from 11 June 1998 to 28 February 2005. On that date, he was replaced as director by Jagjit Singh Jabble (one of the appellant's uncles), who resigned on 1 March 2016. Jagjit Singh Jabble also had day-to-day control over Just Beer, albeit he was not a director of Just Beer, and it was he who corresponded with HMRC on behalf of both Gempost and Just Beer. Gempost was initially based at Suite 45, The Mill House, Windmill Lane, Southall, UB2 4NL, before moving to Unit 50B (where Just Beer also moved to).

45. Gempost was a wholesaler of alcohol within the UK, all duty paid. Gempost had no means of storing alcoholic goods. Goods in respect of which it transacted were shipped directly from Gempost's suppliers to its customers throughout its trading period. DEL's final trade with Gempost was, of the deals shown to the tribunal, dated 31 March 2015 (04/15-18; see paragraph 45 above).

46. Gempost is now in liquidation. On 15 May 2017, a winding-up order was made on HMRC's petition. A liquidator was appointed in May 2017.

*Title passing: Gempost*

47. As to when title was to pass in the deal chains in which DEL purchased from Gempost —

(a) Gempost's invoices to DEL (chains 1 to 18, 77, 79, 80, 82, 110 to 118, starting with the invoice at RWS1/183) all said—

> "TERMS: All Goods remain the property of Gempost Ltd, until full payment is received. All Damages must be confirmed within 12 hours of delivery" (RSW1/445 is a better copy than some of the others);

(b) East Sussex's invoices to Gempost (chains 1 to 18 and 24 to 32, starting with the invoice at RWS1/184) all said—

> "All goods are UK duty paid. Title only passes once payment is cleared and confirmed. Thank you.". The invoices at RWS1/235 and 237 had additional wording underneath that, saying: "*Deliver to UB2 5NS*";

(c) Beer Bhai's invoices to Gempost (chains 13, 15, 16 and 18, starting with the invoice at RWS1/366 and ending with RWS1/376) all said—

> "All stock is delivered or collected from our warehouse in Darwen & UK duty paid.".

None of those Beer Bhai invoices said anything, so far as we could see, about when title passes.

48. So, in the 31 deal chains in which DEL bought from Gempost, the invoices from Gempost to DEL and from East Sussex to Gempost all said in effect that title does not pass from the supplier until full payment is received. In four of the deal chains, although that text was on the invoices to DEL from Gempost, there was no text to that effect on the invoices from Beer Bhai to Gempost.

***(d) Just Beer Limited***

49. Just Beer was incorporated on 18 June 1998 under company number 03583127, a month after the incorporation of Gempost. An application to register Just Beer for VAT was signed on behalf of the company by Jaspal Singh Jabble on 26 June 1998. The application

declared the principal place of business to be Suite 45, Windmill Place, 2/4 Windmill Lane, Hanewell, Middlesex, UB2 4NJ. The main business activity was declared to be *"wholesalers/retailers of alcoholic drinks and related products*". The company declared its estimated turnover for the next 12 months to be £1,000,000. Jaspal Singh Jabble was the director of Just Beer from 18 June 1998 to 28 February 2005. Makhan Singh Jabble (the appellant's father) was appointed as director on 28 February 2005 and resigned in March 2016. Markhan Singh Jabble and Jagjit Singh Jabble are brothers (two of the six siblings who came to the UK in the 1960s). Jagjit Singh Jabble dealt with HMRC on behalf of both Gempost and Just Beer, even though he was not a director of Just Beer. As with Gempost, Just Beer was initially based at Suite 45, The Mill House, Windmill Lane, Southall, UB2 4NL. However, Just Beer later moved to Suite 50B nearby (where Gempost also moved to).

50. Just Beer was a wholesaler of alcohol within the UK, all duty paid. Like Gempost, Just Beer had no means of storing the goods in which it transacted. So goods in respect of which it transacted were shipped directly from Just Beer's suppliers to its customers throughout its trading period. DEL's final trade with Just Beer was, of the deals shown to the tribunal, dated 31 March 2015 (04/15-19; see paragraph 45 above).

51. Just Beer is now in liquidation. On 27 March 2017, the court made a winding-up order on HMRC's petition. A liquidator was appointed on 7 July 2017.

*Title passing: Just Beer*

52. As to when title was to pass in the deal chains in which DEL purchased from Just Beer —

(a) Just Beer's invoices to DEL (chains 19 to 64, 67 to 76, 78, 81, 83 and 119 to 123, starting with the invoice at RWS1/238) all said, with one exception—

> "TERMS: All Goods remain the property of Just Beer Ltd, until full payment is received. All Damages must be confirmed within 12 hours of delivery" (identical to the Gempost invoices to DEL save that these Just Beer ones refer to Just Beer rather than to Gempost).

The exception is that the invoice at page RSW1/321 dated 13 November 2014 has no wording at the bottom;

(b) East Sussex's invoices to Just Beer (chains 19 to 64, 67 to 76 and 119 to 123), starting with RWS1/239) all said, with two exceptions—

> "All goods are UK duty paid. Title only passes once payment is cleared and confirmed. Thank you.".

The two exceptions are RWS1/249: the copy invoice dated 22 September 2014 has no text on the bottom or elsewhere as to title, but it seems the text may have been obscured. And RWS1/356, the copy invoice dated 23 February 2015 has no text at the bottom, but there is only the first page of a two-page invoice. Some of the invoices had additional wording "*Deliver to UB2 5NS*" (as did some of the East Sussex invoices to Gempost)[17];

(c) Beer Bhai's invoices to Just Beer (chains 78, 81 and 83, starting with RWS1/368) all said—

[17] RWS1/273 27/1/15, RWS1/275 21/1/15, RWS1/277 14/1/15, RWS1/279 13/1/15, RWS1/281 12/1/15, RWS1/283 9/1/15, RWS1/285 8/1/15, RWS1/287 7/1/15, RWS1/290 6/1/5, RWS1/293 6/1/15, RWS1/295 17/12/14, RWS1/297 16/12/14, RWS1/299 15/12/14, RWS1/301 12/12/14, RWS1/304 11/12/14, RWS1/306, 10/12/14, RWS1/308 9/12/14, RWS1/310 5/12/14 and then all until RWS1/337 3/11/14, RWS1/448 2/3/15, RWS1/451/ 3/3/15, RWS1/453 4/3/15, RWS1/455 4/3/15, RWS1/457 5/3/15.

> "All stock is delivered or collected from our warehouse in Darwen & UK duty paid".
>
> There was no text as to when title passes in Beer Bhai's invoices to Just Beer.

53. So, in the 64 deal chains in which DEL bought from Just Beer, the invoices from Just Beer to DEL and from East Sussex to Just Beer said with three exceptions that title does not pass from the supplier until full payment is received. In three of the 64 deal chains, although that text was on the invoices to DEL from Just Beer, there was no text to that effect on the invoices from Beer Bhai to Just Beer.

54. From the time of their VAT registration, Gempost and Just Beer each had a number of occasions of contact with HMRC, in a variety of ways. The contact included visits from HMRC. The contact also included so-called "tax loss letters" from HMRC: letters which informed each of Gempost and Just Beer of tax losses in deal chains in which they were involved. We have reproduced at **Annex 3** the parts of Ms Robinson's submission which described the circumstances and dealings of Gempost and Just Beer, and her submission that "*Much about the trading activity and trading patterns of both Gempost and JBL strongly suggests that both were part of an organised scheme to defraud the Revenue*".

55. The appellant's uncle, Jagjit Singh Jabble, was, at the time of the transactions involving Gempost[18], director of Gempost. The appellant's father, Makhan Singh Jabble, was, at the time of the transactions involving Just Beer[19], director of Just Beer. The appellant accepted in oral evidence that it sounded right that his uncle and father assisted with each other's companies, as the uncle and father had told HMRC[20]. For some time, the premises from which Gempost and Just Beer traded were located upstairs from DEL's office premises[21].

56. There were no written agreements between Just Beer and DEL, or between Gempost and DEL, as to when legal title to the goods passed, or as to payment or delivery terms, returns or exchange[22].

### *(e) Phoenix Wholesalers Limited*

57. Phoenix was originally named "Eitmas Clothing Ltd" and was incorporated on 4 March 2010, under company number 07178000. The name of the company was changed to Phoenix Wholesalers Limited on 6 July 2010. From 11 May 2015, the principal place of business was Unit 1, Charlton House, Springfield Road, Hayes, Middlesex UB4 0LG. The director at the date of incorporation was Andrew Davis. He resigned as director the same day. On 29 June 2010, Mohameed Ali Zaheer was appointed director. On 15 April 2015, Mr Sukhdeep Singh Mason was appointed director. He resigned on 25 June 2015. Mr Mason was appointed again on 1 October 2015.

58. Phoenix applied for VAT registration on 26 March 2010. The form was signed by Felix Bamidele, the director on that date. The business activity was declared to be "*import of clothing*". The estimated value of taxable supplies expected in the next 12 months was said to be £100,000. On 14 December 2011, Phoenix applied for a change of trade class from 46420 (wholesale of clothing and footwear) to 463412 (wholesale of alcoholic beverages).

---

[18] Jagjit Singh Jabble resigned as a director of Gempost on 1 March 2016.

[19] Makhan Singh Jabble resigned as a director of Just Beer on 1 March 2016.

[20] Transcript 15/7/22, page 100.

[21] Transcript 14/7/22, page 87.

[22] Transcript 14/7/22, page 106.

59. Phoenix was compulsorily deregistered with effect from 12 February 2016, on the basis that it was using its VAT registration solely or principally for fraudulent purposes. On the same date, Phoenix's input tax claims (totalling £351,352.60) were denied for periods 07/15 and 10/15 on the basis that the transactions on which those claims were based were connected with a fraudulent tax loss and that Phoenix knew or should have known of that fact. A further assessment in the sum of £1,295,133 was issued on 24 November 2016, with a related denial letter, in respect of additional transactions in VAT periods 10/15 and 01/16.

60. Phoenix was dissolved at Companies House on 24 May 2016, before an assessment raised on 24 November 2016 was issued. That assessment was withdrawn and the subsequent debt balance was written off.

*Title passing: Phoenix*

61. As to when title was to pass in the 23 deal chains in which DEL purchased from Phoenix—

(a) Phoenix's invoices to DEL (chains 87 to 109)[23] all said—

> "Stock/Goods supplied remains the property of PHOENIX WHOLESALERS LIMITED until payment has been made/received in full";

(b) A K Suppliers Limited's invoices to Phoenix (chains 87 to 109)[24] all said—

> "All products supplied and delivered are property of A K SUPPLIERS LIMITED until the invoice total has been paid in full. Delivery drivers are not authorised to collect monies on behave of the company.";

(c) the purported invoices from Lupt Utama Limited to A K Suppliers Limited (chains 87 to 109)[25] said nothing about title, perhaps to be expected since this was not really Lupt Utama Limited but someone using Lupt Utama Limited's VAT Registration Number ("VRN");

(d) the purchase orders said nothing about title.

62. So, in all 23 deal chains in which DEL bought from Phoenix, the invoices apart from those purportedly from the trader at the top, Lupt Utama Limited (whose VRN had been hijacked), all said that property remains in the supplier until payment has been received in full.

## (4) Suppliers not supplying direct to DEL in the deal chains

### *(a) A K Suppliers Limited*

63. A K Suppliers Limited ("A K Suppliers") was originally incorporated under the name Aircondirect9 Limited on 13 April 2012, under company number SC421889. At the time of incorporation, the director was Zuber Karim, and the registered office was 13 Luke Place, Dundee, DD5 3BN. The standard industrial classification code ("SIC code") given on the first annual return, submitted on 3 June 2013, was 47421, which relates to the retail of mobile 'phones. A K Suppliers applied on 21 August 2012 for VAT registration. The application gave the principal place of business as 13 Luke Place, Broughty Ferry, Dundee DD53BN. The description of the current and/or intended business was "*Selling consumer electronics to*

[23] Starting at RWS1/382.

[24] Starting at RWS1/383.

[25] Starting at RWS8/142.

*retail and wholesale trade & import and export of consumer products*". The application declared the categorisation of the current and/or intended business to be "*Wholesale of radio, television goods, electrical household appliances (other than of gramophone records, audio tapes, compact discs and video tapes and the equipment on which these are played) n.e.c. (main activity)*" and "*Retail sale of furniture, lighting equipment and other household articles (other than musical instruments) n.e.c., in specialised stores*"[26]. The estimated turnover for the next 12 months was given as £100,000. The estimated value of goods that the company expected to buy from the EU in the next 12 months was given as £60,000. The estimated value of sales that the company expected to make to the EU in the next 12 months was given as £40,000[27].

64. There was a change of director on 20 June 2014 and, on 25 September 2014, a change of business name to A K Suppliers Limited. SIC code 46342 was notified on 4 July 2015 via the annual return. That code relates to the wholesale of wine, beer, spirits and other alcoholic beverages[28]. On 6 July 2015, the original director, Zuber Karim, told HMRC that he had sold the company and that he no longer had anything to do with it. On 14 September 2015, HMRC officers left a seven-day letter at the company's new premises in Crawley, stating that, if the business did not contact the officers within seven days, the business would be deregistered. On 22 September 2015, the director emailed HMRC asking them not to cancel the VAT registration. It was too late by then to cancel the deregistration but reinstatement was commenced and it appears must have been effected. HMRC wrote to the company on 22 March 2016[29] advising it that the company was using its VAT registration solely and principally for abusive purposes, and notifying the company that it was deregistered with effect from 22 March 2016. On 17 August 2016, a winding-up order was made in respect of A K Suppliers[30].

65. On 6 January 2017, a penalty assessment was raised against A K Suppliers in the sum of £288,812.86. The penalty was raised as a result of a "deliberate" inaccuracy under schedule 24 to the Finance Act 2007[31].

66. On 5 February 2017, a Personal Liability Notice was issued to Mr Aftab Khan (director of A K Suppliers), at Flat 5, 6 Spencer Road, South Croydon, CR2 7EH. The penalty owed was in the sum £288,812.86. No payment has been made against the Personal Liability Notice, and no appeal against it has been received[32].

### *(b) East Sussex Distribution Limited*

67. East Sussex was incorporated on 7 February 2014, under company number 8882370. Its registered office was 9A Kerrara Terrace, Whiteley Road, Eastbourne BN22 8NL, the director's home address. The sole director and shareholder was Christian Picknell[33]. On 10 February 2014, HMRC received an application for VAT registration. The VAT1 form was submitted by Mr Picknell, the director of East Sussex[34]. The application described the business activity as "*Distribution service for various goods*" (but the company went on to make supplies of alcohol, the majority of which were not declared to HMRC). The VAT application also indicated that the company sought compulsory registration as the turnover

[26] RWS6/55.

[27] RWS6/56..

[28] RWS6/30 to 64.

[29] RWS6/367.

[30] RWS6/406.

[31] Agreed facts note from both counsel sent by email to judge at 14.05 on 18/7/22, during the hearing, along with Notice of penalty assessment to A K Suppliers Limited (new exhibit number AK/1), Penalty explanation schedules (new exhibit numbers AK/2 and AK/3), and Personal liability notice to Mr Aftab Khan, new exhibit number AK/4.

[32] Ibid.

[33] RWS7/13.

[34] RWS7/20.

would exceed the threshold in the next 30 days alone. The estimated turnover for the next 12 months was specified as £250,000, and the company indicated that it did not expect to be in a repayment position. The principal place of business was declared to be the director's home address, 9A Kerrara Terrace. Mr Picknell was the only director of East Sussex from its incorporation. On 10 July 2014, HMRC received a VAT variation submission amending the principal place of business to Charter House, Courtlands Road, Eastbourne, BN22 8UY[35]. East Sussex was deregistered for VAT with effect from 5 March 2015. Although returns had been submitted for periods 11/14 and 02/15, the liabilities on the returns remained outstanding and no records had been provided by the trader to support the amounts claimed on the returns.

68. HMRC raised assessments totalling £3,612,061, and imposed penalties on East Sussex in excess of £2.5 million. Those sums have since been written off.

69. On 8 July 2015, HMRC issued a Personal Liability Notice to Mr Picknell, the director of East Sussex, in the amount of £419,946.00 (relating to the 05/14 and 08/14 periods)[36]. The basis for the penalty was that Mr Picknell was the sole director and controlling mind of the business and that he knew, when submitting the 05/14 and 08/14 returns, that those returns were false. The notice was issued on the basis of HMRC's view that this was a deliberate and concealed act. Mr Picknell was held by HMRC personally liable for 100% of the penalty issued against East Sussex in these periods.

70. East Sussex was placed into liquidation on HMRC's petition on 14 September 2015. The liquidators were appointed on 18 November 2015.

### *(c) Lupt Utama Limited*

71. Lupt Utama Limited ("Lupt") was incorporated under company number 07093874, on 3 December 2009. The application to register said the registered office was to be 27 Issigonis House, Cowley Road, Acton Vale, London W3 7UN. The sole shareholder and director was a British national named Lupt Utama whose address was the same as that of the proposed registered office[37]. The company details remained unchanged until 2014. On 27 January 2015, Companies House received the Annual Return form AR01 dated 3 December 2014. That form indicated that a Mr Gironella had been appointed as an additional director. The accounts for the year ended 31 December 2014, approved by Mr Utama, showed that by that date the registered office address had changed to 923 Finchley Road, Golders Green, London NW11 7PE. That was the address of Joseph Kahan Associates, the accountants who prepared annual accounts for Lupt[38]. The annual return dated 3 December 2015 showed that Mr Utama was again the sole director[39]. In 2016, Companies House replaced the Annual Return form AR01 with a simplified document, the Confirmation Statement CS01. The CS01 does not name the company directors. The CS01 for Lupt, dated 3 December 2016, confirmed that Mr Utama was a person with significant control of Lupt[40]. Forms AP01 (appointment of director) and TM01 (termination of director appointment), filed with Companies House in November and December 2014 and April 2015, indicated changes of director[41]. On 14 April 2015, Companies House received a form AD01 changing the registered office to 1A Varcoe Road, South Bermondsey, London SE16 3DG. A further form AD01 was received by Companies

[35] RWS7/34.

[36] RWS7/9 and RWS7103.

[37] RWS8/2, RWS8/9.

[38] RWS8/2, RWS8/43.

[39] RWS8/2, RWS8/53.

[40] RWS8/3, RWS8/64.

[41] RWS8/76.

House the following day, 15 April 2015, changing the registered office back to 923 Finchley Road[42].

72. Lupt was registered for VAT with effect from 1 October 2012. Its application for VAT registration, dated 16 December 2012, was in fact received by HMRC on 19 November 2012. The form was signed by Mr Utama. It declared the main trading activity to be costume design and supervision for the television and film industries. The principal place of business was 27 Issigonis House, which was also Mr Utama's home address. The estimated turnover for the next 12 months was said to be £40,000. No trade with the EU was said to be anticipated[43]. Mr Utama applied for Lupt to go on to the Flat Rate VAT scheme in October 2012. The application was granted on 10 December 2012[44].

73. On 16 November 2015, Mr Utama emailed HMRC saying that Lupt's VRN had been hijacked by fraudsters. He said that Lupt had supplied services as a costume designer to film companies and had never traded in alcohol. A dummy VRN 020 4823 61 was set up for the hijack trader the taxable person purporting to be (TPPTB) Lupt Utama Limited[45]. Assessments were raised against the trader purporting to be Lupt Utama Limited. Among the sales invoices raised by the trader purporting to be Lupt Utama Limited were invoices to A K Suppliers, one of the suppliers in the deal chains in the present case. HMRC received various documents from A K Suppliers. Included were deal packs relating to 23 sales purportedly by Lupt to A K Suppliers which, in turn, sold the goods to Phoenix, who then sold the goods to DEL[46].

74. Tax losses totalling £3,686, 544.12 have been attributed to the VRN that was hijacked from Lupt.

**(5) DEL's dealings with HMRC**

75. There were regular (unannounced) visits by HMRC Customs International Trade and Excise ("CITEX") officers to DEL's premises over the years. HMRC officers would check the stock held in the warehouse against purchase invoices. One visit in June 2012 took place over four days. HMRC officers carried out supply chain checks to establish whether or not excise duty had been paid on goods held in the warehouse. Both Just Beer and Gempost had supplied DEL for some years. As the appellant points out, none of these visits by HMRC led to any goods being seized, duty assessments being made or penalties being issued.

76. HMRC sent various items of correspondence to DEL, in the form of letters and standard notices, as regards fraud.

77. On 12 February 2007, HMRC wrote to DEL saying[47]—

> "Dear Sir/Madam
>
> HM Revenue and Customs are still experiencing certain problems with businesses in your trade sector offering commodities regularly involved in Missing Trader Intra Community (MTIC) VAT fraud. MTIC fraud may involve all types of VAT standard rated goods and services including computer equipment, mobile phones and ancillary items. The current estimate of the VAT loss from this type of fraud in the UK alone is between £1.12 and £1.9 billion per annum.

[42] RWS8/84.
[43] RWS8/4, RWS8/86.
[44] RWS8/102.
[45] RWS8/6.
[46] RWS8/140, RWS8/232.
[47] RWS1/508.

As part of our local controls you may. previously have been verifying the VAT status of new or potential Customers / Suppliers with your local office or the National Advice Service. However, with effect from today's date, requests for verification of the VAT status of new Customers / Suppliers should be faxed to **Redhill VAT Office fax numbers 01737 734605 or 01737 734793.** If you do not have fax facilities please contact us via **PETER WYATT TEL NO; 01737 734590 OR TERRY MENDES TEL NO; 01737 734561.**

Although the Commissioners may validate VAT registration details, it does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquiries in relation to proposed transactions. It has always remained a trader's own commercial decision whether to participate in transactions or not and transactions may still fall to be verified for VAT purposes.

For your information I also enclose a copy of our Notice 726 — Joint and Several Liability which may also viewed on our website www.hmrc.gov.uk.

If known, when verifying the VAT status of new or potential Cu6tomers/ Suppliers the information provided should include the following:

- The name of the new or potential Customer/ Supplier.
- Their VAT Registration Number.
- Their contact numbers (including telephone number, fax number, e-mail address and
- mobile numbers if known).
- Copies of any supporting documentation (i.e. VAT certificate, letter of introduction,
- certificate of incorporation etc)
- The Directors and/or responsible members.
- Whether they are buying or selling goods.
- The nature of the goods.
- The quantities of the goods.
- The value of the goods.
- Their bank sort code and account number.
- We would also ask that you forward, on a monthly basis, a purchase and sales listing with the identifying VAT Registration Numbers against the suppliers/customers to your local office.

I look forward to your continued assistance in this matter.

Yours faithfully".

78. Enclosed with HMRC's 12 February 2007 letter was Notice 726[48] headed "Joint and several liability for unpaid VAT (VAT Notice 726)". Its first line said—

> "Find out how you could be made liable for the unpaid VAT of another VAT-registered business when you buy or sell specified goods".

79. The notice went on to say—

> "**1.3 Who should read this notice**
>
> If. you're a VAT-registered business and buy or sell certain specified goods mentioned in paragraph 1.4, you should read this notice.
>
> **1.4 The specified goods**
>
> This measure only applies where there is a supply of goods or services that are subject to widespread VAT fraud — in particular, missing trader intra-community (MTIC) VAT fraud. Because of the way in which this fraud continually mutates,

[48] RWS1/510.

including the types of goods that are used to perpetrate the fraud, the list of specified goods was extended in May 2007".

80. The list of "specified goods" in paragraph 1.4 of the notice comprised computers, telephones and other electronic equipment.

81. The notice later said[49]—

> "**4.4 How to avoid being caught up in MTIC fraud**
>
> It's in your interests to check carefully who you're dealing with. In order to help you avoid being unwittingly caught up in a supply chain where VAT goes unpaid, this notice contains some examples of reasonable steps you can take to establish the integrity of your customers; suppliers and supplies.
>
> **4.5 Reasonable steps**
>
> It's good commercial practice for businesses to carry out checks to establish the credibility and legitimacy of their customers, suppliers and supplies. These checks will need to be more extensive in business sectors that are commercially risky or vulnerable to fraud and other criminality.
>
> Such checks will also assist you to avoid being involved in supply chains linked to the theft of VAT and the possibility of becoming jointly and severally liable for VAT unpaid elsewhere in your supply chain.
>
> HMRC does not expect you to go beyond what is reasonable. But HMRC would expect you to make a judgement on the integrity of your supply chain and the suppliers, customers and goods within it.
>
> Factors you should consider include:
>
> - the type and level of checks you carry out to establish the integrity of the supply chain and the action you take as a consequence of those checks
> - the nature of the supply
> - payment arrangements and conditions
> - details of the movement of goods involved".

82. The appellant was, in any event, "*aware that there was a problem in the industry*"[50].

83. DEL received VETO letters, informing it of the deregistration of a trading partner, on the following dates: 19 February 2007 (Mert Liquors Ltd)[51]; 28 February 2011 (Lid UK Ltd)[52]; 17 August 2011 (Dentile Ltd)[53]; and 15 November 2011 (Sharabi Ltd)[54].

84. On 1 September 2010, HMRC officers visited DEL at its premises, and met with the appellant only. Discussions took place with regard to customers, suppliers and due diligence. The appellant said he had engaged The Due Diligence Exchange to carry out due diligence in respect of all his suppliers and his largest customers, and that he carried out his own checks additional to their work. Following the visit, HMRC sent the appellant a letter dated 7 September 2010 summarising the outcome of the visit[55].

85. On 15 September 2011, HMRC officers visited DEL's premises and met again with the appellant[56]. The appellant said he was aware of MTIC fraud and had had contact with HMRC

[49] RWS1/516.
[50] Transcript 15/7/22, page 154, re-examination.
[51] RWS1/526.
[52] RWS1/529.
[53] RWS1/541.
[54] RWS1/554.
[55] RWS1/527.
[56] RWS1/543.

Bristol in the past. He said he believed he had read PN726. He said he had received VETO letters in the past, advising of the deregistration of businesses he had dealt with. The appellant provided cash receipts in respect of all monies paid to Gempost for June and July 2011. He stated that the goods were not sold "back to back", in that a single lot purchased by DEL would then be split and sold on to a number of different customers. On the same day as that visit, one of the officers who had made that visit, Emma Bullivant, issued two documents: Notice PN726 and the "How to spot missing trader fraud" leaflet[57]. The appellant told the officers on the visit that he conducted due diligence checks on new customers including a trade application form, background checks and credit checks.

86. On 16 September 2011, HMRC sent an MTIC awareness letter to DEL[58], advising that MTIC fraud was prevalent in the wholesale commodity sector, and of the levels of tax loss believed to accrue from such fraud. The letter advised the verification of new trading partners with the Wigan HMRC office. The letter also said—

> "Although the Commissioners may validate VAT registration details, it does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquiries in relation to proposed transactions. It has always remained a trader's own commercial decision whether to participate in transactions or not and transactions may still fall to be verified for VAT purposes".

87. On 12 March 2012, HMRC issued DEL with a further letter informing DEL of fraud within its sector, and directing the company to HMRC's website for further information on MTIC fraud. The letter set out the requirement that companies provide HMRC with details of their trading on a monthly basis, and the need to verify the VAT status of new or potential customers and suppliers[59].

88. On 19 March 2012, HMRC officers visited DEL's premises and spoke with the appellant. The appellant, having established that the officers were part of HMRC's MTIC team and having established his rights, asked the officers to leave and to return when the appellant and his representative were present[60].

89. On 20 March 2012, Mr Curley, DEL's representative, informed HMRC that a formal complaint had been made which alleged harassment and abuse of powers. On 28 March 2012, Officer Synnott replied to Mr Curley's letter. None of the complaints was upheld[61].

90. On 18 June 2012, HMRC officers from both the MTIC team and the CITEX team attended DEL's premises, following a lack of a response to repeated requests to arrange a visit. The officers met the appellant and served on him a letter which explained that CITEX officers were present and would carry out a stock take. The appellant called his representative, Mr Curley, who advised that the ongoing complaints did not stop HMRC conducting an audit. The appellant then stated that he could not see the MTIC officer whilst CITEX continued to harass him. He provided a business card to the officers and asked that they email some dates. The appellant and the officers left the premises[62]. Dates were subsequently emailed to the appellant, as he had requested, on 26 June 2012. No reply was received[63].

91. On 24 July 2012, HMRC wrote to DEL, explaining that HMRC had been unable to verify the company's VAT returns for periods 01/12 and 04/12. The letter said that it was

[57] RWS/549.

[58] RWS1/550.

[59] RWS1/555.

[60] RWS1/557.

[61] RWS1/563, RWS1/564.

[62] RWS1/569.

[63] RWS1/572.

therefore HMRC's intention to issue an assessment in the sum of £1,533,927.93 in respect of those periods[64].

92. On 10 December 2012, HMRC Officer Cook wrote to DEL under the subject heading "**VAT Fraud Alert: Alternative Banking Platforms"** advising that those engaged in MTIC fraud sought to use alternative banking platforms to facilitate fraud or launder its proceeds[65]. The letter went on to say (emphasis in original)—

> "**What does this mean for your business?**
>
> We strongly advise you that you do not ignore this warning. If you fail to carry out proper 'know your customer checks' (KYC) you may be putting your business at risk. It is for you as a business to demonstrate that all the conditions for a taxable supply are met. You must be able to demonstrate that a payment made is for a particular supply from a particular person. If you are not able to establish the audit trail for the supply and consideration you may be denied input tax".

93. On 27 June 2013, Officer Cole wrote to DEL and advised that he was now its control officer. The letter reminded DEL of the need to undertake due diligence and the requirement to verify the VAT status of customers and suppliers. The letter also proposed 30 July 2013 for Officer Cole to visit the company premises[66]. DEL's representative wrote to HMRC saying that the proposed date was not suitable. On 29 July 2013, Officer Cole wrote to Mr Curley suggesting three dates – 28, 29 or 30 August – for a visit to DEL. Mr Curley replied on 8 August 2013 saying—

> "… unfortunately none of the dates you suggest are convenient. We apologise but this is the middle of the holiday period and we are short staffed. You letter raises some legal issues and we are currently arranging to seek legal advice for our client. We will write to you further in the near future" [67].

94. By 11 September 2013, neither Mr Curley nor the appellant had made contact with Officer Cole[68].

95. On 11 September 2013, Officer Cole wrote to DEL advising that he had not heard from DEL regarding the rescheduled visit date, and requesting a number of purchase invoices relating to sales that DEL had made on various dates in 2012 and early 2013. The letter also requested *"CMR/Freight Documents if the goods were purchased outside the UK", "Payment Information*" and "*Due Diligence checks carried out*"[69]. Officer Cole sent a follow-up letter on 25 September 2013 asking for a further piece of information[70]. Mr Curley replied on 23 September 2013—

> "We refer to your letter dated 11 September 2013 and to your earlier demands. Our client has now had the opportunity to take advice.
>
> Your demands are wholly unreasonable and unworkable. Your demands are the latest in a long history of harassment of our client by HMRC. Please note that we are currently in the process of drawing up formal complaints on behalf of our client in relation to this harassment and these complaints include your demands" [71].

---

64 RWS1/577.
65 RWS1/579.
66 RWS1/581.
67 RWS1/585.
68 RWS1/47.
69 RWS1/588.
70 RWS1/590.
71 RWS1/591.

96. On 12 November 2013, Officer Cole again requested the documentation which he had requested in his letter dated 11 September 2013[72].

97. On 20 November 2013, Mr Curley wrote to HMRC saying—

> "Our client has just drawn to our attention your letters to our client of 11 September 2013, 25 September 2013 and 12 November 2013. Our client assumed you would have also written to us as the appointed agents and that we were therefore dealing with these enquiries. Unfortunately, you did not copy these letters to us.
>
> We understand a member of staff sent you the information you asked for in your letter of 25 September 2013 and please can you confirm that you require no further information.
>
> You have asked for a considerable amount of information in your letter of 11 September 2013 and please can you advise the purpose of this enquiry.
>
> We are seeking legal advice for our client and will write to you again in the near future"[73].

98. On 2 December 2013, Officer Cole responded to the request to confirm the purpose of his enquiries. He said the information was required as part of HMRC's strategy to tackle MTIC fraud. He added that HMRC were undertaking a risk-based programme targeted at those believed to be trading in transaction chains associated with MTIC fraud. The letter also said that Officer Cole still required copies of the documents he had requested in his letters of 11 September and 12 November 2013[74].

99. On 29 January 2014, Officer Cole issued to DEL a formal "Notice to produce documents and information" having not received the documents listed[75]. Those were—

> "**Statutory records or information**
> Purchase invoices relating to the following sales made to J and A Drinks Ltd
> Sales Invoice Numbers are : 1819, 2222, 2349, 2631, 2758, 3129, 3275, 3328, 3520, 3797, 4323, 4476, 4636, 4760, 5205, 5731, 8110, 8393, 8546, 8701, 8984, 9253, 9392, 9531, 9585, 9675, 9831, 9978, 10146, 9137
> Purchase Invoice relating to the following sale to Select Cash and Carry Ltd
> Sales Invoice Number: 9653
> Purchase Invoice relating to the following sale to Multinational Trading (2000) Ltd
> Sales Invoice Number: 8452
> Purchase Invoice relating to the following sale to Drinks Stop Cash and Carry Ltd
> Sales Invoice Number 10096
> Evidence of Payment for each of the transactions noted above.
> Freight Documentation for each of the transactions noted above. (If applicable)".

100. On 24 February 2014, Mr Curley wrote to HMRC having previously requested an extension of time 20 February 20145 to provide information. The letter said—

> "Due to circumstances outside our control we were unable to deal with this matter by the date we proposed. Sudden matters arose that we were required to deal with as a matter of urgency and was not a delay caused by our clients. We apologise for this circumstance and request your forbearance of some further time to the end of this week to provide you with the substantive response.
>
> We refer to your letter dated 19 February 2014 which we did not receive until this morning's post. Unfortunately your Department's centralised postal system regularly

[72] RWS1/596.
[73] RWS1/597.
[74] RWS1/599.
[75] RWS1/604.

causes delays in the delivery of mail. We will refer back to you in the near future concerning the matters raised in your new letter"[76].

101. Correspondence continued between HMRC and DEL (via its representative). In a letter from Mr Curley dated 21 April 2014, DEL said there were fundamental flaws in the verification exercise and that HMRC's "*demands*" were "*quite frankly ludicrous*". The letter went on to say—

> "In your letter of 14th March 2014 you offer to enter into discussions about your demands and suggest a meeting. We made reference to discussions in our letter to you but we did not mean by this that this would excuse you from answering a single point we raised in our letter to you [sic] 3rd March 2014. May we now have a full reply to all of the points we raised with you in our letter. Alternatively you could now drop your demands and save our client the costs and substantial inconvenience of having to respond to demands that are ludicrous and impossible to meet" [77].

102. On 30 June 2014, in a separate letter from the tax loss letter of that date, Officer Cole made a further request for documents which had not been provided[78]. He suggested that, if there had been difficulties tracing a purchase invoice in respect of any particular transaction, the company should send copies of the sales and purchase listings.

### *(a) DEL's dealings with HMRC: Tax loss letters*

103. DEL also received from HMRC a number of so-called "tax loss letters", advising DEL of tax losses in earlier chains which had been verified by HMRC—

(i) by letter dated 26 May 2011, HMRC advised DEL of tax losses exceeding £82,000 relating to 26 transactions completed by DEL in VAT period 07/09. The supplier to DEL in those transactions was Barrel Beers[79];

(ii) by letter dated 19 February 2014, HMRC advised DEL of tax losses exceeding £12,607 relating to four transactions completed by DEL in VAT period 07/13. The supplier to DEL in those transactions was Red Dust (Australia) Limited (one of the Jabble family companies, director Kulvinder Jabble). The letter also advised that Red Dust "*were deregistered during the period of these transactions and remain deregistered*"[80];

(iii) by letter dated 30 June 2014, HMRC advised DEL of tax losses exceeding £39,344.43 relating to 12 transactions completed by DEL in VAT periods 07/13 and 10/13. The supplier to DEL in each of those transactions was Gempost[81];

(iv) by letter dated 2 July 2014, HMRC advised DEL of tax losses in excess of £38,682.79 relating to 12 transactions completed by DEL in VAT periods 07/13 and 10/13. The supplier to DEL in each of those transactions was Just Beer[82];

(v) by letter dated 4 September 2014, HMRC advised DEL of tax losses in excess of £5,455 relating to two transactions completed by DEL in VAT period 01/14. The suppliers to DEL in those transactions were Gempost and Just Beer[83];

---

[76] RWS1/608.
[77] RWS1/642.
[78] RWS1/658.
[79] RWS1/530.
[80] RWS1/606.
[81] RWS1/660.
[82] RWS1/662.
[83] RWS10/8.

(vi) by letter dated 1 October 2014, HMRC advised DEL of tax losses in excess of £31,966.10 relating to eight transactions completed by DEL in VAT periods 01/14 and 04/14. The suppliers to DEL in those transactions were Gempost (4) and Just Beer (4)[84];

(vii) by letter dated 18 February 2015, HMRC advised DEL of tax losses in excess of £25,168 relating to seven transactions completed by DEL in VAT period 07/14. The supplier to DEL in all seven transactions was Just Beer[85];

(viii) by letter dated 19 February 2015, HMRC advised DEL of tax losses in excess of £26,109 in respect of seven transactions completed by DEL in VAT period 07/14. The supplier to DEL in all seven transactions was Gempost[86];

(ix) by letter dated 1 April 2015, HMRC advised DEL of tax losses in excess of £40,203.72 relating to 11 transactions completed by DEL in VAT period 07/14. The suppliers to DEL in those transactions were Gempost (6) and Just Beer (5)[87];[88] and

(x) by letter dated 22 June 2015, HMRC advised DEL of tax losses in excess of £30,133.89 relating to eight transactions completed by DEL in VAT period 07/14. The suppliers to DEL in those eight transactions were Just Beer (3) and Gempost (5)[89].

### *(b) DEL's dealings with HMRC: VAT verification*

104. HMRC officers visited DEL's accountant's premises on 15 July 2015. The company accountant informed the officers that the business was run from warehouse-type premises, with a large area set aside for stock and then office space on the first floor[90]. The business employed approximately 40 staff at the time of the visit[91]. According to the accountant, all stock was stored at the principal place of business and none was held elsewhere. Payments for stock were made and received in cash, or by cheque or card. The director dealt with the cash from sales and banked it the following day[92].

105. Records were provided for the period 04/15. Basic checks were conducted by the officers on site, with further checks conducted back at the officers' office. They reviewed the sales invoices. It appeared that, on a monthly basis, hundreds of sales were made, mainly to retailers. The cash payment sheets indicated that payments made for the transactions subject to verification were often made in cash. The sales listings were provided separately on 23 July 2015[93].

106. HMRC officers traced the supply chains from DEL to its suppliers, and from its suppliers' to their suppliers, and so on. Not all of DEL's sales could readily be matched with its purchases because a single purchased consignment would in some cases be split up and sold as separate lots[94].

---

84 RWS9/4.

85 RWS9/6.

86 RWS9/8.

87 RWS9/10.

88 There was also a tax loss letter dated 17 April 2015 advising DEL of tax losses exceeding £59,774.06 relating to 16 transactions completed by DEL in VAT period 01/14, but the supplier in those was Barrel Beers and those transactions were not within this appeal.

89 RWS1/87.

90 RWS1/4, paragraph 16.

91 RWS1/91.

92 RWS1/91.

93 RWS1/5, RWS1/89.

94 RWS1/7, paragraph 24.

107. On 10 September 2015, Officer Cole wrote to DEL informing DEL that he had traced 74 transactions in VAT periods 10/14, 01/15 and 04/15 to defaulting traders, with a total tax loss in excess of £289,148. The suppliers to DEL in those transactions were Just Beer (56) and Gempost (18)[95].

108. On 23 September 2015, Officer Cole wrote to DEL, informing it that he had traced a further four transactions in VAT periods 07/14 and 10/14 to a defaulting trader, with a tax loss in excess of £31,527.44. The supplier to DEL in those transactions was Horizon Traders Limited[96].

109. DEL's representative responded, by letters dated 1 and 2 October 2015, to both of those September 2015 letters[97]. The representative said that DEL had no knowledge or means of knowledge in respect of the tax losses, and that DEL would suspend trading with the identified suppliers.

110. On 16 October 2015, Officer Cole asked for copies of the due diligence performed on Gempost and Just Beer[98].

111. On 22 October 2015, Officer Cole issued another tax loss letter to DEL, informing it of two transactions in period 04/15 which had been traced to a tax loss in excess of £21,415.47. The supplier to DEL in those transactions was Aphrodite[99].

112. On 17 November 2015, Officer Cole notified the company that there was strong evidence of tax losses in DEL's supply chains in VAT period 07/15 where goods had been supplied by Phoenix. He said that, while he had been unable as yet to quantify the loss, he estimated it to be £147,910[100].

113. Further tax loss letters were issued to DEL in respect of transactions conducted in VAT periods 04/15: a letter dated 13 January 2016 related to three transactions with Beer Bhai[101]; and a letter dated 5 February 2016[102] related to four transactions with Gempost and to three with Just Beer. Further tax loss letters were issued to the company in respect of transactions conducted in VAT period 07/15: a letter dated 1 March 2016 related to 23 transactions with Phoenix[103]; a letter dated 22 April 2016 related to nine transactions with Gempost[104]; and a letter dated 23 May 2016 related to five transactions with Just Beer)[105].

114. On 23 March 2016, Officer Cole received from Vincent Curley & Co Ltd due diligence packs for suppliers Beer Bhai, Just Beer, Aphrodite, Barrel Beers, Gempost and Horizon Traders Limited[106].

115. By letter dated 25 April 2016, Officer Adair informed DEL that she had made a protective assessment under section 73 of the Value Added Tax Act 1994 in the sum of £806,653[107].

116. By letter dated 29 July 2016, DEL replied to the various tax loss letters through its representative, Vincent Curley & Co Ltd. The letter said that DEL had no knowledge or

95 RWS1/7, RWS1/105.
96 RWS1/8, RWS1/110.
97 RWS1/112 and 114.
98 RWS1/116.
99 RWS1/9, RWS1/119.
100 RWS1/9, RWS1/121.
101 RWS1/125.
102 RWS1/127.
103 RWS1/130.
104 RWS1/134.
105 RWS1/138.
106 RWS1/664.
107 RWS1/136.

information about the tax losses in its supply chains. The letter added that, so far as DEL was aware, the suppliers were *bona fide* businesses and that DEL's due diligence checks confirmed this to be so[108].

117. On 25 August 2016, the Lanyard team visited DEL's principal place of business and was unable to establish that the business was still operating. The team hand-delivered a seven-day deregistration letter[109]. DEL was deregistered with effect from 8 September 2016[110].

***(c) DEL's dealings with HMRC: HMRC decisions and subsequent events***

118. By a letter dated 17 November 2016[111], HMRC notified DEL of HMRC's decision to deny DEL the right to deduct input tax in the sum of £576,611.52 claimed in accounting periods 10/14, 01/15, 04/15 and 07/15, in relation to the 123 transactions. The grounds for the decision were that those 123 transactions were connected with the fraudulent evasion of VAT and that DEL knew or should have known of that fact (the so-called "*Kittel* basis": *Axel Kittel v État belge (C-439/04), and État belge v Recolta Recycling SPRL* (C-440/04), CJEU 6 July 2006).

119. On 14 December 2016, DEL requested a review of the decision to deny input tax deduction. On 21 February 2017, Officer Rickaby of HMRC informed DEL that the decision to deny input tax had been upheld on review.

120. In its notice of appeal dated 9 March 2017, DEL appealed against the 17 November 2016 decision.

121. DEL entered creditors' voluntary liquidation on 5 April 2017.

122. By an email of 25 April 2017, DEL's liquidator notified the First-tier Tribunal and HMRC of the liquidator's withdrawal of the 9 March 2017 appeal. The assessed tax the subject of that appeal remained due from DEL under section 73(9) of the Valued Added Tax Act 1994 ("the VAT Act 1994").

123. On 3 July 2017, HMRC wrote to DEL's liquidator notifying it of HMRC's intention to raise against DEL a penalty of £383,446.63[112]. The letter said, among other things, "*The enclosed penalty explanation schedule tells you about the penalties that we intend to charge you and, how we have calculated them*". In fact that schedule was not part of Officer Cole's original exhibits, but was supplied by consent to the tribunal during the hearing and given exhibit number PC101A.

124. That penalty explanation schedule said, top right—

> "The trader was the subject of an input tax denial based on the Kittel judgement, which stated that where a taxable person knew or should have known that it was participating in a transaction connected with the fraudulent evasion of VAT, that taxable persons [sic] right to deduct input tax should be refused".

125. Then, under the heading "**Behaviour** – the behaviour which led to the inaccuracy", the schedule said—

> "We consider that the behaviour was 'deliberate'. This is explained below. Trader has a long history of non compliance and involvement in tax loss supply chains. The

---

108 RWS1/165.

109 RWS1/13, RWS1/169.

110 RWS1/172.

111 The decision notified to the company on 17 November 2016 was upheld following a statutory review under section 83C of the Value Added Tax Act 1994. The conclusions of the review were notified to DEL by letter dated 21 February 2017.

112 RWS1/1269.

transactions which are the subject of the denial have all been traced to tax losses. I have evidenced that Drinks Enterprises had a general awareness of MTIC fraud prior to the transaction [sic] under consideration. They continued to purchase from two companies despite prior warnings of tax losses. The transactions were back to back. Drinks Enterprises did not enter into any formal contracts with its suppliers. Drinks Enterprises were advised to carry out due diligence on its suppliers, the due diligence produced did nothing to confirm its suppliers were credible solvent businesses and that the transactions being carried out were not part of a scheme to defraud the revenue".

126. Having explained why HMRC considered the disclosure to have been prompted, as well as how HMRC arrived at the amount of reduction for the quality of disclosure, and how the penalty was calculated, the penalty explanation schedule concluded (emphasis in original) —

"**Information about other action we may take**

When you deliberately get your tax affairs wrong, in addition to any penalty we charge for deliberate behaviour, we may also:

• monitor your tax affairs more closely, and

• publish your details if you meet certain criteria.

You can find more information about monitoring your tax affairs more closely in factsheet CC/FS14 *Managing Deliberate Defaulters*, and more information about publishing your details in factsheet CC/FS13 *Publishing details of Deliberate Defaulters*.

**More information about penalties for inaccuracies**

You can find more information about penalties for inaccuracies in factsheet CC/FS7a *Penalties for inaccuracies in returns or documents*. You can get a copy of this factsheet from our website. Go to **www.gov.uk and search 'factsheets'** or, if you prefer, you can phone us and we will send you one".

127. By letter dated 4 September 2017, HMRC issued to DEL a penalty assessment in the sum of £383,446.63, under Schedule 24 to the Finance Act 2007. The penalty assessment was sent to the liquidator's address[113].

128. In that 4 September 2017 letter, HMRC indicated—

(a) that the inaccuracy penalty had been charged in respect of VAT;

(b) that the inaccuracy related to the claims to input tax, previously denied on the *Kittel* basis;

(c) that the potential lost revenue totalled £576,611.51;

(d) that the penalty range would be between 35% and 70% because the behaviour in question had been "deliberate" and DEL's disclosure had been "prompted";

(e) that some limited reduction (10%) was given because some, albeit not total, information was provided by DEL at HMRC's request;

(f) and that those considerations resulted in a penalty percentage of 66.5%, which came to £383,446.63.

129. On 6 September 2017, HMRC issued a Personal Liability Notice – addressed at the top to the appellant – under paragraph 19(1) of Schedule 24 to the Finance Act 2007[114]. The

[113] RWS1/1271.

[114] RWS1/1273.

schedule it enclosed was a copy of the schedule in exhibit PC101A, which had been sent to DEL with the 3 July 2017 notification of penalty against DEL, and which said "*knew or should have known*"[115]. The 6 September 2017 notice explained that the appellant was personally liable for the penalty. Although addressed at the top to the appellant, this first Personal Liability Notice was sent to the liquidator's address in error, and so, as HMRC accept, was not properly notified to the appellant.

130. On 10 October 2017, HMRC issued notification of the first Personal Liability Notice to DEL at the liquidator's address[116].

131. On 6 November 2017, the appellant made a protective appeal against that first Personal Liability Notice, in case it were to be alleged that the penalty had been notified to him. HMRC however, on 9 January 2018, notified the tribunal and the appellant that HMRC intended to withdraw from the appeal, owing to the deficiencies in service of the first Personal Liability Notice.

## (6) The decision under appeal

132. HMRC then issued, this time correctly as is common ground, the Personal Liability Notice dated 11 January 2018 addressed to the appellant[117]. That is the notice the subject of this appeal. The notice said—

> "We have charged Drinks Enterprises Ltd a penalty for a deliberate inaccuracy. I enclose a copy of the penalty assessment and the penalty explanation that we sent to the company.
>
> Even though we have charged the company the penalty, you are personally liable to pay it because we have charged it because of your actions. There is more information about this below.
>
> **Why you are personally liable to pay**
>
> You are personally liable to pay because we believe that you personally gained, or attempted to gain, from the inaccuracy.
>
> You are liable to pay 100.00% because you were the Officer responsible for the company at the time of the transactions in question.
>
> The legislation that allows us to make you personally liable to pay is Para 19 (1) Schedule 24 of the Finance Act 2007.
>
> The table below shows the penalty that we have charged the company and the amount that you are now personally liable to pay.

| Company penalty assessment number | Amount of company penalty | Percentage of company penalty that you are personally liable to pay | Amount of company penalty that you are personally liable to pay |
|---|---|---|---|
| 1 | £383,446.63 | 100 | £383,446.63" |

[115] Officer Cole's oral evidence.

[116] RWS1/1275.

[117] RWS1/1297.

133. The notice went on to explain "*What you need to do now*", "*How to pay*" and "*What to do if you disagree*".

134. That second Personal Liability Notice, dated 11 January 2018, was accompanied by a letter of the same date to the appellant. The letter said—

> "I am enclosing a corrected Personal Liability notice, the previous notification which I know you were aware of was issued incorrectly. This notice replaces the notification dated 10th October 2017…"[118].

135. The appellant appealed. In amended grounds of appeal dated 18 June 2018, his representative, Mr Vincent Curley, said (page 18)—

> "The Appellant appeals on the following grounds:
>
> a. There was no 'inaccuracy' within the meaning of paragraph 19(1) (and paragraph 1(2)). HMRC is required to prove that there was such an inaccuracy. To the extent that HMRC contends that the inaccuracy was the result of an [sic] claim to input tax which HMRC says was not properly recoverable by the Appellant on the *Kittel* basis, HMRC must prove that the test in Kittel is satisfied such as to mean that the input tax was not properly recoverable. The Appellant refers to *Hackett v HMRC* [2016] UKFTT 0781 (TC).
>
> b. Further and in any event, any inaccuracy was not 'deliberate' (and certainly not deliberate and concealed) within the meaning of paragraph 19(1) (and paragraph 1(3) and 3). HMRC is required to prove that any inaccuracy was deliberate (or deliberate and concealed) and, further, that any such deliberate inaccuracy was 'attributable to' the Appellant. The Appellant refers to *Hackett v HMRC* [2016] UKFTT 0781 (TC).
>
> c. The amount of the penalty assessment (and corresponding PLN) is too high. The conduct complained of was not 'deliberate' (still less 'deliberate and concealed') and HMRC was provided with all necessary documentation such that credit should have been given for this disclosure/assistance pursuant to paragraph 9 of Schedule 24.".

## C. LAW

### (1) Legislation: Input tax deduction

136. Domestic law relating to input tax deduction is contained in the VAT Act 1994 and the Value Added Tax Regulations 1995. Section 4(1) of the VAT Act 1994 provides for VAT to be charged on any taxable supply of goods or services by a taxable person in the course or furtherance of any business carried on by him. Taxable person is defined in section 3. Section 24(1) defines input tax. Sections 25 and 26 provide for recovery of input tax. Section 26 and regulation 101 provide for input tax allowable and for attribution of it to taxable supplies. We need not set out those sections; no point turns on them.

### (2) Legislation: Assessment

137. Section 73(1) of the VAT Act 1994 provides—

> "(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such

[118] RWS1/1299.

returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.".

**(3) Legislation: Penalty**

138. The penalties in question were imposed under section 97(1)(a) of, and Schedule 24 to, the Finance Act 2007.

139. The penalty imposed on DEL was imposed under paragraph 1 of Schedule 24 to the Finance Act 2007. That paragraph 1 provided—

"Liability for Penalty

Error in taxpayer's document

**1.—**(1) A penalty is payable by a person (P) where—

(a) P gives HMRC a document of a kind listed in the Table below, and

(b) Conditions 1 and 2 are satisfied.

(2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss , or

(c) a false or inflated claim to repayment of tax.

(3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.

(4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.".

140. The penalty imposed on the appellant was imposed under paragraph 19(1) of Schedule 24 to the Finance Act 2007, which provided—

"Companies: officers' liability

**19.—**(1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c 46)),

(aa) a manager, and

(b) a secretary.

(3A) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

(4) In the application of sub-paragraph (1) in any other case "officer" means—

(a) a director,

(b) a manager,

(c) a secretary, and

(d) any other person managing or purporting to manage any of the company's affairs.

(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

(a) paragraph 11 applies to the specified portion as to a penalty,

(b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,

(c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,

(d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),

(e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and

(f) paragraph 21 applies as if the officer were liable to a penalty.

(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.".

141. Paragraph 3 of Schedule 24 to the Finance Act 2007 provides for three degrees of culpability in relation to inaccuracies. Paragraph 4 of Schedule 24 sets out the penalty payable, by reference to whether the inaccuracy is deliberate but not concealed or deliberate and concealed. Paragraphs 9 and 10 of Schedule 24 provide for reductions in the penalty for disclosure. The amount of reduction depends on the quality of the disclosure. Paragraph 11 of Schedule 24 provides that, "*If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1, 1A or 2*" and for that purpose, "*reducing a penalty*" includes a reference to staying it or agreeing a compromise in relation to proceedings for a penalty (paragraph 11(3)). Paragraph 13 of Schedule 24 deals with the procedure for assessment of penalties.

**(4) Legislation: Appealing against a penalty**

142. Paragraphs 15 and 16 of Schedule 24 to the Finance Act 2007 provide for the right and procedure to appeal against a decision that a penalty is payable and as to its quantum. An appeal is to be treated, in general, in the same way as an appeal against an assessment to the tax concerned—

"Appeal

**15.—**(1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

(3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.

(4) A person may appeal against a decision of HMRC setting conditions of suspension of a penalty payable by the person.".

**16.—**(1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply in respect of a matter expressly provided for by this Act.".

**(5) Legislation: Powers on appeal**

143. The First-tier Tribunal's jurisdiction in this appeal is in paragraph 17 of Schedule 24 to the Finance Act 2007, which provides—

"**17.—**(1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 11—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.

(4) On an appeal under paragraph 15(3)—

(a) the tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and

(b) if the tribunal orders HMRC to suspend the penalty—

(i) P may appeal against a provision of the notice of suspension, and

(ii) the tribunal may order HMRC to amend the notice.

(5) On an appeal under paragraph 15(4) the tribunal—

(a) may affirm the conditions of suspension, or

(b) may vary the conditions of suspension, but only if the tribunal thinks that HMRC's decision in respect of the conditions was flawed.

(5A) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.".

**(6) Case law: MTIC fraud explanation**

144. There is plenty of case law describing how an MTIC fraud works. An oft-cited description is given in Christopher Clarke J's judgment in *Red 12 Trading Limited v the*

*Commissioners for Her Majesty's Revenue & Customs* [2009] EWHC 2563 (Ch) (emphasis in original)—

> "2. This case concerns what is called "Missing Trader Intracommunity Fraud" ("MTIC fraud"). Anyone reading this judgment is likely to be familiar with this expression, which has been explained in several tribunal and High Court decisions. The classic way in which the fraud works is as follows. Trader A imports goods, commonly computer chips and mobile telephones, into the United Kingdom from the European Union ("EU"). Such an importation does not require the importer to pay any VAT on the goods. A then sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for which A is bound to account to HMRC. There are then a series of sales from B to C to D to E (or more). These sales are accounted for in the ordinary way. Thus C will pay B an amount which includes VAT. B will account to HMRC for the VAT it has received from C, but will claim to deduct (as an input tax) the output tax that A has charged to B. The same will happen, mutatis mutandis, as between C and D. The company at the end of the chain – E – will then export the goods to a purchaser in the EU. Exports are zero-rated for tax purposes, so Trader E will receive no VAT. He will have paid input tax but because the goods have been exported he is entitled to claim it back from HMRC. The chains in question may be quite long. The deals giving rise to them may be effected within a single day. Often none of the traders themselves take delivery of the goods which are held by freight forwarders.
>
> 3. The way that the fraud works is that A, the importer, goes missing. It does not account to HMRC for the tax paid to it by B. When HMRC tries to obtain the tax from A it can neither find A nor any of A's documents. In an alternative version of the fraud (which can take several forms) the fraudster uses the VAT registration details of a genuine and innocent trader, who never sees the tax on the sale to B, with which the fraudster makes off. The effect of A not accounting for the tax to HMRC means that HMRC does not receive the tax that it should. The effect of the exportation at the end of the chain is that HMRC pays out a sum, which represents the total sum of the VAT payable down the chain, without having received the major part of the overall VAT due, namely the amount due on the first intra-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 export 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 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 UK Broker 2. On the contrary a small sum may be due to HMRC from Broker 1. The suspicions of HMRC are, by this means, hopefully not aroused. Broker 2 then exports the goods and claims back the total VAT. The overall effect is the same as in the classic version of the fraud; but the exercise has the effect that the party claiming the repayment is not Broker 1 but Broker 2, who is, apparently, part of a chain without a missing trader ("the clean chain"). Broker 2 is party to the fraud.

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

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

10. In a chain of transactions between traders all of whom are honest each trader will account to HMRC for the output tax received (in respect of which the trader acts, broadly speaking, as agent for HMRC: **Elida Gibbs Ltd v Customs & Excise Comrs** [1997] QB 499), less any input tax incurred, which he will claim from HMRC. He will, ordinarily, need most of the money received from his sales to pay his supplier and the VAT due. The full extent of any chain will be patent. Where there is dishonesty the position is different. It is in the interests of those who seek to defraud HMRC of VAT to hide the full extent of any chain by the use of buffer companies. Such persons lack any interest in seeing that they, or the companies through whom they operate, are able to account to HMRC for all the VAT that they should.

> 11. The tribunal noted that, in some of the chains in the present case, instructions had been given for the price (or most of it) to be paid to some third party in a Member State other than the UK. The tribunal accepted that this was evidence of two things:
>
> (a) that the goods had been imported from the EU; and
>
> (b) fraud, since it ensured that the defaulting trader was left with no funds from which HMRC could seek payment of the VAT liability.".

145. Christopher Clarke J's observations in *Red 12* were approved by the Court of Appeal in *Mobilx Ltd (in Administration) and others v The Commissioners for Her Majesty's Revenue & Customs* [2010] EWCA Civ 517. Judge Mosedale also helpfully set out the types of VAT fraud, and the key elements of an MTIC fraud, in *CCA Distribution Ltd (In administration) v the Commissioners for Her Majesty's Revenue and Customs* [2020] UKFTT 00222 (TC) at paragraphs 7 to 64.

**(7) Case law: Knowledge and approach to evidence**

146. Taxpayers have a right to deduct input tax when certain objective criteria are met. But, in *Axel Kittel v État belge (C-439/04), and État belge v Recolta Recycling SPRL* (C-440/04), CJEU 6 July 2006. [2006] ECR 1-6161, the CJEU held that—

> "where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct" (paragraph 61) and
>
> "to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'." (paragraph 59).

147. So, if a trader's transaction is connected to a fraudulent tax loss, then the trader will lose the right to deduct input tax if it is established, on the basis of objective factors, that the trader knew or should have known that his transaction was connected to a fraudulent tax loss. The trader loses the right because the trader is considered a participant in the fraudulent evasion of VAT. The claim to recover the input tax is considered inaccurate because it falsely represents that the trader is entitled to recover the input tax in those circumstances.

148. A trader will not however lose the right to deduct input tax merely on account of having a suspicion that the transactions were connected to fraud. Nor will a trader lose the right to deduct where the trader merely knows or should have known that it is more likely than not that the transaction are connected to a fraud (*Mobilx Ltd (in Administration) and others v The Commissioners for Her Majesty's Revenue & Customs* [2010] EWCA Civ 517, paragraphs 53 to 57). Only a trader who knew or should have known that its transaction was connected to fraud loses the right to deduct. As the Court of Appeal recognised in *Mobilx*, the principle of legal certainty requires that a trader should be able to know before entering a transaction whether or not the trader will be entitled to deduct input tax. Knowing that there is a risk that the transaction is connected to fraud does not provide a trader with that level of certainty.

149. In *Fonecomp Limited v the Commissioners for Her Majesty's Revenue and Customs* [2015] EWCA Civ 39, the Court of Appeal considered what knowledge would bring the trader within the *Kittel* test. The Court of Appeal said—

> "51. … [The trader] has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transaction 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* cited above. 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.".

150. In *The Commissioners for Her Majesty's Revenue and Customs v Pacific Computers Limited* [2016] UKUT 350 (TCC), the Upper Tribunal summarised the way in which a finding that there is an overall scheme to defraud can feed into the question of knowledge—

> "76. HMRC's closing submissions invited the FTT to find that the evidence showed that the level of orchestration in the deal chains was very high. It was then submitted that two questions arose: first, how did the orchestrators of the fraud manage it so well, and secondly how likely was it that an orchestrator of such a fraud would involve an unknowing party and why? The submission was that the only way in which the orchestrators of such a fraud could ensure a carousel pattern and speed was to tell each party from whom to purchase, to whom to sell and at what price. It was argued that the carousel, circularity and timings that occurred simply could not have happened without that level of instruction. It was further submitted that, because a fraudster would wish to retain control of the component parts of such a fraud, it was highly improbable that an orchestrator of such a fraud would involve an unknowing party.".

151. The Upper Tribunal in *Pacific* went on to consider the submission that the orchestrator of such a fraud would be unwilling to relinquish any part of it to an unknowing or unwitting participant. Not least because of the risk of discovery. The Upper Tribunal commented on how the First-tier Tribunal had dealt with that argument—

> "80. The FTT failed to appreciate, and thus failed to address, the link that HMRC was seeking to make between the evidence of fraudulent behaviour on the part of the three companies through the submission that the deal chains in which PCL's transactions had been orchestrated by fraudsters to the submission that all companies involved, including PCL, must have been instructed so as to facilitate the fraud, and PCL must therefore have known, or should have known, of the connection to fraud. It did not connect the evidence and submissions in relation to the three companies with the question of PCL's knowledge that it had to address. It simply considered whether PCL had been aware of the involvement of the three companies in the 2005 fraud. It said, at [218], that that involvement did not go to PCL's actual knowledge or that the only reasonable explanation for PCL's transactions was fraud; and at [219] it remarked, rather caustically, that "whilst this may be interesting information we do not see that it helps us answer the question was the only reasonable explanation for the transactions PCL took part in fraud? It does not go to what PCL did or did not know."
>
> 81. It is regrettable that the FTT failed to appreciate the inferences which HMRC was inviting the FTT to make from the orchestrated and contrived nature of the fraud and the presence of fraudulent companies within the deal chains at issue in the appeal. The FTT was keenly aware, it appears, of the need to consider whether inferences could be drawn from the evidence. But in the FTT's decision that awareness manifests itself, not in a proper consideration of whether inferences could be drawn, weighing the evidence on both sides and reaching a reasoned conclusion, but in a number of statements by the FTT of a general nature that there was no evidence on which to found any inference.".

152. In *The Commissioners for Her Majesty's Revenue and Customs v Brayfal Limited* [2011] UKUT 99 (TCC), Lewison J discussed the First-tier Tribunal's citation in *Brayfal* of what Christopher Clarke J had said in *Red 12 Trading*, where he had said—

> "111. … 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".

Lewison J appeared to accept in paragraph 12 of his judgment in *Brayfal* that—

> "in determining what a taxpayer knew or ought to have known, "all the evidence must be considered; that an accumulation of factors may prove a case; and that they must look at the totality of the deals".

153. By the time of the final hearing in the present case, the Supreme Court had given its judgment in *Commissioners for Her Majesty's Revenue and Customs v Tooth* [2021] UKSC 17. The Supreme Court considered the meaning of "deliberate" in section 118(7) of the Taxes Management Act 1970, for the purposes of section 29 of that act. Section 29 provided, so far as relevant—

> "**Assessment where loss of tax discovered**
>
> **29.—**(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—
>
> (a) [...], or
> (b) that an assessment to tax is or has become insufficient, or
> (c) [...],
>
> the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.
>
> (2) […].
>
> (3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—
>
> (a) […]; and
> (b) […],
>
> unless one of the two conditions mentioned below is fulfilled.
>
> (4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.".

154. Section 118(7) of the Taxes Management Act 1970 provided—

> "(7) In this Act references to a loss of tax or a situation brought about deliberately by a person include a loss of tax or a situation that arises as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.".

155. In setting out its approach to the construction of sections 29 and 118, the Supreme Court in *Tooth* observed—

"27. Thirdly, a broadly similar differential treatment of careless and deliberate conduct by the taxpayer is reflected in different levels of penalty which may be imposed. The penalty scheme is contained in Schedule 24 to the Finance Act 2007. A necessary condition for the imposition of a penalty is that an inaccuracy in a specified type of document (including a return) is either careless or deliberate: see Part 1, paragraph 1(3). Culpability is then divided into three ascending classes of seriousness: (i) careless, (ii) deliberate but not concealed and (iii) deliberate and concealed, each attracting progressively higher levels of penalty: see Part 1, paragraph 3 and Part 2, paragraph 4 ...".

156. As to what is required by the "*deliberate*" limb in the first condition under section 29(4), construed in accordance with section 118(7), the Supreme Court in *Tooth* said—

"37. While there is no escaping a meticulous examination of Mr Tooth's tax return in order to ascertain whether it was inaccurate, or contained an inaccuracy, with due regard to the fact that (as the online form pointed out) it would initially be read by a Revenue computer, it is best first to form a clear view about what is required by the "deliberate" limb in the first condition under section 29(4) as illuminated (if that is the right word) by section 118(7). The trouble is that, read separately, section 29(4) and section 118(7) tend to pull in different directions. As Mr Julian Ghosh QC correctly submitted for Mr Tooth, section 29(4) read on its own suggests that to fall foul of the first condition (otherwise than by carelessness) the taxpayer must deliberately have brought about the "situation" mentioned in section 29(1), which in this case is that his self-assessment was insufficient. In other words, says Mr Ghosh, the taxpayer must have deliberately under-declared his tax liability. To allow this central feature of the requisite misconduct to be watered down by section 118(7) would be to allow the section 118(7) tail to wag the section 29(4) dog. By contrast Ms Hui Ling McCarthy QC for the Revenue submits that section 118(7) is a sort of deeming provision, which may perfectly legitimately control the meaning of section 29(4) which it seeks to interpret, and may thereby greatly reduce the seriousness on the scale of misconduct required to fulfil the first condition for a discovery assessment. In particular it may remove the requirement for a deliberate under-declaration of tax which section 29(4) read on its own might otherwise have appeared to require.

38. On this issue we consider that the Revenue must be correct. A deeming provision in a definition section of a statute may and commonly does give rise to a different meaning of the operative provision than the one which might have been arrived at by reading it on its own. That is, in a sense, what the definition section is frequently there for, although in many cases it may only be for the avoidance of doubt. It may in that sense wag the dog. Section 118(7) is not strictly a deeming provision, but rather one which includes conduct which it specifically describes within a class of conduct (that generally described in section 29(4)) which would not otherwise accommodate it. Its effect is that where the conduct which (in the present context) brings about or "results" in a situation consisting of an insufficiency within section 29(1) consists of an inaccuracy in a document given to the Revenue by or on behalf of the taxpayer, then the section 29(4) condition is fulfilled even if the insufficiency itself was not deliberate, provided that the inaccuracy was. In short, it decouples the insufficiency from the requisite intention, provided that the deliberate inaccuracy causes it in fact..

[…]

41. But the Revenue seek to go further. Ms McCarthy submits that the requirement in section 118(7) that the documentary inaccuracy should be deliberate means only that the statement in the document constituting the inaccuracy was deliberately made: ie made intentionally rather than for example carelessly or by mistake. This

would apparently extend to an intentional statement which was in fact inaccurate, even though genuinely believed by the maker to be true, and not intended to mislead. She sought support for this submission by reference to West v Revenue and Customs Comrs [2018] UKUT 100 (TCC); [2018] STC 1004 ("West"). In that case the relevant question was whether the taxpayer knew that there had been a wilful failure by a company by which he was employed to deduct PAYE, within the meaning of regulation 72C(2)(a) of the Income Tax (Pay as You Earn) Regulations 2003 (SI 2003/2682).…".

157. The Supreme Court went on in *Tooth* to pose the following question, and provided its answer to that question—

> "42. … The question is whether it means (i) a deliberate statement which is (in fact) inaccurate or (ii) a statement which, when made, was deliberately inaccurate. If (ii) is correct, it would need to be shown that the maker of the statement knew it to be inaccurate or (perhaps) that he was reckless rather than merely careless or mistaken as to its accuracy.
>
> 43. We have no hesitation in concluding that the second of those interpretations is to be preferred…
>
> […]
>
> 47. It may be convenient to encapsulate this conclusion by stating that, for there to be a deliberate inaccuracy in a document within the meaning of section 118(7) there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement or, perhaps, (although it need not be decided on this appeal) recklessness as to whether it would do so.".

158. So the question in *Tooth* for the purposes of section 29 of the Taxes Management Act was not whether a statement was deliberate but whether, when made, the statement was deliberately inaccurate. In fact, we derive that for present purposes from the face of paragraph 1(3) of Schedule 24 in any event; it refers to the inaccuracy being deliberate (our emphasis)—

> "(3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part …".

## D. SUBMISSIONS, COMMON GROUND, ISSUES, EVIDENCE

### (1) The appellant's case

159. By the time of the hearing, the appellant had accepted that all 123 transactions were connected with a fraudulent evasion of tax. Mr Farrell also raised the additional point that the appeal must be allowed without more because of the reference to "*should have known*" which he said formed part of the decision to impose on the appellant the Personal Liability Notice when in fact that part of the K*ittel* test was not relevant to this penalty.

160. Mr Farrell's broad arguments for the appellant were that the tribunal should cancel the Personal Liability Notice for the following reasons—

(a) the officer who made the decision to issue the Personal Liability Notice (Paul Cole) applied the incorrect legal test when doing so, namely that the appellant either knew or ought to have known that the relevant transactions were connected to

fraudulent tax losses. What was required was a specific finding of knowledge. No such finding was made;

(b) it follows that the First-tier Tribunal must cancel the decision. It is not open to the First-tier Tribunal on an appeal under paragraph 15(1) of Schedule 24 to the Finance Act 2007 to remake the decision;

(c) in any event, the decision to issue the Personal Liability Notice should be cancelled as there is insufficient evidence that DEL either knew or ought to have known that the relevant transactions were connected to fraudulent tax losses; and

(d) further, HMRC have failed to prove to the civil standard that the inaccuracies in DEL's tax returns were *deliberate,* attributable to the appellant and that he *knew* that they were inaccurate.

161. Between the adjourned and final hearings of this appeal, the appellant inspected business records at the office of DEL's liquidator. The appellant then adduced 269 further pages of material, including further due diligence reports for each of Phoenix, Just Beer and Gempost. Mr Farrell submitted that this material showed that Ravinder Jabble, the appellant's cousin and fellow director, was heavily involved in running DEL, ordering stock, dealing specifically with the medium/small suppliers and customers, jointly signing business documentation, having responsibilities equal to those of the appellant, and jointly with the appellant dealing with banking issues. Mr Farrell pointed out that, as the appellant had noted in his sixth witness statement, Ravinder Jabble's statement in the liquidation proceedings confirmed the division of roles and that Ravinder Jabble was responsible for ordering stock and sales and ensuring that there was sufficient stock in the warehouse.

**(2) HMRC's case**

162. As to the test used by Officer Cole, Ms Robinson argued for HMRC that the tribunal was not required to allow the appeal without more (a) because Officer Cole had not used the wrong test, but (b) even if he had, the tribunal's jurisdiction was not limited as suggested for the appellant.

163. Ms Robinson confirmed that HMRC's original position – that the tribunal could substitute careless for deliberate – was withdrawn by the time of the final hearing. She accepted that there is no provision permitting the tribunal to substitute a careless inaccuracy penalty for a deliberate inaccuracy penalty issued against a company officer.

164. Ms Robinson submitted that DEL's transactions were carried out as part of an orchestrated scheme to defraud HMRC of VAT and that DEL, through the appellant as its controlling mind, knew or should have known of this fact. To prove this, HMRC did not point to any single piece of evidence that provides the conclusion that DEL knew or should have known that its transactions were connected with the fraudulent evasion of VAT. HMRC relied instead on the inferences that can be drawn from the evidence as a whole in relation to the company's transactions. If the tribunal concludes that the "surrounding circumstances" of the company's transactions include that they took place as part of an orchestrated fraud then, following *Mobilx* at paragraphs 82 and 83, the tribunal can, and Ms Robinson submitted it should, take that into account in determining whether DEL knew or should have known that its transactions were connected with the fraudulent evasion of VAT. She submitted that the tribunal is entitled to conclude that the more heavily orchestrated and efficient a fraudulent scheme is, the more likely it is that each party knew its role in that scheme. The facts of such

a scheme in the individual case can give rise to the inference that DEL, through the appellant, knew its role in the scheme.

165. HMRC's opening submissions had relied on "*should have known*" in the alternative to "*knew*", but Ms Robinson clarified that, if DEL only should have known that the transactions were connected to a fraudulent tax loss, that would not suffice for the tribunal to affirm the Personal Liability Notice against the appellant. Issue 4 however remained framed, by agreement, as whether DEL knew or should have known that the transactions were connected to a fraudulent tax loss. If the tribunal were to find only that DEL should have known, it need not go on to answer the additional questions in the appeal.

166. Ms Robinson submitted that the same questions as were set out in *Pacific Computers* apply equally to the present case namely, (i) is the tribunal satisfied there is a high level of orchestration? (ii) if so, how was it managed so well? and (iii) would an orchestrator of a fraud involve an unknowing party, and why would it do so?

167. Ms Robinson argued for HMRC that the following matters, among others, were indicative of the transactions forming part of an orchestrated scheme to defraud HMRC—

(i) All of the 123 transactions have been traced to a tax loss within the UK.

(ii) In those transactions, DEL purchased goods from Just Beer, Gempost, and Phoenix, and all three of those companies had a history of being involved in tax loss supply chains.

(iii) The patterns of trade, evidenced by the structure of the chains, and by the consistency of participants in the supply chain (including their places in the supply chain) are indicative of an overall scheme to defraud including directions given to different traders to fulfil distinct roles.

(iv) DEL continued to transact with both Just Beer and Gempost, despite having been advised by HMRC (in letters dated 30 June 2014 and 2 July 2014 respectively) that there had been tax losses in earlier chains in which those companies had been suppliers.

(v) DEL transacted directly with Beer Bhai in three deals in period 04/15. In the same period, Beer Bhai transacted with Gempost and with Just Beer, both of which then made onward sales to DEL. There was no logical or commercial reason for the insertion of Just Beer or Gempost into those transaction chains. Neither Gempost nor Just Beer added value, and their presence (given that Beer Bhai and DEL were known to each other, said Ms Robinson) was demonstrative of the contrived nature of these chains.

(vi) Payments in respect of the transactions were made by DEL in cash.

(vii) DEL's suppliers were able to meet DEL's requirements (in terms of stock description and quantity) within a very short space of time. Ms Robinson submitted that the transactions were "back to back" in the sense that: (i) goods were bought and sold on the same day, (ii) the same quantity of goods was transacted at each step of the chain.

(viii) DEL did not enter into any formal written contracts with its suppliers relating to the periods in question, meaning that there was no formal return or exchange policy between trading partners, and that matters such as transfer of title, and payment and delivery terms, were not subject to formal agreement. The paperwork did not enable it to be ascertained at any one time in the course of a given deal chain who owned the goods and who would suffer loss in the event of accident or other cause of loss of supply.

(ix) The appellant knew that DEL's suppliers were themselves wholesalers. It must have occurred to the appellant that, given the nature of the product, there was a lack of commerciality in chains involving more than one wholesaler. Knowing this and continuing to engage in deal chains with those companies demonstrated the cavalier approach to the transactions the subject of the appeal and must have given DEL the knowledge or means of knowledge of connection with fraud.

168. Ms Robinson submitted that, in view of the above factors indicating an orchestrated scheme, the appellant knew that the transactions were connected to a fraudulent tax loss. In relation to transactions with Gempost and Just Beer, an additional factor contributing to an inference that the appellant knew that the transactions were connected to a fraudulent tax loss was, argued Ms Robinson, that those companies were run by the appellant's uncle and father (respectively).

**(3) Common ground**

169. The following were common ground—

(1) The burden of proof is on the respondent. The standard of proof is the balance of probabilities.

(2) All 123 transactions were connected to fraudulent tax losses. The appellant's acceptance of this was a change from the more limited concessions in his position statement dated 15 November 2019.

(3) If the tribunal finds that DEL should have known, but did not actually know, that the transactions were connected to fraudulent tax losses, Mr Jabble's appeal must succeed.

(4) If either Ravinder Jabble or the appellant knew, then DEL knew, rather than merely should have known.

(5) If the tribunal finds that DEL knew, but via Ravinder Jabble and not via the appellant, that the transactions were connected to fraudulent tax losses, Mr Jabble's appeal must succeed.

(6) The test for whether the appellant's conduct was deliberate for the purposes of paragraph 19(1) of Schedule 24 to the Finance Act 2007 will not be satisfied if it is found only that the appellant should have known, which is one of the two limbs of the *Kittel* test. There has to be a finding that he did know. Moreover, recklessness will not suffice. This approach is consistent with the Supreme Court's recent decision in *HMRC v Tooth* [2021] UKSC 17.

(7) As Mr Farrell put it[119], "the correct question to be answered, which is central to the appeal, is whether or not the Respondent has proved to the civil standard that the Appellant *knew* that the relevant transactions were connected to fraudulent tax losses".

(8) The tribunal cannot substitute a careless inaccuracy penalty for a deliberate inaccuracy penalty.

**(4) Issues**

170. The issues therefore are—

[119] Mr Farrell's submissions 11/7/22, paragraph 5.

(1) whether the decision maker applied the wrong legal test, namely that the appellant knew or ought to have known that the transactions were connected to fraudulent tax losses;

(2) whether, if the decision maker did apply the wrong test, that means the First-tier Tribunal must, in view of its jurisdiction in paragraph 15(1) of Schedule 24, cancel the decision and allow the appeal without more;

(3) whether the transactions were connected to fraudulent tax losses (strictly a question not an issue, because it was common ground that they were);

(4) whether DEL knew or should have known that the transactions were connected to a fraudulent tax loss;[120];

(5) whether the inaccuracies in DEL's VAT returns were deliberate;

(6) whether those inaccuracies were attributable to the appellant; and

(7) whether the quantum of the penalty is correct.

## (5) Evidence

### *Appellant's witness statements*

171. The appellant gave six witness statements, dated 2 July 2019, 20 October 2020, 11 December 2020, 5 January 2021, 23 or 26 July 2021 and 27 January 2022. He also gave oral evidence. Throughout his witness statements and in oral evidence, he denied having knowledge or means of knowledge that the purchases were connected with fraudulent tax losses. We need not set out below each occurrence of the denial.

*Appellant's first witness statement*

172. In his first witness statement[121], the appellant explained the effect on him of the documents being with HMRC, or with the liquidator or with the liquidator's solicitors, Teacher Stern—

> "35. The current position in these Tribunal proceedings is that all of the documents, information, files and business records that I require for setting out my evidence in defence of the penalties are held by Teacher Stern and/or their client the Liquidator and/or HMRC. In the case of DDE's files, Teacher Stern confirmed in communications that they in fact held over 103 due diligence files provided to DEL by DDE, yet they still required DDE to produce further electronic files. The quantity of due diligence files held by the Liquidator is indicative of the seriousness and commitment we as directors gave to the need for due diligence when we were trading with DEL.
>
> 36. The Liquidators [sic] intervention and the actions of Teacher Stern this year have considerably interfered with my ability to defend myself in the Tribunal proceedings".

173. In his first witness statement, the appellant described the different roles that he and his cousin, Ravinder Jabble, had within DEL—

> "**Director's Responsibilities**

[120] Ms Robinson's addendum to opening submissions 5/7/22, paragraph 2.

[121] AWS/1 to AWS/38.

15. Throughout the relevant time, and probably for the last 8 years that we worked in the business, Ravinder and myself had separate roles and responsibilities in the business. Ravinder was responsible for sales and purchases, in terms of dealing with customers and suppliers. This included responsibility for speaking with suppliers, ordering goods, and deciding which suppliers to source goods from at any time. I was responsible for administration of the company and the business management. I oversaw the accounts department, the credit department, dealt with all visits and communications with official bodies, including HMRC, dealt with the business accountants who were JSB Accountants Limited, dealt with the VAT and tax returns for the company, dealt with the company finances and operation of the banks [sic] accounts and dealt with matters such as the compliance requirements for the Money Laundering Regulations. So far as suppliers were concerned, Ravinder dealt with all the suppliers on a daily basis. I dealt with some of the larger corporate accounts like Carlsberg, Peroni and Maxxium and also Confex. Landmark Wholesale was a large national buying group established in 1960. Landmark sourced goods from suppliers such as manufacturers and brand owners. Landmark had a network of large national wholesalers as members/customers of its business and had an annual turnover of nearly £3 billion. The larger and national wholesalers were members of Landmark. Confex was part of the Landmark group but was a buying group for the smaller independent wholesalers such as DEL.

16. Invoices from suppliers were passed internally within DEL to the accounts department and I was responsible for making an [sic] authorising payment to suppliers. However, I always would liaise with Ravinder before paying suppliers to confirm that invoices were correct and due for payment. With most suppliers we had ongoing credit facilities and therefore periodic payments were made to suppliers rather than specific payments against specific invoices.

17. My responsibilities also included arranging for due diligence to be carried out into suppliers. DEL utilised the services of DDE, who were a professional third-party due diligence service provider. We used DDE to carry our [sic] due diligence checks over a period of many years and throughout the relevant time period in this appeal. The way this operated was Ravinder would inform me of any new suppliers that he wanted DEL to deal with and I would arrange for DDE to carry out the necessary due diligence. Once DDE provide their report, I would consider the reports with Ravinder and we would jointly decide whether to proceed with sourcing goods from the supplier concerned. Once we had started dealing with suppliers then I liaised with DDE periodically with [sic] obtain updated due diligence as required.

**Sales and Purchases**

18. DEL's customers were retail shops, pubs, clubs, restaurants etc that sold drinks to the general public. In the main, these customers attended Lion House, selected the goods that they wished to purchase and then paid before the goods are taken away. This was a typical cash and carry wholesale operation. Some customers placed orders by telephone and the goods are delivered. When deliveries were made then the drivers collected payment for the goods from the customers at point of delivery. Some customers were allowed credit. In these instances, the customers signed a delivery note for receipt of the goods and the sales invoices were issued within 14 days of delivery in accordance with the VAT tax point rules. Payment was then made at a later date in accordance with the credit terms allowed to each customer. DEL also sold goods to other wholesalers and cash and carry businesses. These types of customers were supplied goods on sales invoices with credit terms as is normal business practice with these types of customers.

19. Suppliers delivered goods to Lion House and goods were also collected from suppliers. When goods were delivered by suppliers then the goods were accompanied by either a delivery note or by the supplier's invoice. The deliveries were checked

against the accompanying paperwork by DEL's warehouse staff and then taken into the warehouse.

20. If there were any shortfalls or damages on receipt of goods at the warehouse, then the warehouse staff reported these to Ravinder. Ravinder then double checked the damages/shortfalls and took up the matter with the suppliers concerned at the time the delivery was made. When there were damages and shortfalls, the suppliers either issued a credit note or replaced the stock when they made the next delivery. When DEL collected goods from suppliers then we required the goods to be provided for collection with either a delivery note or invoice. DEL had its own delivery vehicles."

174. As to the assessments and penalties, the appellant said in his first witness statement—

"**Kittel assessments**

66. The Kittel assessments issued by HMRC concerned five direct suppliers of DEL; Just Beer Ltd, Gempost Ltd, Aphrodite Sales Ltd, Beer Bhai Cash and Carry Ltd and Phoenix Wholesales Ltd. These businesses were five suppliers out of the numerous suppliers used by DEL over the 20 years that the company traded. As far as I can recall the goods that were purchased from these suppliers at the relevant time were the normal ranges of goods dealt with by DEL and the prices they charged to DEL were the going rate market prices at the time.

67. At the relevant time, I did not know that these suppliers were involved in any supply chains where there may have been fraudulent tax losses in the chains and if this were the case then I had no means of knowing that this was the situation. HMRC have produced witness statements and exhibits in these proceedings relating to visits and investigations of all of the businesses in the supply chains but there is no evidence whatsoever produced by HMRC to prove that I had any knowledge that any of these other businesses were involved in fraudulent supply chains and this is because I did not know.

68. As detailed above, the five suppliers relevant to this appeal were Just Beer Ltd, Gempost Ltd, Aphrodite Sales Ltd, Beer Bhai Cash and Carry Ltd and Phoenix Wholesales [sic] Ltd. As far as I am aware due diligence was carried out into all of these five suppliers and I refer to due diligence later in this witness statement. I did not deal with any of these suppliers. Ravinder dealt with all suppliers like these on a daily basis and my only involvement with these suppliers was to make the periodic payments due for the purchases we made, after Ravinder had confirmed their invoices were correct and due for payment.

69. DEL's warehouse staff inspected stock held in the warehouse on a very regular basis and new stock would be ordered to maintain stock levels for satisfying sales and customer demands. To order new stock, would [sic] phone the business we were dealing with at the time who held the lines of goods that we required. We checked with them the prices, availability of stock, and when they could deliver the goods to DEL or make the goods available for collection by us from their premises. We then placed orders with suppliers as required.

70. There were never any substantial differences in pricing between the various suppliers that we used at any time and pricing was not normally the determinative factor in ordering goods. The main issue when ordering goods was what stock suppliers had available and when they could supply the goods so that we could maintain the necessary stock levels. Ordering goods from suppliers was therefore demand led. When deciding to place orders we could order all the goods required at the time from one supplier or if no supplier had the full quantity and lines of goods we required then we may have needed to place orders with several suppliers at the same time.

71. DEL stocked and sold a very wide range of goods. To do this we needed to source goods from many different suppliers. Also, to ensure we could maintain the stock levels we needed, we had to have several alternative supplies [sic] at any given time for every line of goods we stocked.

72. As explained above, sourcing goods was driven by the need to maintain the stock levels needed to satisfy sales. We only used suppliers therefore who were able to satisfy the orders placed by DEL, delivered goods on time or made goods available for collection on time, that supplied goods that were in good condition and where were no regular or niggling issues about short deliveries and damages etc.

**General response to matters raised by HMRC**

73. Businesses acting as brokers facilitating deals at a small profit or for a commission is a very common and normal business model that is widespread throughout numerous industries. Brokers are not only found within the alcohol industry.

74. HMRC refer to back to back trading in their evidence. This is non-point and not indicative of anything other than the normal course of trading. Many wholesale businesses supply to order rather than to stock therefore purchases and sales are arranged so that goods do not remain in warehouses for any length of time. Back to back trading is a normal business practice and is very prevalent.

75. Insurance on goods is also mentioned in HMRC's evidence. When DEL collected goods from suppliers then, as a matter of fact, the goods being collected on DEL's vehicles were covered by DEL's insurance. If suppliers delivered goods to DEL then there is no reason why DEL would hold any information about suppliers insuring their goods as that was obviously the responsibility of the suppliers".

175. As to the traders in the deal chains, the appellant said in his first witness statement—

**A K Suppliers**

"96. It seems from the evidence that AK Suppliers was a business in the supply chain and not a business that directly dealt with DEL. I am not familiar with a business called AK Suppliers Ltd. …

99. I note that there is no evidence anywhere in the witness statement and/or exhibits of my involvement with AK Suppliers Ltd in any way nor of my involvement in any of the purchases made by DEL from AK Suppliers Ltd. If there were a conspiracy, as HMRC are alleging, then there is no evidence of my involvement in any conspiracy that involved AK Suppliers Ltd".

**Beer Bhai and Aphrodite**

"85. … 6.6 I have a vague recollection of Aphrodite Sales Limited and it seems from the SOC that DEL purchased some goods from this business. I therefore may have made some payments to this company. I can only assume that any dealings that DEL had with this company were with Ravinder The matters set out in 6.6 are not within my knowledge and I cannot comment.

6.7 I have a vague recollection of Beer Bhai Cash & Carry Ltd and it seems from the SOC that DEL purchased some goods from this business. I therefore may have made some payments to this company. I can only assume that any dealings that DEL had with this company were with Ravinder. The matters set out in 6.7 are not within my knowledge and I cannot comment. …

100. In total there are three purchases made from Beer Bhai Cash and Carry Ltd included in the Kittel assessment. I can vaguely remember this name. I may have made the payments to this supplier for these purchases, as was my normal role in the [sic] DEL's business but I do not believe that I had any contact or dealings with Beer

Bhai Cash and Carry Ltd. Any contact between DEL and Beer Bhai Cash and Carry Ltd concerning their supplies to DEL would have been carried out by Ravinder.

101. Various individuals are mentioned in this statement under the section headed company history. It appears the directors of this business at various times were Steven Paul Pittman, Terence Daniel McGinley, Stephen Paul Pittman (with steven [sic] spelt as Stephen rather than Steven) Terence Patrick McGinley and Aaron Lee Taylor. I do not recognise any of these names and believe I have never had any dealings with any of these individuals.

102. There also seems to be some connection between Beer Bhai Cash and Carry Ltd and Aphrodite Sales Ltd and there were two purchases made from Aphrodite Sales Ltd by DEL included in the Kittel assessment. It is said in this witness statement that the persons involved with Aphrodite were Mr Davey John Geater, Mr Christian Picknell and Ms Jay Pittman. It is then said that Mr Christian Picknell was also a director and shareholder of East Sussex Distribution Ltd and I refer to a witness statement produced relating to that business below. I can confirm that I had no direct dealings that I can recall with Aphrodite Sales Ltd, other than possibly making payment of the two invoices and I have never heard of or had any dealings with East Sussex Distribution Ltd. I also do not know and do not recall having had any dealings with Davey John Geater, Mr Christian Picknell and Ms Jay Pittman. I have no knowledge of any of the other matters set out in the witness statement of officer Thomas Burns.

103. I note that there is no evidence anywhere in the witness statement and/or exhibits of my involvement with Beer Bhai Cash and Carry Ltd and/or Aphrodite Sales Ltd in any way nor of my involvement in any of the purchases made by DEL from Beer Bhai Cash and Carry Ltd and/or Aphrodite Sales Ltd. If there were a conspiracy, as HMRC are alleging, then there is no evidence of my involvement in any conspiracy that involved Beer Bhai Cash and Carry Ltd and/or Aphrodite Sales Ltd".

**East Sussex**

"85. … 6.5 I have no knowledge of East Sussex Distribution Limited or the matters set out here in the SOC. …

106. As far as I am aware DEL had no dealings with this company not with any of the individuals involved in the company. I have no knowledge of any of the matters set out in this witness statement.

107. I note that there is no evidence anywhere in the witness statement and/or exhibits of my involvement with East Sussex Distribution Ltd in any way nor of my involvement in any of the purchases made oy DEL from East Sussex Distribution Ltd [sic] If there were a conspiracy, as HMRC are alleging, then there is no evidence of my involvement in any conspiracy that involved East Sussex Distribution Ltd".

**Gempost and Just Beer**

"108. As detailed earlier in this witness statement, my father was the director of Just Beer Ltd and my uncle the director of Gempost Ltd. In this statement the officer states that Gempost Ltd was trading and VAT registered from 5th June 2000. In the case of Just Beer Ltd the officer states that the business was trading and VAT registered from June 1998. Both of these companies were therefore trading and VAT registered long before I became an employee of DEL and long before I became a director of DEL in April 2004. As far as I can recall, both Gempost Ltd and Just Beer Ltd were already suppliers of DEL when I became a director of the company. Once myself and Ravinder became directors of DEL we continued using the same suppliers who were already supplying DEL at that time. We had no reasons to cease sourcing goods from Gempost Ltd and Just Beer Ltd at that time.

109. I am a Sikh and within my culture high regards is paid to honouring you [sic] family elders. It went without saying that throughout the time I was a director of DEL, because of the family connections, we continued to source goods from Gempost Ltd and Just Beer Ltd. Having said that, we had no cause nor were we given any cause by HMRC to call into question or have any doubt that Gempost Ltd and Just Beer Ltd were anything other than well established and legitimate suppliers. My father and uncle never discussed with me any of HMRC's dealings with those companies, so I had no reason to believe other than they were legitimate businesses.

110. I note that DEL purchased goods from these companies throughout the period of time that I was a director of the company yet HMRC did not issue an assessment to disallow input tax recovery until a purchase from Gempost Ltd dated 1st August 2014 and a purchase from Just Beer Ltd dated 2nd October 2014. In these circumstances for HMRC to suggest that I had some knowledge of a fraud in the supply chain in relation to purchases made from Gempost Ltd and Just Beer Ltd is wholly unreasonable and disingenuous. As stated earlier, once we received the first letter from HMRC informing us that they have found alleged tax losses in supply chains relating to Gempost Ltd and Just Beer Ltd I took the decision that we could no longer source goods from these two businesses. This was of considerable personal concern to me and caused family difficulties, yet I did what was required of me as a responsible director for DEL.

111. Ravinder dealt with both Just Beer Ltd and Gempost Ltd and I made periodic payments to these suppliers when required.

112. There is mention in the witness statement of communications between HMRC and VCC [sic] Vincent Curley has confirmed that VCC acted for that company for a short period of time but quite properly VCC are not prepared to disclose to me information about the services they provided to Phoenix Wholesalers Ltd which they treat as confidential.

113. There is also mention of services been supplied to these businesses by DDE. The situation in respect of DDE s similar in that they consider their dealings with Just Beers [sic] Ltd and Gempost Ltd to be confidential.

114. I have no knowledge of any of the other matters set out in this witness statement relating to Just Beer Ltd and Gempost Ltd. There are other businesses mentioned in this statement, such as IK Drinks Ltd. Unless I have mentioned other businesses in this witness statement then I have no knowledge of these other companies and I certainly never had any knowledge of any dealings between Just Beer Ltd and Gempost Ltd and any other suppliers and customers of those businesses.

115. I note that there is no evidence anywhere in the witness statement and/or exhibits of my involvement with Just Beer Ltd and Gempost Ltd in any way nor of my involvement in any of the purchases made by DEL from Just Beer Ltd and Gempost Ltd If there were a conspiracy, as HMRC are alleging, then there is no evidence of my involvement in any conspiracy that involved Just Beer Ltd and Gempost Ltd

116. Given the type of allegations made by HMRC about Just Beers Ltd and Gempost Ltd, I find it very surprising that no penalties appear to have been imposed on these companies nor do any appear to have been imposed personally on my father and uncle".

**Lupt**

"85. … 6.8 I have no knowledge of Lupt Utama Limited or the matters set out here in the SOC. …

104. I cannot recall ever hearing of this company before and I have no knowledge of any of the matters set out in the officer's witness statement.

105. I note that there is no evidence anywhere in the witness statement and/or exhibits of my involvement with Lupt Utama Ltd in any way nor of my involvement in any of the purchases made by DEL from Lupt Utama Ltd. If there were a conspiracy, as HMRC are alleging, then there is no evidence of my involvement in any conspiracy that involved Lupt Utama Ltd".

**Phoenix**

"87. I recall that DEL made a limited number of purchases from Phoenix Wholesalers Ltd, albeit I recall that there was more than one supplier with a name Phoenix in the title. In paragraph 12c of the statement, it says the company changed its principal place of business to Unit A3, Bridge Road Industrial Estate, Bridge Road, Southall, Middlesex UB2 4AB. DEL used to trade from these premises but moved to larger premises at Lion House, North Hyde Wharf sometime during 2011.

88. In paragraph 10 of the witness statement, the officer sets out the company's directors and shareholders. He mentions Mr Andrew Davis, Mr Felix Steven Banidele, Mr Mohammed Ali Zaheer, Mr Saad Qureshi and Mr Sukhdeep Singh Mason. In the section of the statement it also says that Mr Mohammed Ali Zaheer was the shareholder of the company. I had no dealings with, nor do I know any of these persons. From memory, the person DEL dealt with at Phoenix Wholesalers Ltd was Mr Ali Zaheer. I presume this could be Mr Mohammed Ali Zaheer who is stated was a director and shareholder in the company. I knew Mr Ali Zaheer personally and I also can recall that I had some dealings with him for making payments for DEL to Phoenix Wholesalers Ltd. That is the full extent of my knowledge and dealings with Phoenix Wholesalers Ltd.

89. Ravinder would have been the person in DEL who in the first instance decided we should consider sourcing goods from Phoenix Wholesalers Ltd. Once that business was used as a supplier then Ravinder was responsible for all dealings with that company for ordering goods. My only involvement would have been to make payments to Phoenix Wholesalers Ltd on behalf of DEL.

90. In the witness statement at paragraph 4, the officer states that Phoenix Wholesalers Ltd sold alcohol that it had purchased from Drinks Enterprise [sic] Ltd and purchased alcohol from AK Suppliers Ltd who in turn purchased from a "hijacked trader, Lupt Utama Ltd." I have no knowledge of these matters. Matters set out in the remainder of the statement all concern HMRC and its dealings with Phoenix Wholesalers Ltd and I have and had no knowledge of any of these matters".

176. The appellant in his first witness statement responded generally about the purchases made by DEL—

"85. … 6.9 This seems to be a general point about suppliers, albeit under a section of the SOC relating to Lupt Utama. I did not deal with any of the goods purchased by DEL from Aphrodite Sales Limited, Beer Bhai Cash & Carry Limited, Phoenix Wholesalers Limited, Gempost Limited and Just Beer Limited. All purchases made from these companies were dealt with by Ravinder and my only role was to make payment for supplies to these companies".

177. As to knowledge of tax losses, the appellant said in his first witness statement—

"85. … 6.22ii I have no knowledge of Just Beer Limited, Gempost Limited and Phoenix Wholesalers Limited having "a history of being involved in tax loss supply chains" …

117. [commenting on paragraph 251 of Officer Cole's witness statement] I have no knowledge of Just Beer Ltd and Gempost Ltd being involved in tax loss supply chains prior to the transactions in question. These are matters within the knowledge of Just Beer Ltd and Gempost Ltd and not myself and DEL".

178. As to a company called Keyrange Limited, the appellant said in his first witness statement—

"91. In paragraph 21 the officer refers to a company called Key Range Ltd which he says is owned by the Jabble family. HMRC appear to be assuming that any [sic] member of my extended family did by way of business has some relevance to this case! This is obviously a blatant form of prejudice by HMRC. It is stated that Key Range Ltd rented the business premises to Phoenix Wholesalers Ltd. I am aware that Key Range Ltd owned the premises at Unit A3 Bridge Road Industrial Estate as DEL previously rented that unit from Key Range Ltd. Key Range Ltd is a company owned by my Mother and two of my Aunties. I have never had any involvement in Key Range Ltd and know no more about the company than I have set out above".

179. As to when DEL stopped purchasing from suppliers in the deal chains, the appellant said in his first witness statement—

"110. … As stated earlier, once we received the first letter from HMRC informing us that they have found alleged tax losses in supply chains relating to Gempost Ltd and Just Beer Ltd I took the decision that we could no longer source goods from these two businesses. This was of considerable personal concern to me and caused family difficulties, yet I did what was required of me as a responsible director for DEL. …

117. [commenting on paragraphs 14 to 68 of Officer Cole's statement] The officer goes onto stat [sic] refer carried out an extended verification of the VAT return for period 04/15 and wrote to DEL about alleged tax losses he had found in the transaction chains relating to 8 purchases made by DEL This is his exhibit PC5. This is a letter dated 22nd June 2015 and it lists 5 purchases made from Gempost Ltd and 3 from Just Beer Ltd. I have detailed earlier in this witness statement that it was on receipt of this letter, namely the first letter stating that irregularities had been found in DEL's supply chains, that gave rise to me making the decision that we could no longer source goods from Gempost Ltd and Just Beer Ltd.

The officer then details sending a series of letters to DEL alleging there had been tax losses in supply chains; namely letters at exhibits PC05, PC07, PC08, PC13, PC14, PC17, PC18, PC20. PC22, PC23. I reacted appropriately to these letters, as a responsible company Director, and endured that goods did not continued to be sourced from the suppliers detailed in these letters. Officer Cole then issued his Kittel assessment letter detailing the input tax disallowed, exhibit PC33."

"117. [commenting on paragraphs 132 and 133 of Officer Cole's statement] I have already dealt with the situation concerning purchases from Just Beer Ltd and Gempost Ltd. As soon as officer Cole informed me of alleged tax losses in relation to purchases made from these companies, I took the decision to stop sourcing goods from both of these companies, at personal angst to myself because of the family connections to the Directors of these businesses. The letters issued by the officer alleging tax losses all related to transactions that had taken place an a much earlier time. The officer here is being disingenuous by suggesting that DEL ought to somehow had retrospective knowledge of tax losses in transaction that had taken place at a much earlier time".

> "117. [again, this time commenting on paragraph 251 of Officer Cole's statement] … As far as I can recall, the statement made by officer Cole that "Drinks Enterprises were warned about Gempost and Just Beer Ltd but continued to trade with them" is not true. I have dealt with the situation with both of these companies after being informed by HMRC that there were alleged tax losses in their supply chains elsewhere in this witness statement".

180. At paragraph 6.22iii of HMRC's statement of case, HMRC had said "*the Company continued to transact with both Just Beer Ltd and Gempost Ltd, despite having been advised by the Commissioners that there had been tax losses in earlier chains in which those companies had acted as suppliers*". The appellant responded, in his first witness statement—

> "6.22iii This is not true and I deny this allegation. There may have been a couple of transaction in the pipeline that we were committed to purchase at the time but my clear recollection is that following receipt of letters alleging tax losses in the supply chains for purchases we have made from Just Beer Limited and Gempost Limited that we acted on this information and made a decision to cease purchasing goods from these two companies. This is despite the directors of those companies being my farther and my uncle. I ignored this personal consideration and made the responsible decision of a director to cease sourcing goods from these companies once these allegations had been by HMRC".

*Appellant's second witness statement*

181. In his second witness statement, the appellant reiterated that he and Ravinder had different roles within DEL, and that Ravinder was responsible for sales and purchases (paragraph 21). The appellant said that, in terms of purchasing stock, he only had dealings "*with our larger suppliers such as Carlsberg, Peroni, Maximum and Confex*" (paragraph 21). He said that HMRC "*also failed to ask any basic questions about the Director's [sic] roles in the Company (Ravinder was a Director on Companies House) and about who did what and who was responsible for what in the Company*" (paragraph 61). The appellant pointed out that, in 19 years of trading, no seizures of goods were made, despite numerous visits from excise duty officers, nor were there any assessments for excise duty raised, or penalties imposed, or tax loss letters issued to DEL (paragraph 40). He reiterated the "*very clear and distinct roles*" that he and Ravinder had each had. In particular, Ravinder decided what to purchase, and who to purchase from (paragraph 46). "*Ravinder would speak with these suppliers daily and he was their point of contact at the Company*" (paragraph 47). He said that "*If Ravinder had located a new supplier that he wanted to use, he would discuss this with me as one of my roles was to keep an eye on the finances, including credit control*" (paragraph 48). The appellant said it was not correct to suggest that, when HMRC officers visited DEL, they never saw Ravinder. He said that the officers "*saw Ravinder every time ... but failed to ask who he was*" (paragraph 61).

182. As to when he ceased purchasing from Gempost and Just Beer, the appellant said at paragraph 109 of his second witness statement—

> "109. ..d … i. The two businesses that we continued to purchase from after receiving the tax loss letters were JBL and GL [Just Beer and Gempost]. The business [sic] operated by MSJ and JSJ [father and uncle Jagjit].
>
> ii. I referred to these letters in my first witness statement and stated that the company ceased to source goods from these companies as results of the tax loss letters. I can see now that I did not explain the situation very well in my first witness statement and my first witness statement did not provide a detailed explanation. …
>
> viii. I took action immediately following receiving these letters [the first set of tax loss letters, dated 30 June 2014 and 2 July 2014].

ix. As they had arrived so closely together, I discussed both of them with Ravinder and we decided to approach both MSJ [father] and JSJ [uncle Jagjit] together. This was easily done, as stated earlier in this statement, they both operated the businesses from the Company business premises.

x. We were informed that they were not aware of the same, and certainly had not received any tax loss letters from HMRC at that time. We were also informed that they would take action immediately, that they would locate new suppliers so that this problem would not arise again.

xi. We were also informed that they had carried out all the necessary due diligence into their supply chains as required and that all new suppliers would be checked in accordance with the relevant HMRC due diligence notices issued at that time.

xii. I was comforted at this time by the assurance that they had not received any tax loss letters, as I would have assumed that they would have been in the same position as us, having been our supplier, *i.e.* if we had received tax loss warning letters, they would have too. Furthermore, they would locate new suppliers to source goods sold to the Company from different chains of supply.

xiii. Again, I would like to reiterate that by the time that these two letters were received by the Company, we had been purchasing goods from both JBL and GL for very many years without issues.

xiv. As I have explained above, the Company was essentially a family run business, and in our culture/community we respect and listen to our elders. The family is very Patriarchal. So when we were told that both JBL and GL had not received tax loss warning letters, that they had carried out all due diligence as required and that they would introduce new suppliers into their supply chain to eradicate any possible issues with tax losses, both I and Ravinder had no reason not to believe them and we accepted what they said in good faith.

xv. Following these reassurances by MSJ and JSJ, Ravinder then continued to purchase goods from JBL and GL. With the reassurances given, and the fact that they were my father and uncle, I did not expect any difficulties to arise again in respect of any further purchases made from them.

xvi. The Company then received a further tax loss letter detailing purchases made from JBL and GL dated 22 June 2015.

xvii. I immediately arranged a meeting between myself, Ravinder, JSJ and MSJ.

xviii. I told them that we were going to cease trading with them and the Company made no further purchases from JBL and GL after receipt of this letter dated 22 June 2015.

xix. This situation caused considerable angst and difficulties within the family. It led to a rift in the family, which has never been repaired. …

xxi. I had no knowledge and nor did I have any means of knowledge of any VAT fraud by any business connected to the purchases we made from them".

183. As to "back to back" transactions, which the appellant had addressed in his first witness statement, he made the point in his second witness statement that DEL had numerous suppliers and that "*If one supplier could only supply a portion of the goods required on time then the Company always had alternative suppliers to turn to*" (paragraph 109(e)(vi)).

184. In his second witness statement, the appellant also made points about other matters. These included that absence of written contracts was not proof that he was aware of fraud, or that he had means of knowledge of fraud (paragraph 109(f)(ii)); points about criticisms of the due diligence (paragraph 109(g)); and points about the correspondence with HMRC and visits from HMRC. The points he made about the visits included that the visits were

"*extremely disruptive and, in my opinion, unreasonable*", that they took the appellant away from his work, and that the officers wore nametags and jackets "*emblazoned with HMRC, this was very disturbing for customers in the warehouse at the time because they would believe it was a raid*" (paragraph 115).

*Appellant's third witness statement*

185. In his third witness statement, the appellant adduced a due diligence report for each of Gempost, Just Beer and Aphrodite, and he adduced two for Phoenix.

*Appellant's fourth witness statement*

186. In his fourth witness statement, the appellant dealt further with tax loss warning letters. He said—

> "4. On 18 December 2020 Officer Paul Cole served a third witness statement, dated the same day, in which he exhibited for the first time several tax loss warning letters from HMRC to the Company which were not exhibited prior to this dated:
>
> a. 1 October 2014
>
> b. 18 February 2015
>
> c. 19 February 2015
>
> d. 1 April 2015; and
>
> e. 17 April 2015.
>
> 5. In my statements I have already addressed the difficulties that I have had in these proceedings due to the issues with accessing business records and paperwork as a result of the Liquidator's action.
>
> 6. Having considered the tax loss warning letters for the first time during these proceedings, I now recollect that after the first meeting with both Mr Makhan Singh Jabble (MSJ), my Father, Director of JBL and Mr Jagjit Singh Jabble (JSJ), my Uncle, Director of GL, as a result of the 30 June 2014 and 2 July 2014 letters, in relation to the VAT quarter ending 10/13, I instructed the DDE to carry out an [sic] update due diligence report on GL.
>
> 7. I have already addressed the contents of this meeting at paragraphs 109(d)(vi) through to (xv) in my second statement.
>
> 8. This report was provided to the Company on or around 18 September 2014, exhibited to my third statement at appendix 1, nothing adverse was highlighted in this report and we continued to trade with GL.
>
> 9. I cannot now recall whether the Company instructed the DDE to carry out an update report on JBL, I can only assume that we were satisfied with the due diligence that the Company had at that time in relation to JBL.
>
> 10. As a business, we would always update due diligence periodically on our suppliers.
>
> 11. The Company then received a further tax loss warning letter on or around 1 October 2014 for VAT quarter ending 04/14.
>
> 12. The letter was in relation to both JBL and GL.
>
> 13. Again, after discussing the same with Ravinder, revisiting the due diligence carried out on both JBL and GL and taking into consideration the earlier reassurances provided by MSJ and JSJ in our meeting, we continued to trade with them as this letter

addressed the trade deals leading up to the quarter ending 04/14, the trading period prior to the first letters being received.

14. However, when the Company received the letters dated 18 and 19 February 2015, for VAT quarter ending 07/14, the second meeting took place with MSJ and JSJ, in which The Company decided to no longer trade with them as a direct result of these letters and not as a result of the 22 June 2015 letter.

15. I believe that the last transaction that took place with either JBL and/or GL was in or around March 2015, this was for stock that had already been ordered and therefore we were obliged to purchase it and/or as a result of Ravinder continuing to order stock without my knowledge.

16. Certainly as far as I was aware, no new orders would be placed with either JBL and/or GL after our second meeting.

17. This puts right an error made in my earlier statements regarding the date of when the Company ceased to trade with JBL and GL".

187. That fourth witness statement also described the appellant's solicitor's attempts to examine documents held by the liquidator.

*Appellant's fifth witness statement*

188. The appellant's fifth witness statement exhibited documents which he said showed, among other things, his cousin Ravinder's involvement on the purchasing side of the business. The appellant also exhibited further due diligence materials for Phoenix dated 14 March 2021, for Just Beer dated 22 October 2012, and for Gempost dated 9 November 2012.

189. The appellant explained in the fifth witness statement about losing records, computers and documents on liquidation, and about reaccessing them—

"… 4. The original FTT started on 7 January 2021, and after a day and a half of opening, my legal team made an application to adjourn the case so that I could have the opportunity to view and consider the material held by the Liquidator.

5. As expected, the Liquidator had a large amount of Company documents in his control, these included sales/business records, general correspondence, SAGE records *etc*.

6. The initial sifting exercise took place over a two day period on Monday 10 May 2021 and Monday 17 May 2021, whereby both myself and my Instructed Solicitors attended at the offices of Mr Taj Virdee.

7. During this exercise we took copies of documents readily available, and those that were not, we requested electronic copies of, including SAGE backups.

8. Although the copies of the requested documents were provided as expeditiously as possible by the Liquidator and/or his team, the last set of documents being provided on 13 June 2021, we were only able to access the SAGE records on 12 July 2021.

9. I have now had the opportunity to consider the material within the control of the Liquidator, including the 20,000 plus pages of SAGE, and I have extracted those documents that I believe would assist the FTT in these proceedings".

190. The appellant went on in this fifth witness statement to explain what was shown by the various documents that he had exhibited. They included invoices, an advertisement, signatures, handwriting on typed documents, a letter, and an extract from a visitors' book. The appellant explained that those documents showed that it was Ravinder who made the purchases from the small and medium-sized suppliers and who had signed to say that he was happy with goods delivered, and had compared an invoice against a purchase order. The

appellant also exhibited banking documents. These showed, he said, that Ravinder and the appellant had both signed in their capacity as directors. The appellant exhibited Ravinder's P60 and DEL's payroll records. The appellant said that both the P60 and the payroll records showed that Ravinder was paid the same as the appellant, "*as we were both the company directors with equal responsibility*" (paragraph 12, commenting on pages 130 to 233, page 620).

*Appellant's sixth witness statement*

191. The appellant's sixth and final witness statement responded to Officer Cole's witness statement dated 12 October 2021, which had included 108 exhibits. The exhibits included a letter dated 10 September 2015 signed by Ravinder Jabble, 106 due diligence letters to the appellant and one due diligence letter to Ravinder, and exhibit 108 contained witness statements made by members of the appellant's family in relation to the investigation carried out by the insolvency practitioner. The appellant made the preliminary comment in this sixth witness statement that Officer Cole's statement "*does not specify why he has provided those exhibits, so I am unsure how to respond. He does not give any observation on the exhibits, so I don't know to what extend [sic] these are relevant*" (paragraph 3).

192. The appellant went on in his sixth statement to disagree with Ravinder's assertion in a witness statement that Ravinder had left DEL due to the appellant's character and because the appellant had belittled him (paragraph 5). The appellant also pointed out that Ravinder's witness statement "*confirms our clear division of roles. Ravinder confirms his roles were sales and in particular to ensure that the company had sufficient stock in the warehouse*". The appellant went on to reiterate that their roles were separate and that "*Ravinder was responsible for sales and purchases in terms of dealing with customers and suppliers*" while the appellant oversaw the accountant's department, the credit department and all visits and communication with official bodies, liaised with the external accountants and dealt with DEL's VAT and tax returns, the company finances and the operation of the bank accounts, and dealt with matters such as compliance requirements. The appellant went on to point out a variety of flaws and inaccuracies in Ravinder's witness statement made for the insolvency proceedings. We do not set them out here; we were not invited by either party to look at Ravinder's witness statement.

193. That then deals with the appellant's written witness evidence. We turn next to his oral evidence. We will deal separately with the evidence from DEL's former employee, Manveer Bhatti.

***Appellant's oral evidence***

194. The appellant gave uncontested oral evidence as to the make-up of the Jabble family and as to how the business came to be set up. We have set that out under the background facts starting at paragraph 5 above.

*Appellant's oral evidence: Relationships and dealings with father and uncle Jagjit*

195. As to the appellant's relationships with his father and uncle, he told the tribunal that he had a typical father and son relationship. Typical in that it was "*a typical Indian sort of father and son relationship*", it's "*very patriarchal*". It was a given that he respected his father, along with all 16 of his elders; "*it went unsaid*", he told us. And yes, the same for his uncle Jagjit, he explained.

196. The appellant told the tribunal he lived with his father at least as far back as 2010, right up until his father died (so throughout the period covered by the 123 transactions), and that he saw his father every day, and spoke to him every day[122]. As to the appellant's contact with his uncle in 2012, 2013 and 2014, the appellant told the tribunal that he spoke to his uncle a couple of times a week[123]. The appellant said that Gempost and Just Beer (whose directors were his uncle and father respectively) had offices attached to DEL's warehouse[124], and that it sounded reasonable to say that they shared their office premises[125]. The appellant did not agree or disagree with the proposition, originating from HMRC[126], that his uncle and father shared a desk: the appellant said: "*I think they might have had separate offices, I can't remember exactly now*"[127].

*Appellant's oral evidence: How DEL came into possession of goods purchased by DEL from Gempost and from Just Beer*

197. The appellant accepted in oral evidence that neither Gempost nor Just Beer had a warehouse facility. He accepted that that meant that the supplier to Gempost had to deliver goods direct to Gempost's customer and that the supplier to Just Beer had to deliver direct to Just Beer's customer. The appellant accepted that this happened with supply to DEL as a customer of Gempost and of Just Beer[128]. He accepted also that on occasion he would have to go to Gempost's suppliers, and to Just Beer's suppliers, to collect the goods[129]. Yet he said that, despite receiving delivery of goods from Gempost's and Just Beer's suppliers, he would "*not necessarily*" know who was delivering the goods. And he disagreed with the proposition that "*in every single transaction, you, their customer, was automatically made aware of the identity of their supplier*"[130].

*Appellant's oral evidence: Terms and conditions and payment*

198. In oral evidence, the appellant gave three examples of suppliers with whom DEL had standard written terms (produced by the suppliers): Molson Coors, Miller Brand and Carlsberg[131]. It was undisputed that DEL had no written terms with Gempost or Just Beer. He did however say that there was a term with each of Gempost and Just Beer that payment be made "*as soon as possible*"[132], although he did not say that it was a written term. Asked whether there were written terms or conditions with each of Beer Bhai, Aphrodite and Phoenix, the appellant told the tribunal he could not remember[133].

199. The appellant was asked about the time it took DEL to pay Aphrodite, the supplier in two of the deal chains[134]—

> "Q. No. But the point is, of course, there is a huge risk for Aphrodite -- and potentially any trader below Aphrodite in the chain -- who have lost custody and control of the goods, yes?

122 Transcript 14/7/22, page 89.
123 Transcript 14/7/22, page 89.
124 Transcript 14/7/22, page 87.
125 Transcript 14/7/22, page 88.
126 Transcript 15/7/22, page 101.
127 Transcript 15/7/22, page 102.
128 Transcript 15/7/22, page 138. Except that he did not accept that it was so for certain Beer Bhai transactions, page 138, line 21.
129 Transcript 15/7/22, pages 138 to 143.
130 Transcript 15/7/22, page 142.
131 Transcript 14/7/22, page 105.
132 Transcript 14/7/22, page 107.
133 Transcript 14/7/22, pages 112 and 113.
134 Transcript 15/7/22, pages 53 to 57.

A. Yes, I appreciate that.

[…]

Q. Yes. I asked you yesterday if you had standard terms and conditions and if you had particular terms and conditions with different suppliers. That's why we went through them all. I am asking now what the payment terms were here?

A. Yes.

Q. So how long did you have to pay?

A. I can't remember. As I said, there was only a couple of transactions. There wasn't much of a history built up, I can't remember.

Q. I am not going to turn it back in the bundle, but we looked at the invoice a moment ago which is dated 13 October 2014.

[…]

Q. Invoice date 13 October, paid date 5 March 2015 according to the stamp. So it has taken, it would appear, four and a half months to secure payment.

A. Yes.

Q. Does that sound about right to you?

A. Yes, well, according to what you have laid out, yes.

Q. Yes. What was Aphrodite doing in the meantime? Was it clamouring at your doors to get paid for these transactions?

A. I think there might have been one or two reminders. Off the top of my head, I can't remember.

Q. You see, these transactions together were worth over £120,000 to Aphrodite.

A. Yes.

Q. And nothing is paid until February 2015. We saw – we looked at the handwriting and there seems to be those two part payments.

A. Yes.

Q. Nothing is made until February.

A. Yes.

Q. So that is four months it has taken to get anything.

A. Yes.

Q. Did you not have a chain of angry emails from Mr Picknell saying "where is my money"?

A. I didn't deal directly with Mr Picknell.

Q. Of course he can't get his goods back, can he? Because they have already gone from your cash and carry to the retailer and they have probably been consumed?

A. Yes.

Q. Yes. It is too good to be true, isn't it, Mr Jabble?

A. Not sure. Not sure".

200. The appellant was also asked about payment to Phoenix[135]—

[135] Transcript 15/7/22, pages 90 to 94.

"Q. Do you agree that DEL paid cash for the Phoenix supplies?

A. Yes, I believe it did.

Q. Do you understand or do you know now what the payment terms were for Phoenix? Payments to be made within what period of delivery?

A. I can't remember now. Not off the top of my head, I don't.

Q. We spoke a little earlier about the cash ledger.

A. Yes.

Q. I am just going to bring that up. If we go to RWS1/96.

A. Page 96?

Q. Bottom right, yes, please.

A. Yes.

Q. Yes. This was -- this bundle of documents was provided by Mr Appan to Mr Cole in 2015, all right?

A. Okay.

Q. Presumably this was prepared by someone in the company?

A. Yes.

Q. And in fact it goes on for a number of pages. There are cash payment lists, creditor lists, more cash payment lists, summary for cash payments for different quarters and so on.

A. Yes.

Q. Mr Cole gave some evidence summarising the -- he tried to do a cross-referencing of this schedule with the deals in this case --

A. Yes.

Q. -- to see which ones he could find a payment for?

A. Yes.

Q. And in relation to Phoenix, we can see the -- I think it is six on page 96, about a third of the way down the page?

A. Yes.

Q. Those are six of the 23 Phoenix supplies, but in fact there aren't any other of the Phoenix supplies in any of these cash ledgers.

A. They don't appear in any other of these cash ledgers, you are saying?

Q. That's it. That's what Mr Cole's evidence was on this point.

A. Okay, all right.

Q. Okay. Yet we know, of course, that 23 invoices were issued by Phoenix. So I am trying to issue what payment was made in respect of those other 17.

A. Okay. Sorry, are you asking me?

Q. Yes, I am trying to get you to help us with what happened. Were they paid for?

A. Yes, I would assume so.

Q. In September 2015, Mr Zaheer told HMRC that £240,000 was owed to him by his customer, and he said that DEL was his only customer. So he seemed to be saying to HMRC that by September 2015, DEL owed him £240,000; does that sound right or wrong to you?

A. By September 2015?

Q. Yes. So two or three months after these invoices were issued.

A. I can't remember -- I can't remember, I can't recall a figure like that. I certainly didn't have a conversation with him about that.

Q. No. Did you receive any correspondence from Mr Zaheer demanding his payment?

A. No.

Q. No. Strange that somebody who was owed £240,000 was not banging your door down to find out where his money was and when he might get it".

A. That's what he said to Officer Cole.

Q. No -- it might not have been Officer Cole, in fairness, but that's what he told HMRC.

A. Okay.

Q. But, in fact, we have the cash payments summaries for various quarters from the quarter ending July 2015, and we can only find payment for 6 of the 23 deals, if the cash ledgers are right, in fact there are 700. We have the cash ledgers, we have them starting at the [sic] 96. If you go through and flick on, they continue for a number of pages and cover different quarters.

A. Yes.

Q. Yes?

A. Yes.

Q. And if you do the exercise, that's what Mr Cole did, he tried to see if he could marry up any of the payments across any quarter with any of the invoices we have, he found six of the 23 matched.

A. Okay.

Q. The value of the other 17 is £700,000.

A. Okay.

Q. I am trying to work out where we might find any reference to the payment made for those deals.

A. They ought to have appeared in with -- along with paperwork in these files.

Q. Yes, but we don't have it.

A. I agree. It seems that way.

Q. It is your case that payment was made?

A. As far as I remember.

Q. Are you able to help with when, in relation to the issues of the invoices?

A. I can't.

Q. You can't?

A. I can't say, no.

Q. All right. Let's look at one of the invoices from Phoenix to DEL, RWS1/382.

A. Which document was that, please?

Q. RWS1/382, bottom right?

A. Yes, I can see that.

Q. It is a Phoenix invoice to DEL. You can tell that -- I know it doesn't have a proper header on it -- we can tell because it has "Phoenix" at the bottom.

A. Yes.

Q. "... Goods supplied remains the property of PHOENIX WHOLESALERS."

A. Yes.

Q. The invoices, if you just flick on to 384 to look at another example, they appear not to come with a header of any sort or a footer of the sort we might see. Do you see that?

A. Yes. Yes.

Q. Anything strike you as odd about these?

A. I recollect them appearing with a header. I am not sure if these are his own internal documents.

Q. All right. These are documents that would have been provided by either you or Phoenix to Mr Cole as part of the verification.

A. Yes. I can imagine -- I can only assume that these were provided by Phoenix.

Q. Okay. So let's go back to 382. This is deal 87 for those who want to correspond it with the global deals. We can see that the tax date is 4 June 2015. Do you see?

A. Yes, yes.

Q. And it is for a total value of about 30 and a half thousand pounds. It says, bottom left: "Stock/Goods supplied remains the property of PHOENIX WHOLESALERS ... until payment has been made/received in full." Yes?

A. Yes, yes.

Q. If we go over the page, 383, we now have the other part of this deal pack which is AK Suppliers' invoice to Phoenix for the same goods.

A. Yes.

Q. And we can see at the bottom it says: "All products supplied and delivered are [the] property of A K SUPPLIERS ... until the invoice has been paid in full. Delivery drivers are not authorised to collect monies on behalf of the company."

Do you see that?

A. Yes.

Q. So is this another example where goods are delivered to DEL before DEL has made payment for them? It seems right.

A. Yes, possibly.

Q. And it looks as though, if this is right -- again a bit like the example we looked at before -- the risk sits entirely with AK Suppliers.

A. Okay.

Q. Because AK Suppliers has released the goods to Phoenix?

A. Yes.

Q. Phoenix has released the goods to DEL, and yet neither company has received payment.

A. Yes.

Q. That's not something that would ever occur in legitimate transactions, is it?

A. I don't know.

Q. But because these are consumable products, alcohol is there to be drunk?

A. Yes".

*Appellant's oral evidence: When DEL stopped trading with Gempost and Just Beer, and surrounding events*

201. In cross-examination, the appellant was asked what action he took after receiving the first set of tax loss letters relating to Just Beer and Gempost, dated 30 June and 2 July 2014[136] —

"A. I think my initial action -- if I recollect correctly -- was to forward those letters on to Mr Curley.

Q. Did you ever think about speaking perhaps to your uncle or your father?

A. I would have raised those questions with them, yes.

Q. Might you have said -- what question did you raise with them?

A. I said -- sorry --

Q. -- can you help us? You tell us what you raised with them.

A. Yes, a conversation would have taken place at the time regarding those letters and what they felt about them and how they could assure me that -- or how they would work -- if concerned, they were able to assure me and they did.

Q. How did they?

A. They said we have conducted our own due diligences.

Q. What did they do? What did they tell you they had done?

A. They had conducted similar exercises to me.

Q. All right. Which was what?

A. Employed the services of Mr Curley and Due Diligence Exchange.

Q. That wasn't working, was it? Because here we have a number of tax loss chains in which you still managed to involve yourself. That wasn't working. What else?

A. That was -- I took them at their word that they had entered into their business transactions with their relevant due diligences done.

Q. Did you ever ask them: what do you do by way of due diligence?

A. No, I didn't.

Q. How do you check these supply chains?

A. No, I didn't.

Q. How do you check your suppliers?

A. No, I didn't.

Q. Did you ever actually have a conversation of the sort you have been telling us with your uncle or father at all?

A. Absolutely I did.

Q. Or is the case that you kept on taking those supplies and hoping that Customs would not investigate any further?

[136] Transcript 15/7/22, pages 127 and 128.

A. No, it is not".

202. Ms Robinson cross-examining then asked the appellant what steps he took following receipt of the 1 October 2014 tax loss letter and the later tax loss letters[137]—

"Q. All right. So it is a letter dated 1 October 2014 to Drinks Enterprises updating your verification now of the 01/14 and 04/14 returns and advises of eight transactions in which a chain has either been traced to a defaulting trader and the suppliers were either Just Beer or Gempost. This was the second letter in three months --

A. Yes.

Q. Well, the third, but it is the second with regard to each company. All right. What steps did you take following receipt of this letter?

A. I believe I had instructed the Due Diligence Exchange to carry out further due diligences.

Q. What did you ask them to do?

A. I believe I would have asked them to undertake a thorough -- a more thorough -- due diligence exercise.

Q. In respect of which companies?

A. Both.

Q. Both. All right. Is there a reason why we have already established that the only Just Beer material we have is from 2012. Is there any reason why we wouldn't have that available to us?

A. I can't explain that. The files did change hands a number of times.

Q. They didn't change hands, of course, before 2016 when Mr Cole was provided with materials.

A. No, you are right, yes.

Q. So is there any reason why what was provided to Mr Cole was only the version we looked at this morning for Just Beer?

A. I can't -- no, I am not sure what the reason for that was.

Q. No. Is it possible that you, in fact, didn't update any due diligence at all?

A. No, I remember undertaking -- I remember requesting -- and I am firm as I can be that we received the files as well.

Q. What did you learn in this due diligence that you tell us you received?

A. I was as satisfied as I could be that they continued to operate –

Q. We know they continued to operate --

A. No, no.

Q. -- I am asking you to try to help us with what satisfied you particularly that continuing to transact with them would not engage your company in deal chains tainted with fraud?

A. Along with those reports and correspondence with Mr Curley, I was -- I was under the impression that Mr Curley wished to challenge those assertions by HMRC.

Q. Right. That's a different point, though, however. That's whether or not HMRC are right in asserting that there are tax loss chains. That is a different point.

[137] Transcript 15/7/22, pages 129 to 137.

A. Yes.

Q. Supposing they are right, what did you -- as the conscientious trader you assert yourself to be – what are you doing about all of this?

A. At the time, taking the word of my father and my uncle.

Q. Because, in fact, you participate in 38 further supplies from Just Beer and 12 further supplies from Gempost after the October 2014 letter.

A. Yes.

Q. Yes. So the answer is you didn't do anything at all, really. You just kept trading as you had always done?

A. I took the word of my father and my uncle.

Q. What did they tell you they had done? Here is your second letter in three months; what are they telling you now?

A. They had assured themselves that their supply lines were -- they met the standards required off of us (inaudible).

Q. These are interesting observations, Mr Jabble. But they are very vague and you don't give us any real detail. Were you ever given any detail by your uncle or your father about what they were actually doing to satisfy themselves as to the integrity of these chains?

A. No. I can't remember the exact precise detail. As I had said, it was a conversation going back almost eight years.

Q. Yes. But they had some significant consequences because --

A. Yes.

Q. -- we have looked at all the tax loss letters that you received.

A. I appreciate that.

Q. We looked at the Barrel Beer one from 2011?

A. Yes.

Q. We know that was a company in which your cousin had an interest at the time of the deals?

A. Yes.

Q. Yes. You tell us you might have spoken to him, but you 1 might also have spoken to your father, but we have also looked at deals from 2012 when you continue to transact with Barrel Beers.

A. Yes.

Q. So on the face of it, you appear not to be taking any notice of the tax loss letter?

A. That's not true.

Q. We see that the June and July letters come along and you participate in a huge number of transactions with Gempost and Just Beer, despite the contents of those letters. The October letter comes along and you participate in further transactions.

A. Yes.

Q. And you can't give us one piece of detail that you say either your father or your uncle told you to satisfy you that the problem would no longer arise?

A. I thought I just did give you a piece of detail.

Q. What detail? You said they satisfied themselves, how, in what way?

A. They had -- when they performed their own exercises.

Q. Yes. That's general. What exercises did they do?

A. I didn't ask. I didn't ask them.

Q. So you weren't given any detail?

A. No, I told you. They gave me their word.

Q. They have given you their word. Okay. The same bundle, RWS9, page 6.

A. Yes.

Q. Do you see that?

A. I do.

Q. 18 February 2015 now. Another letter this time talking about the verification of the 07/14 return?

A. Yes.

Q. Now we have seven transactions which have been traced to a defaulting trader where Just Beer are the suppliers?

A. Yes.

Q. And the matching letter is at page 8, 19 February, same return. This time seven transactions tracing back to a tax loss in which Gempost is the supplier. Do you see that?

A. Yes.

Q. What is happening now? We are now on a third lot of letters telling you there are tax losses in these chains?

A. Yes. Yes.

Q. Aren't there?

A. Yes, you are right.

Q. So what did you do?

A. I think I ceased trading shortly after. We ceased trading shortly –

Q. In fact, you participated in nine further supplies from Just Beer and four further supplies from Gempost. It doesn't sound like you stopped trading at all, does it?

A. No, that -- as soon as I could, I stopped trading. That might have already been stuff that had been assigned to us.

Q. What do you mean "stuff that's assigned to you"?

A. Stuff that we might already have had.

Q. How would that relate to the date on the invoice?

A. What do you mean, how would that relate to the date on the invoice?

Q. We will have invoice dates. When I say that you have 13 further supplies from those two companies after 19 February, I am referring to the date on the invoices raised in respect of those transactions. So 13 invoices --

A. On these invoices, on these letters, or those invoices?

Q. Invoices are the document of sale, if you like.

A. Yes, yes. Are we talking about the dates on this page 8 or are we talking about the dates on the invoices?

Q. No, no. The dates on page 8 -- Mr Jabble, you understand perfectly well what page 8 is talking about. It is telling you that the transactions you undertook or your company undertook in 07/14 connected with a tax loss.

A. Yes.

Q. And we see invoice date, 4 July 2014 --

A. Yes.

Q. You see it is all set out?

A. Yes.

Q. It is telling you it is the third in the pair of letters that have been sent out telling you of these tax losses with the same companies supplying you, yes?

A. Yes.

Q. My point is that after 19 February, which is when this pair has been sent to you, you do a further 13 transactions with either Gempost or Just Beer.

A. Yes.

Q. When I say you do a further 13, what I mean is the invoices are raised on a date after 19 February 2015. So after the date of this letter.

A. Yes.

Q. So 19 March, 20 March, 20 March again, 30 March, 30 March, 31 March, 31 March. Those are the dates we are talking about.

A. Yes.

Q. So a month and a half after the date of this letter, that's when these invoices are raised.

A. Yes.

Q. It is not a case that stock had been allocated to you 1 for a month and a half, it is a case that you entered into further transactions despite what you were being told by HMRC in these letters. It's true, isn't it?

A. I don't remember.

Q. You don't remember? All right. Page 10, please, same bundle. 1 April 2015 letter, further verification update on 7/14 return. Now there is a further 11 transactions where the chain has commenced with a defaulting trader and they are set on.

A. Yes.

Q. It takes four rounds of letters for your company to stop these transactions. You could not possibly contend that you did not know your transactions with these two companies were connected with fraud. You have been told and told and told and told. You knew, Mr Jabble.

A. I didn't.

Q. And that's why, on receipt of this letter, the game is finally up for you, and there are no further supplies from Gempost or Just Beer. That's when we see the appearance of Beer Bhai and Phoenix Wholesalers. Because you knew you would never get away with it?

A. I didn't".

*Appellant's oral evidence: Checks by DEL on suppliers*

203. The appellant was asked about a meeting with HMRC officers which took place on a visit to DEL on 1 September 2010. The record of that visit recorded that the appellant told HMRC, as to checks made by DEL—

> "RJ and his team also carry out their own DD checks on high value traders, minimum checks – visit premises ensure as described on paperwork, check directorship, VAT certificate, utility bills, passport/driving licence for ID".

204. The appellant was asked about that in cross-examination[138]—

> "Q. And I think you give them a couple of folders produced by the Due Diligence Exchange as examples, and then it says:
>
> "RJ and his team also carry out their own [due diligence] checks on high value traders, minimum checks - visit premises ensure as described on paperwork, check directorship, VAT certificate, utility bills, passport/driving licence for ID."
>
> Do you see that?
> A. Yes.
> Q. I think you told us this morning that you generally got the documents but for local companies you might visit but not for ones that were based far away?
> A. Yes.
> Q. So we probably need to correct that. That's not an accurate record of what took place?
> A. Which was an inaccurate record, sorry?
> Q. Well, you didn't visit all the premises yourself?
> A. No, I'm not sure if I said that this morning. I can't remember. I don't think I did".

*Appellant's oral evidence: The more wholesalers the less profit*

205. As to inserted traders in the deal chains, the appellant accepted in cross-examination that he "*suppose[d]*" he agreed with or had said "*that more wholesalers in a supply chain eats into profit*", taken from an HMRC report of a visit made on 1 September 2010[139].

*Appellant's oral evidence: 1 September 2010 HMRC visit to DEL*

206. The appellant did not however accept that, on that 1 September 2010 visit, he had said that he "*orders as per turnaround of stock*" and that "*RJ does not buy specifically for a customer's order*", as Officer Cole had said in paragraph 9 of Officer Cole's second witness statement (paragraph 235 below). This was the cross-examination of the appellant about that —

> "Q. All right. And it says you were asked or spoken to by the officers about the background and you give the background of being wholesale in alcoholic beverages to other wholesalers and retailers. "Most of his stock is on shelves in area of warehouse that we walked through ... Customers have to be members ..." And it gives your hours. Then you say this: "RJ [that's you because we can see from the code at the top] RJ orders as per turnaround of stock - he knows what his fastest lines are and tries to get the best prices." Help us with that.
>
> A. I didn't -- that would have -- I'm sure there's been a mistake there. That refers to my cousin. They've put it down as RJ, but I didn't order stock.

138 Transcript 14/7/22, pages 139 and 140.

139 Transcript 14/7/22, pages 141 and 142.

Q. All right.

A. Not at that point.

Q. Of course, the only member present, of course, at the meeting are you, that's why the initials RJ are used?

A. This is what they've put down, but yes.

Q. Yes: "He knows what his fastest lines are and tries to get the best prices." Do you see that?

A. Yes. Yes.

Q. Was that something you said?

A. It's -- this is a long time back. You know, I can't remember. That would have been -- the way we would ordered [sic] stock in, yes.".

*Appellant's oral evidence: Tax loss letters 26 May 2011 (about Barrel Beers) and 19 February 2014 (about Red Dust)*

207. The appellant was cross-examined about whether he had seen the tax loss letters dated 26 May 2011 and 19 February 2014 about Barrel Beers and Red Dust respectively—

"Q. Is this [Barrel Beers letter] a letter that would come to you as being the person responsible for dealings with HMRC? [140]
A. We would have both had sight of it, yes, at one point or another"

[…]

Q. Do you recall receiving that particular letter?
A. I can't remember now. It's almost 11 years back.

[…]

A. No, I agree, but as I say, it's a bit difficult to recall this particular letter.

[…]

A. I may have seen that letter, I might not have seen it. I don't remember. So if I had therefore followed that up, I'm not sure how to answer that.

[…]

A. Well, as I say, it's difficult for me to comment. I don't remember -- going to that letter, I don't remember seeing that letter"

"Q. Do you remember receiving this letter [the Red Dust tax loss letter]?[141]
A. I received many letters from HMRC. This letter in particular -- as I say, I received lots of letters from HMRC.
Q. Right. Do you remember receiving this letter though?
A. I might -- as I said, I might well have. I can't remember precisely. …".

*Appellant's oral evidence: Appellant's involvement in Keyrange Limited*

208. The appellant was asked about his written statement that he had had no involvement with Keyrange Limited[142]—

"Q. You were a director for 14 years?

A. Yes.

[140] Transcript 14/7/22, pages 142 to 147.

[141] Transcript 14/7/22, page 163.

[142] Transcript 15/7/22, page 99.

Q. Yet you were able to serve a statement in which you said you knew nothing else about it than that it was a company in which your mother and aunties had some involvement.

A. You are absolutely right. That's a clear error".

*Appellant's oral evidence: Re-examination of appellant*

209. In re-examination, the appellant confirmed that, "*very soon after"* the time when DEL went into liquidation in April 2017, DEL lost possession of all its business records and documents, and all DEL's computers. He explained that, when he and his solicitors went to inspect the documents at the liquidator's office, they were not allowed to take any documents away or even use the liquidator's photocopier, so he and his solicitors were taking photographs of the documents on their mobile 'phones. That was why the quality of the copies "*wasn't optimal*" he said[143].

210. The appellant went on to confirm that all the due diligence records that he had been "*referred to today*" were "*absolutely*" kept "*physically on the premises*" of DEL. He told the tribunal that CITEX officers would visit DEL's work premises "*multiple times a year*". Asked "*did those customs officers have access, and did they see the due diligence material?" he replied "Absolutely*"[144]. The exchange continued—

"Q. And did they take copies of that material away?

A. At times they had full access to our photocopier, yes, if they wanted them all, they could pass for us to provide them at a later date, arrange for them to be picked up. But they were never refused entry to anything, access to any document.

Q. I mean, did at any stage any of those Customs officers make any complaint or comments about that due diligence material that they were reading?

A. I don't believe so".

211. The re-examination of the appellant continued with questions about Mr Curley of The Due Diligence Exchange[145]—

"Q. … next question. You obviously were using Mr Curley's company?

A. Yes.

Q. Due Diligence Exchange. Did you trust Mr Curley?

A. Absolutely.

Q. Did you assume that he was doing a proper job?[146]

A. Absolutely.

Q. You said: "I believe he was of good repute." What did you mean by that?

A. Everybody in the industry knew who he was. Most of the HMRC officers knew who he was. And were aware of the fact that he was a former HMRC officer.

Q. Right. Did that give you comfort -- let me ask you one other question: were you paying him for these reports --

A. Absolutely.

---

143 Transcript 15/7/22, pages 145 to 149.

144 Transcript 15/7/22, page 152.

145 Transcript 15/7/22, pages 152 and 153.

146 No point was taken as to leading and the tribunal chose not to intervene.

Q. -- paying him. What was the fee for a report, do you know?

A. Due Diligence Exchange reports were, I think, around 250/£300 a report, something like that.

Q. In terms of scrutinising these reports, was this a situation where you were sort of relying on a professional adviser who you had paid. Did that have any impact on how you treated the report?

A. Yes. Yes, it did.

Q. So once he passed the company, given it a clean bill of health, did that give you comfort?

A. Yes, it did.

Q. And then did you scrutinise these reports thereafter?

A. I did my best to, yes".

212. The appellant was then re-examined about enquiries to be made by DEL[147]—

"Q. You were then asked a large number of questions about whether you should or whether you carried out enquiries about other companies than even your immediate supplier? Did you see it as your job to be a detective?

A. A lot of this work is very time-consuming and, you know, first of all, is that financial -- then there is a feeling that, okay, I think I mentioned it earlier to Ms Robinson, I am doing somebody else's work for them.

Q. You said that you knew there was that problem. There was a problem in this industry, and you knew that, didn't you?

A. Yes. I was aware there was a problem in the industry.

Q. Yes. I think you said "we tried to do as much as we could" is the way you put it?

A. Yes.

Q. And you describe that being paying Mr Curley to produce the report which you assumed, you said, had been carried out in good faith?

A. Yes.

Q. And taking that information about place of business and identity documents and that sort of thing?

A. Correct.

Q. And that's how you saw it?

A. Yes, absolutely.

Q. You were asked about a letter at RSW1, at page 530. I think it is the Barrel Beers letter, the HMRC letter to you about Barrel Beers … 26 May 2011 …

Q. This is one of these letters -- let's look at the letter, and understand what it is actually saying.

A. Yes.

Q. Is it fair to say, when you look at it, that Customs are warning you to take care; is that the point of this letter?

A. Yes.

[147] Transcript 15/7/22 pages 153 to 157.

Q. They are not telling you not to do anything, are they, in this letter?

A. I don't believe they are. I don't believe --

Q. (overspeaking).

A. Sorry, I didn't hear you.

Q. Have a look at the letter. As I am looking at it, I just want to ask you what you thought it was telling you to do?

A. Yes.

Q. It seems on the face of it --

A. Please carry on.

Q. Well, is it telling you not to trade with people? I am not sure it is. Is it or is it not telling you to take care?

A. At one point it says "I must, however, point out the checks are still ongoing". Yes.

Q. Is it right that all these letters were worded in exactly the same way save for the box in the middle?

A. Very much so.

Q. The name of the defaulting trader. If we look at Mr Curley's reply, which I think was in August and it is at page 532 …

Q. Does what does he say -- does he say that in that first paragraph "There is a limit to what you can do as a trader" in terms of checking everybody in the chain?

A. I am having a look, which paragraph?

Q. He was in the early paragraph there. This was, anyway, Mr Curley replying on your behalf to --

A. Yes, yes.

Q. And as we know, there are quite a large number of these letters. Again, were you trusting Mr Curley's professional judgment?

A. Absolutely.

Q. And we have noticed from these letters a large number of them refer to all sorts of legal provisions and European rules and all sorts of stuff. Did you take that at face value as a layperson?

A. Absolutely. I believe I mentioned that earlier.

Q. Yes. Did you think that Mr Curley was an expert in these areas?

A. Absolutely I did.

Q. And did you trust him?

A. Absolutely I trusted him. I paid him a substantial amount of money".

213. Asked in re-examination whether he was responsible for procuring stock from Aphrodite (for whom there are two transactions in this case), the appellant said it was Ravinder who procured the stock from Aphrodite. Asked "*Is this the kind of supplier that Ravinder would, in fact, be responsible for?*", the appellant replied "*Yes*"[148].

214. In re-examination, the appellant was asked about his recollection regarding the Barrel Beers tax loss letter dated 26 May 2011[149]—

148 Transcript 15/7/22, pages 157 and 158.

149 Transcript 15/7/22, page 154.

"Q. Is it fair to say, when you look at it, that Customs are warning you to take care; is that the point of this letter?

A. Yes.

Q. They are not telling you not to do anything, are they, in this letter?

A. I don't believe they are. I don't believe --

Q. (overspeaking).

A. Sorry, I didn't hear you.

Q. Have a look at the letter. As I am looking at it, I just want to ask you what you thought it was telling you to do?

A. Yes.

Q. It seems on the face of it --

A. Please carry on.

Q. Well, is it telling you not to trade with people? I am not sure it is. Is it or is it not telling you to take care?

A. At one point it says "I must, however, point out the checks are still ongoing". Yes".

215. The appellant was asked in re-examination about the tax loss letter from HMRC dated 19 February 2014 about Red Dust, another Jabble family business. Asked whether he recalled that letter, the appellant replied "*Not before this conversation took place yesterday or so*". Asked had he any recollection of those matters at all, he replied "*Not -- a vague recollection, I have to be honest, but not -- not in any detail*"[150].

216. The appellant confirmed that DEL moved from 2A Bridge Road Industrial Estate to its North Hyde Wharf address at the end of May or beginning of June 2011. He confirmed that Keyrange Limited (a Jabble family company) owned unit 2A and that North Hyde Wharf was owned by BKS Properties Limited, another Jabble family company[151].

217. In relation to the cross-examination of the appellant in which he had been asked why DEL was trading with Barrel Beers because they were said to be competitors, the appellant said in re-examination that he did not see them as direct competitors to what he was doing. DEL was, he said, a cash and carry whereas Barrel Beers were purely wholesalers, and at that point DEL was doing around about 30% wholesaling if the appellant remembered correctly. He confirmed that the vast majority of his business, as Mr Farrell put it, was with restaurants, members of the public and off-licences[152].

218. As to whether DEL had made all payments to Phoenix for the 23 deals with Phoenix in this case, the appellant said he had been unable to check the business records to see whether or not Phoenix had been paid. He had "*nothing*" he said, in terms of paperwork. He confirmed Mr Farrell's suggestion that he did not have access to the bank account and that the liquidator took everything. Asked whether he knew whether the payments had been made, he replied that he would have endeavoured to pay them as far as he could remember, and that he could not think of any reason why he would not pay them[153].

219. As to DEL ceasing trading with Gempost and Just Beer after tax loss letters, the appellant was taken in re-examination to his witness statement dated 5 January 2012, his fourth statement. He confirmed that what he had said at paragraph 14 of that statement was

[150] Transcript 15/7/22, pages 158 and 159.

[151] Transcript 15/7/22, page 159.

[152] Transcript 15/7/22, page 160.

[153] Transcript 15/7/22, page 161.

true: that it was after receiving the two further tax loss letters, dated 18 and 19 February 2015, that he had decided no longer to trade with those companies, and not after the June letter which he had said in his earlier statement[154].

220. The appellant was asked to expand on paragraph 15 of that fourth witness statement, which said—

> "15. I believe that the last transaction that took place with either JBL and/or GL was in or around March 2015, this was for stock that had already been ordered and therefore we were obliged to purchase it and/or as a result of Ravinder continuing to order stock without my knowledge".

221. These were his reply and the follow-up questions—

> "A. I didn't have -- he had most of the relationships with the suppliers and he and my father and my uncle worked closely in regard to the supply line.
>
> Q. I think you didn't mention when you were being cross-examined that there may have been an issue – you carried on for a short-ish period, because of stock that had already been ordered.
>
> A. Yes.
>
> Q. What did you mean by that?
>
> A. We may have already ordered it and it may have already been delivered.
>
> Q. Yes. Now, how relevant was it, that this was your father and uncle telling you that basically everything was all right? How relevant to you?
>
> A. Extremely relevant.
>
> Q. Did you believe your father was an honest man?
>
> A. Without question.
>
> Q. What about your uncle?
>
> A. At the time the same, yes.
>
> Q. I mean, hindsight is a wonderful thing. Looking at this now, do you see it differently than you saw it at the time?
>
> A. I can appreciate the case being made.
>
> Q. At the time of these transactions -- the transactions in between 1 August 2014 and 31 July 2015 -- at the time of the 123 transactions, 96 of them were with Gempost and Just Beer, yes? And the rest being with the other companies … as companies supplying to you.
>
> A. Yes.
>
> Q. Did you know or not that those purchases you were making were connected to a fraudulent VAT tax loss?
>
> A. No".

222. At the request of the panel, Mr Farrell asked the appellant how his first witness statement came to say what he did at paragraph 91[155]. That was, that he was aware of Keyrange Limited, the company owned by his mother and two aunts, but knew no more about it than he had said in that paragraph and had had no involvement. The appellant replied

[154] Transcript 15/7/22, page 164.

[155] Transcript 15/7/22, page 167.

"*Being it is about 100 pages long, I think I have neglected to scrutinise each and every page. That's the most honest answer I can give*"[156].

223. Mr Jabble further explained what he had meant in cross-examination in dealing with his evidence as to when he stopped trading with Gempost and Just Beer. He explained that he did not act earlier on the principle that he had mentioned in his first witness statement – that as a responsible company director he would ensure that goods did not continue to be sourced from the suppliers mentioned in the tax loss letters – because it was the amended volume of tax loss letters that caused the change.[157]

***Manveer Bhatti's evidence for the appellant***

224. Ms Bhatti gave a witness statement dated 28 October 2020. She explained that she had been employed by DEL from July 2008 until DEL's liquidation in 2017. She said her role was Office & Accounts Manager. She said her duties involved overlooking all office duties on a daily basis, such as payments to suppliers, purchase orders, human resources and assisting the directors. She said her accounts/cashier responsibilities included handling cash, analysing invoice/expense reports and recording entries, verifying supplier accounts by reconciling monthly statements and related transactions and liaising with The Due Diligence Exchange. As to the roles of the two directors, the appellant and Ravinder Jabble, Ms Bhatti said—

> "6. Rashpal worked in the business full time and was responsible for the financial side of the business. Rashpal was responsible for managing the accounts for the business, making payments, making sure all the necessary checks were done on suppliers and customers which involved Due Diligence checks in accordance with the Money Laundering Regulations.
>
> 7. Ravinder, was responsible for the sales and purchases operations. His duties would include buying stock for the warehouse and dealing with suppliers.
>
> 8. Rashpal was usually never involved with purchasing goods from suppliers as that responsibility was in Ravinders [sic] remit, who would make the purchases and then tell Rashpal to make the payment for the goods. However, only until the last 1 or 2 years when DEL started dealing with larger companies such as Heineken and Carlsberg did Rashpal take over dealing with these large accounts. While Ravinder continued to deal with the normal accounts".

225. Ms Bhatti confirmed in examination-in-chief that "*Rashpal was in charge of accounts and Ravinder was in charge of purchase [sic]. So he would do the sales*"[158].

226. In cross-examination, Ms Bhatti explained that her role at DEL had changed over her time with DEL. She had started off as a receptionist, which she remained for about three years, she thought, before becoming office and accounts manager[159]. She was full time in both roles. She had her own office at the Unit 2A address and did not share her office with anyone[160]. She said that the appellant "*was in the office, like, behind me*"[161], that Ravinder had an office in front of her, and that there was a window so she could see when he was in[162]. Because he was dealing with sales, he was right at the front[163]. He would pass purchase

156 Transcript 15/7/22, page 168.

157 Transcript 15/7/22, pages 169 to 172.

158 Transcript 15/7/22, page 176.

159 Transcript 15/7/22, page 177.

160 Transcript 15/7/22, page 178.

161 Transcript 15/7/22, page 181.

162 Transcript 15/7/22, page 178.

163 Transcript 15/7/22, page 179.

orders onto her to type up, that is to say, put them on SAGE, the electronic accounting system[164]. Once Ms Bhatti had raised the purchase order, she would pass it on to a few people, including Raj or Bupinder[165]. She was not involved after that except to make payments or bank transfers, and she would work alongside the appellant to make sure the payments were made[166].

227. Ms Bhatti was asked about cash payments[167]—

> "Q. Right, so you worked with him on bank transfers and cheque payments. What about cash payments, did you have any responsibility on cash payments?
>
> A. No, I didn't have no responsibility on cash.
>
> Q. Whose responsibility were cash payments?
>
> A. Um.
>
> Q. If one of your -- sorry, let me give you an example. If one of the company's suppliers was to be paid in cash, who would undertake to obtain the cash and make the cash payment?
>
> A. Well, it would be either Bupinder --
>
> Q. Yes.
>
> A. -- or Raj at unit A2, yes.
>
> Q. Did Rashpal have any responsibility for cash?
>
> A. I think they would liaise with Rashpal.
>
> Q. So either Bupinder or Raj would liaise with Rashpal before making a cash payment?
>
> A. Yes, but obviously according to the money-laundering regulations, so --
>
> Q. Sure?
>
> A. -- yeah, they would do".

228. Asked about DEL's next address, North Hyde Wharf, Ms Bhatti explained that again she had her own office, that it was upstairs "*Because accounts was upstairs, sales was downstairs*" and that "*Ravinder was based downstairs, Rashpal was upstairs*". Ms Bhatti said the appellant worked full time for DEL, Monday to Friday. She did not know "*exactly what companies or who he'd deal with*", but he came in daily and would come upstairs as well. She agreed that the appellant dealt with the company finances.

229. Ms Bhatti was asked in cross-examination about other aspects of the business that the appellant dealt with[168]—

> "Q. Was he the director responsible for ensuring the money-laundering regulations were complied with?
>
> A. Yes.
>
> Q. Was he responsible for operating the company bank accounts?
>
> A. Yes.
>
> Q. Did he deal with HMRC if they came calling?

[164] Transcript 15/7/22, page 179.

[165] Transcript 15/7/22, page 179.

[166] Transcript 15/7/22, pages 179 and 180.

[167] Transcript 15/7/22, page 180.

[168] Transcript 15/7/22, pages 183 and 184.

A. Yes, he did.

Q. Thank you. Was he the person who would collate materials and provide it to the accountants for the VAT returns and tax returns?

A. Yes.

Q. Was he the person who sourced due diligence checks on potential customers or suppliers?

A. Yes, we do, yes.

Q. -- suppliers?

A. Yes.

Q. Just to clarify, was it Rashpal as opposed to anyone else in the company?

JUDGE PEREZ: Can you repeat that question, because you broke up, Ms Robinson?

MS ROBINSON: Sorry. Was it Rashpal as opposed to anyone else in the company who was responsible for making sure due diligence was done on potential customers or suppliers?

A. Yes.

Q. Was it Rashpal who was responsible for deciding which of the customers or suppliers the company might deal with?

A. I think sometimes Rash -- Ravinder would have a say as well.

Q. Okay. Were you ever present during those discussions?

A. No".

230. Asked by Ms Robinson "*Were there any other companies based at either of the two office premises?"* (Unit 2A and North Hyde Wharf), Ms Bhatti replied "*no*"[169].

231. Ms Bhatti was asked about Kulvinder Singh Jabble, one of the appellant's cousins[170]—

"Q. … Is Kulvinder Singh Jabble a name that you know?

A. Yes.

Q. Did he ever work for DEL during the time you were there?

A. No, not --

Q. Sorry, Drinks Enterprises, I should say.

A. Kulvinder Jabble, no.

Q. Was he ever working in either of the two buildings that DEL was located in?

A. No.

Q. How did you know Kulvinder Jabble then?

A. Because he was obviously related, so he'd come in.

Q. What for?

A. Just to see Ravinder at times".

232. Ms Bhatti was briefly re-examined by Mr Farrell[171]—

169 Transcript 15/7/22, page 182.

170 Transcript 15/7/22, page 184.

171 Transcript 15/7/22, page 185.

"Ms Bhatti, just a couple of questions in re-examination about Ravinder. Was he responsible for dealing with some of the medium to smaller customers and suppliers --

A. Yes. Yes.

Q. So is that right?

A. That's right, yes.

Q. And was he -- he wasn't -- was he in the office sort of less doing administrative tasks on the computer and rather dealing with the customers face to face and suppliers?

A. Yes.

MR FARRELL: Yes. Thank you very much".

233. That concluded the evidence for the appellant.

***HMRC's evidence***

234. There were five witness statements from HMRC officer, Paul Cole. There were also witness statements from officers David Reynolds (dealing with Gempost and Just Beer), James Borland (dealing with Aphrodite), Ruth Povey (dealing with Beer Bhai), Mathew Bycroft (Lupt), Susan Bradstock (East Sussex) and Pankaj Mandalia (Phoenix).

235. In relation to the roles of DEL's directors, that is, the appellant and Ravinder Jabble, Officer Cole's second witness statement, dated 1 August 2019, said[172]—

"7. I refer to paragraph 15 [of the appellant's statement], in that paragraph Mr Jabble refers to the division of labour within Drinks Enterprises Ltd (In liquidation) ("Drinks Enterprises") between Rashpal and Ravinder Jabble. Ravinder Jabble is not a name I am familiar with at all and throughout the period I was responsible for Drinks Enterprises I do not recall his name being mentioned. Given that I informed the company of tax losses within their supply chains Ravinder Jabble, who according to the statement was responsible for suppliers would have been central to Drinks Enterprises enquiries.

8. I have also reviewed every HMRC visit to Drinks Enterprises from 2008 – 2015, Ravinder Jabble did not attend any of these visits and was not even mentioned by Rashpal Jabble at any visit.

9. The visit dated 01/09/10 states that Rashpal Jabble "orders as per turnaround of stock" the visit report goes on to state that "RJ does not buy specifically for a customer's order". RJ refers to Rashpal Jabble as he was the only RJ present at the meeting. (Exhibit PC 48A to the First Witness Statement of Paul Cole)".

236. In relation to Officer Cole's decision-making, Mr Farrell cross-examining first took Officer Cole through the penalty notice that Officer Cole had issued against DEL on 3 July 2017 (exhibit PC101[173]) and to the schedule which accompanied that penalty notice, exhibit PC101A. That schedule had said, next to "Description of the inaccuracy"—

"The trader was the subject of an input tax denial based on the Kittel judgement, which stated that where a taxable person knew or should have known that it was participating in a transaction connected with the fraudulent evasion of VAT, that taxable persons right to deduct input tax should be refused".

[172] RWS2/2.

[173] RWS1/1269.

237. As to whether what Officer Cole had done for the DEL penalty was to decide that there had been deliberate conduct by reference to the *Kittel* test, the cross-examination of Officer Cole continued—

> "Q. … what you've done is you have decided that there has been deliberate conduct by reference to the Kittel test?
>
> A. No.
>
> Q. All right, explain then.
>
> A. I think what you are getting at -- what you were saying yesterday, if I just go back a bit, the way we issue a Kittel denial letter is exactly as we said there. We are not alleging that a person knew or should have known. That would go out as standard in each Kittel letter. What I have gone on to do is to consider the penalty. The reason -- in fact, I suppose what I am saying is that Mr Jabble, in fact, knew that these transactions were connected to tax losses because I have deemed them to be deliberate. I have gone through my reasoning there of why I think these were deliberate actions. So as we can see, we have a long history of tax or supply chains prior to the transactions in question and the transactions in question. Obviously I have evidence(?) to say there was that general awareness. We are talking there about purchasing from companies despite prior warnings of tax loss. And contracts and so on and so forth. So I have looked at the company as a whole, or the -- my dealings with the company as a whole and come to that conclusion.
>
> Q. You don't say anywhere here, though, do you, that you have found that -- in this case, of course, it is the company, we have not got to Mr Jabble yet. We will reach him in that minute. You have not recorded in anywhere here, have you, that you found a finding of knowledge?
>
> A. No, I haven't. As I mentioned, the way we set out a Kittel letter is as we have discussed already. But I am just moving that on, and thinking it through, the very fact I am saying it was deliberate, I think says that I am saying Mr Jabble knew that these transactions are connected.
>
> Q. We have not got to Mr Jabble yet.
>
> A. Sorry, the company knew. The company did.
>
> Q. This is that notice sent to the company via the liquidator.
>
> A. Yes.
>
> Q. But you comment at the top that the Kittel – you comment in Kittel terms, and then you set out, don't you, the same conduct action you have described in the Kittel letter, don't you? It is the same wording, same factors? You set out exactly the same factors.
>
> A. A lot of the same factors, yes. But as I mentioned to you before, we don't allege that a company knew -- standard procedure is that we would always say they knew or should have known, regardless of all of those factors there.
>
> Q. You might be forgiven for the influence by hindsight, and particularly because you heard what I said yesterday, perhaps. Is that perhaps a fair way of looking at it, that you might be saying now something perhaps in good faith but you really didn't consider the issue of knowledge at the time. That's not the way your mind was working. I mean, you were in, if I can put it this way, a HMRC/Kittel mindset, and I suppose a deliberate mindset. Is that fair or not?
>
> A. I am not sure it is. My mindset, I think, in this particular case was that with these cases you never -- I have certainly never come across evidence that somebody knew. Certainly nobody has ever admitted to me that they knew that these transactions were connected -- I am talking in general terms through my experience. It is always a combination of factors that we take into account when making the Kittel decision and

following that the penalty decision. So it is a combination of a lot of factors. It is not just one. Certainly I have never come across it where we could actually point to something saying "he's admitted it, he knew", and so on because I have never come across that.

Q. That's a slightly different position. What I am trying to ask you about, what I am putting to you, is that you apply the Kittel test when describing whether there had been deliberate conduct.

A. I don't think I did, no. Certainly some of the factors that I have outlined in the penalty explanation or behaviour explanation, yes, that would be the same. But some of stronger comments that I have made in there, in terms of the trader having -- sorry, the company having a long history of non-compliance and involvement in tax loss supply chains, so this is something that would have been going on for quite a few years prior to my involvement, as we talked about. So it is considering that factor. The fact that we saw purchases from companies where tax loss warnings had already been given, and again we have discussed that. So they, to me, were stronger factors of knowledge than just your normal kind of run-of-the-mill, if you want to put it like that, Kittel decision.

Q. Do you have any training on what "deliberate" means to you?

A. I have had training in penalties, but not specifically on "deliberate".

Q. Do you have any written guidance to test what "deliberate" means?

A. I am sure there is guidance, yes".

238. Officer Cole was asked in cross-examination about paragraphs 256 to 259 of his statement—

"Q. If we could just look at your first witness statement, your conclusion, paragraph 256, page 62? … This is your conclusion why you issued the personal liability notice against the appellant.

A. Well, I suppose you could say that. It is my conclusion to the statement. What I really said in there, is that I reached the conclusion the appellant knew or should have known the transactions were contented to the overall scheme. Then I go on to say that the decision was raised -- sorry, the decision was made to raise a penalty on that. I should have said in there that that penalty was deliberate, but -- so --

Q. Can I just ask you a question? I will let you have an opportunity in a moment to say what you like. I just wanted to check. As I understand it, this, at least before now, was the way in which you put the matter –

A. Yes.

Q. -- as to why penalties should be issued against Mr Rashpal Jabble; is that correct?

A. That's correct.

Q. Obviously you knew this was an important statement.

A. Yes.

Q. Yes. And obviously the broader contents to be true to the best of your knowledge and belief?

A. Yes.

Q. I just want to look at these paragraphs. At paragraph 256:

"I have taken into account a number of factors including the tax losses identified before and after the verified periods, the extensive knowledge of the fraud given to the director and the company in general, the lack of cooperation ... lack of meaningful due diligence.

"Then, in addition to the other risk factors I have already detailed in this statement I have reached the conclusion that the Appellant either knew or should have known there transactions were connected to an overall scheme to defraud the revenue. "I have reached the conclusion that Appellant either knew or should have known there transactions were connected to an overall scheme to defraud the revenue."

You say, finally: "... it is only right that the person responsible for the transactions under review should be made liable for that penalty." That's what you say, isn't it?

A. Yes.

Q. I think you would agree with me, would you not, that on the face of it you are applying the Kittel test to the issues of this penalty?

A. I don't actually agree. As I spoke before, I used a test -- I outlined the reasons why I thought there were stronger indicators that the company knew -- sorry, Mr Jabble knew -- that these transactions were connected to VAT fraud.

Q. But I don't understand why you are referring to the Kittel test at all. What does it have to do with it?

A. Because that forms the basis of the penalty in the first place. If I had not raised the Kittel, we would not have had the penalty.

Q. Surely the Kittel test doesn't, does it, form the basis of the penalty at all. It is a different test.

A. Yes.

Q. I don't think there is any doubt -- I agree there is legal stuff about knowledge and all the rest of it -- but in terms of guidance, I think HMRC's own manual says that you cannot issue a deliberate penalty -- and I will find the quotation in a moment -- I will just quote from the handbook, the HMRC compliance handbook. I will give you the reference, it is CH8, 1150. It says: "A deliberate but not concealed inaccuracy occurs when a person gives to HMRC a document that they know contains an inaccuracy." That's the guidance. They have to know it. … So it is all about knowledge, isn't it, Mr Cole?

A. Yes.

Q. Thank you. Again, I am asking you as a witness how you approached it. I am just suggesting to you that -- I think you would accept, would you, that your statement does not appear to be entirely accurate; do you accept that?

A. I just think it is the way it is written. I think the statement is accurate. I have written it like that because that -- that's how a Kittel decision is normally put over. I know this is not particularly – not specifically about the Kittel, but the Kittel is part of the whole statement. So that's how I would normally word my -- how my words would normally be if I was discussing a Kittel. But I think what I have gone on to do is to show that the -- in my view -- and the evidence I think supports it -- the actual actions were deliberate. That's why I raised the deliberate penalty".

239. Some of HMRC's other witnesses gave oral evidence—

Officer Pankaj Mandalia: oral evidence

(1) Officer Mandalia of HMRC adopted his witness statement. He was cross-examined[174]. He accepted that he had had direct dealings with Phoenix from 22 July 2015, and not before that. He accepted that Phoenix carried out quite a lot of activity over the four years from April 2012 to January 2016. Asked whether it was hundreds of deals, however, Officer Mandalia could not say. But he accepted that Phoenix's turnover had substantially increased from 12 April 2012

[174] Transcript 14/7/22, pages 13 to 24.

to when he got involved with Phoenix in July 2015. He said that no Personal Liability Notice had been issued against the director of Phoenix, Mr Mohammed Ali Zaheer, but that he could not off the top of his head remember why not. Officer Mandalia also accepted that, as far as he was aware, there was no evidence that Mr Zaheer had been criminally investigated or prosecuted. Officer Mandalia's statement had also dealt with another company, I-K Drinks Limited, which had shared an address with Phoenix. Officer Mandalia said in cross-examination that he was not aware of whether a Personal Liability Notice had been issued against the director of I-K Drinks, a Mr Baig[175]. In relation to penalty assessments issued against Phoenix, Officer Mandalia said he did not know whether they had been paid.

Officer James Boreland: oral evidence

(2) Officer Boreland of HMRC adopted his witness statement. He confirmed that he had given it as replacement HMRC officer for A K Suppliers. Officer Boreland was cross-examined[176]. He was asked, among other things, about A K Suppliers' addresses, how many deals A K Suppliers had done, and whether the director who had taken over that company, a Mr Aftab Khan, had been issued with a Personal Liability Notice. Officer Boreland replied: "*I can't see it in my witness statement either. But it went to a disputes resolution board where penalties were issued and I think there was a PLN actually issued out to them. I could double check that and -- I don't have it in front of me, unfortunately, sorry*"[177]. Both counsel agreed that Officer Boreland could go and dig out that information. The parties later supplied to the tribunal a statement of agreed facts saying, among other things, that on 5 February 2017 a Personal Liability Notice was indeed issued to Mr Aftab Khan. Counsel supplied with that statement of agreed facts the penalty notice and schedules to which the agreed facts referred (see paragraph 66 above). Officer Boreland said in cross-examination that there had been no criminal prosecution against Mr Aftab Khan, that Officer Boreland was aware of. In re-examination[178], Ms Robinson took Officer Boreland to page 370 of RWS6, which was his statement and exhibits in these proceedings. Page 370 was a letter dated 22 March 2016 from HMRC officer Ms Dalgit Ruparelia to A K Suppliers. The letter notified a decision to that company to refuse entitlement to the right to deduct input tax in the sum of £1,444,973. On the second page of Officer Ruparelia's letter, at page 371 of RWS6, Officer Ruparelia had written, among other things: "*Every transaction carried out [sic] A K Supplies Ltd has been traced to fraudulent tax losses*"[179]. Officer Boreland agreed that that schedule represented 100% of A K Suppliers' transactions.

Officer David Reynolds: oral evidence

(3) Officer Reynolds of HMRC gave oral evidence—

175 A Hassan Baig had been registered with Companies House as secretary with effect from 1 October 2007, and was shown on the Companies House records as having resigned from that position the following day, 2 October 2007. A Hasan Baig had, too, been registered with Companies House as secretary with effect from the same start date, 1 October 2007. That Hasan Baig was shown on the Companies House records as having resigned from that position one month and three weeks later, on 23 November 2007. The name "Mr Baig" was used in questions and in oral evidence.

176 Transcript 14/7/22, pages 33 to 40.

177 Transcript 14/7/22, page 40.

178 Transcript 14/7/22, page 40.

179 In the third line after the table on that page.

(a) In chief, Officer Reynolds adopted his witness statement. He confirmed that he had been monitoring Gempost's supply chains since 16 May 2011, and that he had been monitoring Just Beer's supply chains since October 2011[180].

(b) Mr Farrell cross-examined Officer Reynolds[181]—

(i) Officer Reynolds confirmed in cross-examination that his witness statement, addressing matters relating to Gempost and to Just Beer, addressed matters going back to the inception of each of those companies, and so included matters which had occurred prior to his taking over monitoring of those companies in 2011. Among other things, Mr Farrell asked Officer Reynolds what his awareness had been, prior to these proceedings, of the director of Gempost being the appellant's uncle and of the director of Just Beer being the appellant's father. Officer Reynolds replied as to the appellant's uncle that "*I knew there was a family connection but I wasn't fully aware of what it was*" and, as to the appellant's father, that "*Like I said earlier, I wasn't 100 per cent certain of the relationship*". Officer Reynolds confirmed that, following the striking out of appeals made by Gempost and Just Beer against assessments, those assessments stood.

(ii) Mr Farrell took Officer Reynolds to paragraphs 126 and 133 of Officer Reynolds' statement, where Officer Reynolds had said—

> "126. Gempost and Just Beer were supplied continually by defaulting traders and as soon as one defaulter was deregistered by HMRC they immediately were able to find another supplier who went on to default and the sequence carried on for many years"

> "133. Over the 18 years since date of Registration of the deals that have been traced and verified, they all have all led to fraudulent defaulters - either the immediate supplier or one away from the defaulter. The business model did not change despite a number of visits by HMRC Officers, correspondence and further guidance given to the Directors of Gempost and Just Beer".

Mr Farrell asked Officer Reynolds: "*why didn't you stop this?*". Officer Reynolds replied—

> "It's a very good question … I was behind the scenes and not in this witness statement I was putting together my own submissions to assess for all of these input tax on a means of knowledge case. When they withdrew from the other appeals and did not apply for VAWRS and went into a voluntary deregistration effectively by ceasing trading, I was advised to discontinue, we had enough debts on file to wind these companies up, there will have been a lot of hard work, they may even be able to appeal against these and get the hardship of continual trading. So it was taken out of my hands and I was reassigned onto different jobs".

## E. ANALYSIS

240. The following analysis is premised on our judgment that the asserted failures to do adequate due diligence are not relevant so far as relied on by HMRC to show that DEL

[180] Transcript 14/7/22, pages 48 and 49.

[181] Transcript 14/7/22, pages 49 to 60.

should have known, because – as we explain below – we find that DEL did know, via the appellant.

**(1) Analysis: Issue 1: Whether the decision maker applied the wrong legal test, namely that the appellant knew or should have known that the transactions were connected to fraudulent tax losses**

241. Mr Farrell submitted for the appellant that, although Officer Cole in evidence attempted to change the position set out in paragraphs 256 to 259 of his witness statement, that position was confirmed by the contemporaneous documents. The NPPS100(S) Form Penalty Explanation – schedule 1 (exhibit PC101A) issued by Officer Cole repeated, said Mr Farrell, the *Kittel* test under the "*Description of Inaccuracy*" section and characterised this as deliberate in the "*details*" box below. Officer Cole's completion of that form in that way was in sharp contrast, said Mr Farrell, to the NPPS100(S) Form Penalty Explanation–schedule 1 completed to record the decision to issue a Personal Liability Notice to Aftab Khan of another company, A K Suppliers (see paragraph 66 above). That completed form correctly recorded, said Mr Farrell, a decision of deliberate conduct as follows: that *"All of your* alcohol *stock was traced to missing or defaulting suppliers. You sold this stock for a profit of 5p a case regardless of the product sold or the customer you sold it to.* ***The whole character and circumstance of these transactions demonstrate that the supply chain was contrived and that you knew they were connected to fraud***" (Mr Farrell's emphasis). Mr Farrell invited the tribunal to conclude therefore that Officer Cole had misdirected himself and applied the wrong legal test when making his decision to issue the Personal Liability Notice to the appellant.

242. Ms Robinson submitted for HMRC that there is no requirement to set out in the notice of intention to charge a penalty, or in the explanation schedule, or in the penalty assessment or in the Personal Liability Notice that a deliberate (but not concealed) inaccuracy occurs when a person gives HMRC a document that the person knows contains an inaccuracy. However, Ms Robinson accepted that there is guidance to that effect in the factsheet to which reference is made within the Personal Liability Notice. Ms Robinson submitted that there is nothing, therefore, in the documents issued either to DEL (c/o the liquidator) or to the appellant to support a contention that Officer Cole applied the wrong test. She submitted that Officer Cole had made clear that, in the context of a *Kittel* denial, the allegation brought by HMRC is routinely set out in terms of "*knew or should have known*", regardless of whether the decision maker takes the view that the trader knew or that the trader should have known. A *Kittel* case is invariably brought on the "*knew or should have known*" alternate basis, she said. Ms Robinson submitted that there is simply no evidence that Officer Cole *in fact* issued the penalty, or the Personal Liability Notice, on an erroneous basis. She pointed out that, in his oral evidence, Officer Cole stated that the *Kittel* letter (17 November 2016) had been issued to DEL in standard form, pleading the *Kittel* test as the basis for the denial of DEL's right to deduct input tax in respect of the transactions set out in that letter. He had said in evidence that the decision to issue a penalty against the company was a separate, and further step. Ms Robinson submitted that Officer Cole's oral evidence showed that, in imposing a penalty for deliberate behaviour, he had reached a conclusion that the appellant knew that the VAT returns contained inaccuracies.

243. As Mr Farrell pointed out, the penalty explanation schedule issued to DEL, exhibit PC101A, had said, next to "Description of the inaccuracy"—

> "The trader was the subject of an input tax denial based on the Kittel judgement, which stated that where a taxable person knew or should have known that it was participating

in a transaction connected with the fraudulent evasion of VAT, that taxable persons right to deduct input tax should be refused".

244. The penalty explanation schedule had however gone on to say, next to "**Behaviour** – the behaviour which led to the inaccuracy"—

> "We consider that the behaviour was 'deliberate'. This is explained below.
>
> Trader has a long history of non compliance and involvement in tax loss supply chains. The transactions which are the subject of the denial have all been traced to tax losses.
>
> I have evidenced that Drinks Enterprises had a general awareness of MTIC fraud prior to the transaction under consideration.
>
> They continued to purchase from two companies despite prior warnings of tax losses.
>
> The transactions were back to back.
>
> Drinks Enterprises did not enter into any formal contracts with its suppliers.
>
> Drinks Enterprises were advised to carry out due diligence on its suppliers, the due diligence produced did nothing to confirm its suppliers were credible solvent businesses and that the transactions being carried out were not part of a scheme to defraud the revenue".

245. We accept Ms Robinson's general observation that the same factors which support a *Kittel* denial in respect of input tax claimed by a company may well also support the imposition of a penalty on the company for a deliberate inaccuracy. In a *Kittel* denial, HMRC need be satisfied only that the trader knew or should have known of the connection to fraudulent tax loss. But the evidence underpinning such a decision might support a finding of actual knowledge on the company's part, even though the *Kittel* wording does not require HMRC to specify which. In such a case, the same evidence may well support the imposition of a penalty for a deliberate inaccuracy.

246. We accept Ms Robinson's submission that the appellant is not assisted on this issue by the fact that the passage at the top right of the penalty explanation schedule sets out the *Kittel* test. It was common ground that the completed explanation schedule sent to DEL had also been supplied with the wrongly served Personal Liability Notice dated 6 September 2017. It seemed also to be common ground that – as the second, correctly served, Personal Liability Notice told the appellant – that one too enclosed the same completed penalty explanation schedule (exhibit PC101A, our emphasis)—

> "We have charged Drinks Enterprises Ltd a penalty for a deliberate inaccuracy. I enclose a copy of the penalty assessment and the penalty explanation that we sent to the company".

247. Even if the completed penalty explanation schedule were taken to mean that the penalty was imposed on a "*knew or should have known*" basis, because of the passage at its top that referred to that phrase, that completed explanation schedule was about the penalty charged to "*the trader*". The trader was DEL, not the appellant. The explanation schedule was supplied to the appellant with his own Personal Liability Notice because it explained the penalty assessment on the company, which in turn was the backdrop to the Personal Liability Notice to the appellant. That is clear from the passage cited at paragraph 246 above.

248. We do however accept that what the decision maker Officer Cole said in his witness statement – as opposed to in the penalty explanation schedule – suggested at paragraphs 256 to 259 that he had found only that the appellant knew or should have known that the transactions were connected to a fraudulent tax loss. That was not a finding that the appellant only should have known. But nor was it a clear finding that he knew. Officer Cole did

change his position in oral evidence; he said that knowledge was indeed the basis of his decision to issue the Personal Liability Notice to the appellant. If the decision maker had – from all the evidence – made a decision based only on a finding that the appellant should have known (which it was common ground is not the test), it might be said that the decision to issue the Personal Liability Notice had no lawful basis. But it was neither Officer Cole's oral evidence, nor his written evidence, that he had found only that the appellant should have known. In any event, we accept Ms Robinson's submission as to the effect on the case even if the decision maker did apply the wrong test. We turn to that under issue 2 below. Given our judgment on issue 2, we need not attempt to reconcile Officer Cole's written evidence with his oral evidence, nor consider to what extent his recall might have been helped by hearing opening submissions, nor decide which of his oral and written evidence is the true position.

**(2) Analysis: Issue 2: Whether, if the decision maker did apply the wrong test, that means the First-tier Tribunal must in view of its jurisdiction in paragraph 15(1) of Schedule 24 cancel the decision and allow the appeal without more**

249. No, the tribunal is not required to cancel the decision and allow the appeal without more if the decision maker did apply the wrong test. We say that for the following reasons.

250. Mr Farrell argued that, if the decision maker did apply the wrong legal test, it follows that the Personal Liability Notice should be cancelled. He argued that this is because, in these circumstances, the tribunal has no power – under paragraph 17(1) of Schedule 24 to the Finance Act 2007 – to put itself in Officer Cole's shoes and remake the decision applying the correct legal test.

251. Ms Robinson argued for HMRC that the tribunal's jurisdiction under paragraph 17(1) of Schedule 24 is not merely supervisory but is "full appellate". She said there appeared to be no dispute that the tribunal's jurisdiction under paragraph 17(1) is appellate, and that that means that the tribunal has the power to consider evidence and remake the decision, "*and could reverse findings of fact made by the commissioners*" (as the Court of Appeal said in *John Dee Limited v Commissioners of Customs and Excise* [1995] EWCA Civ 62, [1995] STC 941, [1995] STC 265).

252. We are not sure Mr Farrell would agree that the paragraph 17(1) jurisdiction is appellate as opposed to supervisory (supervisory in the sense of considering only what was before the decision maker when the decision was made). But in any event, we accept Ms Robinson's submission for HMRC that, in exercising the power in paragraph 17(1) of Schedule 24 to the Finance Act 2007 to affirm HMRC's decision, the tribunal need not adopt each and every aspect of the decision maker's reasoning. We say that for the following reasons—

(1) First, that is apparent from the face of paragraph 17(1) in our judgment; it requires "*the decision*" to be affirmed or cancelled, not the reasoning underlying it.

(2) Second, as Ms Robinson pointed out, by virtue of paragraph 16 of Schedule 24, "*An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned*". It was not suggested, and we would not accept, that on an appeal against an assessment of the tax concerned, the tribunal does not have power (i) to take evidence that was not before the decision maker, and (ii) to make findings based on that evidence.

(3) Third, there is a contrast between paragraph 17(1) (under which we are acting in the present case) and 17(3)(b) of Schedule 24. The power in paragraph 17(3)(b) to make a

decision that HMRC could have made pursuant to paragraph 11 of the schedule is limited to considering whether HMRC's decision was flawed. In other words, if HMRC's decision was open to HMRC on the evidence and was not otherwise in error of law, then the fact that the tribunal disagrees (if it does) with that decision does not permit the tribunal, where acting under paragraph 17(3)(b) of Schedule 24, to replace HMRC's decision with the tribunal's own decision. Had the drafter wanted so to limit paragraph 17(1) of the schedule, the drafter had the very words to do so just two subparagraphs later. That the drafter did not use such words suggests that the intention was not to limit paragraph 17(1) to considering whether HMRC's decision was flawed.

(4) Fourth, we see no reason why, for practical purposes, such an approach would require paragraph 17(1) to be construed in the limited way advanced for the appellant. Moreover, as Ms Robinson pointed out, the appellant himself has not treated the jurisdiction as being so limited; he supplied additional material to the tribunal after the adjournment for that purpose.

**(3) Analysis: Question 3: Whether the transactions were connected to fraudulent tax losses**

253. Yes. By the time of the final hearing, the appellant had conceded that all 123 transactions were connected to fraudulent tax losses. We accept that concession, in view of the wealth of evidence supplied in relation to the transactions, and to the traders, throughout each of the 123 deal chains.

**(4) Analysis: Issue 4: Whether DEL knew or should have known that the transactions were connected to a fraudulent tax loss**

254. Yes, we find that DEL knew that at least 120 of the 123 transactions were connected to a fraudulent tax loss.

255. We do not so find in relation to deal chains 84 to 86. Moreover – given that we are looking at the appellant's liability, which requires his knowledge – we need not and do not consider whether DEL should have known in respect of those deal chains. We bear in mind that this is not DEL's appeal, nor Ravinder's. Neither of them was able to make representations about what knowledge each had. To the extent that we need not make findings, we prefer not to do so.

256. It became common ground that if DEL only "*should have known*" that the transactions were connected with a fraudulent tax loss, that would not suffice for the inaccuracies in DEL's returns to be deliberate (issue 5).

257. As was common ground, if either the appellant or his fellow director Ravinder Jabble knew, then that means that DEL knew, rather than merely should have known, given those directors' positions in DEL. In this section we are looking at factors which showed DEL's knowledge. But there is inevitably some overlap between factors that showed DEL's knowledge (and which showed a significantly orchestrated scheme) and factors which showed the appellant's knowledge. So we will under later sections of the decision point back to some of the factors that we include here.

258. We accept the undisputed facts in the factual background set out at paragraphs 5 to 135 above.

(A) DEL's knowledge that 120 of the 123 transactions were connected with fraud

259. The reasons for which we find – against the factual background at paragraphs 5 to 135 above – that DEL knew that at least 120 of the transactions were connected with a fraudulent tax loss are as follows[182]—

(a) there was an orchestrated scheme with a significant level of orchestration (and we infer that the reason it was managed so well was that each trader in the chain must have known that it was fraudulent (except for Lupt whose VAT number was highjacked but the trader purporting to be Lupt must have known) and that it is highly unlikely that the chain would have involved an unknowing participant. That unlikelihood increases with each of the additional factors we list at subparagraphs (b) to (i) in this paragraph);

(b) DEL's awareness (via the appellant) of the fact, and prevalence, of missing trader fraud in the sector in which DEL traded;

(c) the real number of deal chains in which DEL participated which according to HMRC had been traced to a tax loss was significantly higher;

(d) DEL's continued trade with family companies after tax loss warning letters;

(e) despite the appellant's awareness of fraud in the alcohol industry, DEL continued to fail to conduct aspects of basic due diligence;

(f) the association between the appellant, Ravinder Jabble, Kulvinder Singh Jabble, Jagjit Singh Jabble, Makhan Singh Jabble, and other family members, and their respective companies;

(g) the uncommercial trading model whereby goods were released to DEL prior to DEL's supplier's receipt of payment, and prior to those further up the chains receiving payment, and the consequent lack of risk for DEL in the transaction chains;

(h) other aspects evidencing uncommercial relationships with competitor traders: including that the inclusion of a middleman harmed the profit, and that, in relation to the purchases from Gempost and from Just Beer, DEL continued to purchase from those companies despite having collected or received delivery direct from the suppliers to Gempost and to Just Beer, and so knowing from whom DEL could buy goods directly; and

(i) in relation to the purchases from Gempost and from Just Beer, the appellant lived with his father, who must have known about the involvement in the fraud of Just Beer (run by his father) and of Gempost (run by his uncle, his father's brother, who was also involved in running Just Beer).

The factors at subparagraphs (a) to (i) above are the basis for our finding that DEL knew that 120 of the 123 transactions were connected to fraudulent tax losses. We take each factor in turn.

### *(a) DEL's knowledge: Orchestrated scheme*

260. Ms Robinson advanced for HMRC the following as the relevant questions: (1) is the tribunal satisfied there is a high level of orchestration? (2) if so, how was it managed so well? and (3) would an orchestrator of a fraud involve an unknowing party, and if so why?

261. We find that at least the 120 transactions that were not direct with Beer Bhai were part of an orchestrated scheme. We do not say whether it was "*highly orchestrated*" because

[182] We find, too, later in this decision that it knew via the appellant.

"*highly*" can mean different things. We do however find that the level of orchestration was significant.

262. Our reasons for finding that at least those 120 transactions were part of an orchestrated scheme in which the level of orchestration was significant, are as follows—

Generally

(i) the transactions were "back to back" in the sense used by Ms Robinson;

(ii) there was significant consistency in the supply chains;

(iii) there were no mutually understood terms as to date of payment (except, according to the appellant, as to payment to Just Beer and to Gempost), and there was in any event no long-stop payment date with Just Beer or Gempost;

(iv) there was no provision, on the evidence, for who carries the risk once the goods have left a supplier but the supplier has not yet been paid;

(v) the more suppliers in the chain, the less profit was to be made (as the appellant said he understood, to which we return later);

Gempost and Just Beer

(vi) Just Beer and Gempost had a history of being involved in tax loss supply chains;

(vii) DEL continued to transact with both Just Beer and Gempost despite receiving tax loss letters about those two companies;

(viii) Gempost and Just Beer both knew (as we find below), via the appellant's uncle and father, that the transactions involving Gempost and Just Beer supplying to DEL were connected with a fraudulent tax loss;

(ix) DEL either had to collect from the supplier to Gempost or Just Beer, or had goods delivered to DEL by the supplier to Gempost or Just Beer;

Phoenix and Aphrodite

(x) there was no evidence of payment by DEL of 17 invoices from Phoenix, and there was a delay in payment by DEL to Aphrodite;

(xi) Phoenix had a history of being involved in tax loss supply chains;

(xii) Aphrodite's VAT1 declared an intended business activity (beauty products) other than the sale of alcohol, and had other readily discoverable red flags, yet DEL chose to buy from Aphrodite without seeing Aphrodite's VAT certificate or checking certain other matters; and

Beer Bhai

(xiii) DEL transacted directly with Beer Bhai in three deals in period 04/15. But in the same period, Beer Bhai also transacted with Gempost and with Just Beer, both of which then made onward sales to DEL.

263. That was our list of reasons for our findings as to orchestration. We now take each reason in turn.

*(i) Orchestrated scheme: Back to back transactions*

264. First, as we found at paragraphs 28 and 258 above, the transactions were back to back (as was not disputed) in the sense used by Ms Robinson, that is to say: (i) goods were bought

and sold on the same day (with one exception, not taken by either party), and (ii) the same quantity of goods was transacted at each step of the chain.

265. The one exception is that, as mentioned at paragraph 28 above, for deal chain 104 (07/15-18), the invoice from Phoenix to DEL was dated one day earlier (21 July 2015) than the invoices higher up the chain from each supplier to the next (Lupt to A K Suppliers: 22 July 2015; A K Suppliers to Phoenix: 22 July 2015[183]). That exception does not in our judgment detract from HMRC's point that the goods were sold on the same day, being just one day's difference. If significant at all, it would be so in that it shows that DEL's supplier Phoenix was invoicing DEL the day before Phoenix was invoiced by A K Suppliers. So, on paper, Phoenix was selling to DEL before Phoenix had even bought the goods from A K Suppliers, and before A K Suppliers had bought the goods from the trader purporting to be Lupt. This is further evidence of orchestration in our judgment.

*(ii) Orchestrated scheme: Significant consistency in the supply chains*

266. Our second reason for our orchestration findings is that there was significant consistency in the supply chains. With nine exceptions, when DEL purchased from a particular supplier, that supplier had always sourced that supply from the same supplier, the supplier to DEL's supplier had equally always sourced that supply from the same supplier and, where there were four participants in the deal chain, the second trader in the chain always sourced that supply from the same ultimate supplier at the top of the chain. For that to happen could not be mere coincidence every time. We infer that there must have been communication between the traders in the chain as to how much to supply, when and to whom. (The exceptions were these: in deal chains 77, 79, 80 and 82, Gempost bought from Beer Bhai instead of from East Sussex; in deal chains 78, 81 and 83, Just Beer bought from Beer Bhai instead of from East Sussex; and deal chains 65 and 66 involved just Aphrodite and DEL. Aphrodite was the fraudulent defaulting trader in those two chains.)

*(iii) Orchestrated scheme: No mutually understood terms as to time of payment (except as to payment to Just Beer and to Gempost) and no long-stop payment date with Just Beer and with Gempost*

267. Our third reason for our orchestration findings is that there were no terms and conditions as to time of payment (except as to payment to Just Beer and to Gempost), and no long-stop payment date with Just Beer and with Gempost.

268. We find, based on the appellant's own oral evidence, that DEL had no written terms with Gempost or Just Beer. The appellant did however say in oral evidence that there was a term with each of Gempost and Just Beer that payment be made "*as soon as possible*"[184], although he did not say that it was a written term. Asked whether there were written terms or conditions with each of Beer Bhai, Aphrodite and Phoenix, the appellant told the tribunal he could not remember[185]. We find that there were – as to time of payment – no formal terms or conditions with each of Beer Bhai, Aphrodite and Phoenix – whether formal in the sense of written, or formal in the sense of mutually understood from a course of dealings or from oral discussions.

---

183 Lupt to A K Suppliers, invoice number 1350: RWS8/210. A K Suppliers to Phoenix, invoice number PWL22715: RWS1/417.

184 Transcript 14/7/22, page 107.

185 Transcript 14/7/22, pages 112 and 113.

269. As to the effect of those findings: we accept Mr Farrell's submission for the appellant that the absence of written terms and conditions is not necessarily significant given that the five suppliers to DEL in this case were not as big as, for example, Carlsberg or Molson Coors. We would not necessarily expect to see a formal written contract for the five suppliers to DEL in this case. We would however expect suppliers in a genuinely commercial and non-fraudulent supply chain to have an understanding between supplier and recipient as to when payment is required to be made. First, without a reliable common understanding of when payment must at the latest arrive, there will be difficulties for the supplier both in terms of internal decisions about when that money will be available to spend, and in terms of any representations needing to be made to banks or others as to when payment must at the latest arrive. Moreover, although we accept that payment to Gempost and to Just Beer was understood to be due "*as soon as possible*", that does not alter the fact that there was according to the appellant no long-stop date by which payment was due from Gempost and from Just Beer, on which a genuine supplier would need to rely as we have said. Second, as Ms Robinson pointed out, regardless of the provision on invoices as to the supplier retaining title until payment (see below), by the time DEL were to be in default of payment (whatever date that might be given the lack of provision as to date of payment) it would be too late for DEL's supplier to get the goods back; the goods would have been consumed by the ultimate customer. These are not aspects of a genuine commercial supply chain, at least for the amounts involved in the present case.

270. As Ms Robinson said, the business model in operation in these transactions was uncommercial, vested all the risk in traders further up the chains, yet created no risk whatsoever for DEL. An obvious reason that the traders further up the chain would not mind this is that they knew that the transactions would be honoured because the transactions were part of an orchestrated scheme. We accept that those traders must have known that, in these circumstances.

*(iv) Orchestrated scheme: No provision on the evidence for who carries the risk once the goods have left a supplier but the supplier has not yet been paid*

271. Our fourth reason for our orchestration findings is that, with three exceptions, the suppliers' invoices at each step of each chain said that title did not pass until payment was received. The three exceptions were (i) supplies from Beer Bhai to Gempost and to Just Beer, (ii) two invoices from East Sussex to Just Beer, and (iii) one invoice from Just Beer to DEL. The purchase invoices from DEL did not carry any provision as to title passing either. And yet payment was not required to be received – from DEL at least – prior to the goods arriving with DEL or by any particular date at all. The appellant's failure to identify any specific written terms and conditions in DEL's dealings means, and we find, that there was no contractual provision in DEL's purchases as to whether the supplier to DEL would or would not carry the risk of loss. This mattered – or would matter in a genuinely commercial transaction – because DEL was not required to pay prior to receipt of the goods and yet the supplier's title remained in the goods until payment. The supplier had no control over the goods and so could no longer keep them safe, yet was still the owner if DEL were to lose them. The values of the transactions were in the tens of thousands, too high for this not to matter.

272. Ms Robinson's point about lack of provision for payment applies similarly in relation to the lack of provision as to risk. An obvious reason that the traders further up the chain would not mind this is that they knew that the transactions would be honoured because the transactions were part of an orchestrated scheme. We found at paragraph 270 above that they must have known that.

*(v) Orchestrated scheme: The more suppliers in the chain, the less profit was to be made*

273. Our fifth reason for our orchestration findings is that, the more suppliers in the chain, the less profit was to be made. There was no commercial reason for the insertion of additional wholesalers into the chains between the defaulting trader at the top and DEL at the bottom. That was especially so in relation to supplies to DEL by Just Beer and by Gempost, neither of which had its own warehouse and the goods supplied to them notionally were physically supplied direct by their suppliers to DEL.

*(vi) Orchestrated scheme: Just Beer and Gempost had a history of being involved in tax loss supply chains*

274. Our sixth reason for our orchestration findings is that, in relation to the transactions with Just Beer, Gempost (and Phoenix), all three of those companies had a history of being involved in tax loss supply chains. That renders it more likely that they were part of an orchestrated scheme in the present case, compared with if they had not previously been involved in tax loss supply chains.

*(vii) Orchestrated scheme: DEL continued to transact with Just Beer and Gempost despite receipt of tax loss letters about them*

275. Our seventh reason for our orchestration findings is that, in relation to purchases from Just Beer and from Gempost, DEL continued to transact with both Just Beer and Gempost, despite having been advised by HMRC (in letters dated 30 June 2014 and 2 July 2014 respectively) that there had been tax losses in earlier chains in which those companies had been suppliers. We return later to this topic, to discuss the appellant's shifts in evidence about when DEL stopped buying from Gempost and from Just Beer.

*(viii) Orchestrated scheme: Gempost and Just Beer both knew that the transactions involving Gempost and Just Beer supplying to DEL were connected with a fraudulent tax loss*

276. Our eighth reason for our orchestration findings is that, on the evidence before us, we are satisfied that Gempost and Just Beer both knew, via the appellant's uncle and father, that the transactions involving Gempost and Just Beer supplying to DEL were connected with a fraudulent tax loss. We say that because we accept Ms Robinson's submissions on that – see **Annex 3** to this decision. This is relevant to orchestration, to the appellant's knowledge and to DEL's knowledge. We deal with it here for its relevance to orchestration. That the middlemen – Gempost (via uncle) and Just Beer (via father) – knew that the transactions were connected to a fraudulent tax loss increases the likelihood that the scheme was significantly orchestrated. We are sorry to have to make such a finding about the appellant's father's and uncle's knowledge, especially as regards the appellant's father who is sadly no longer with us. We emphasise that our finding is based only on the evidence before us and was unable to take account of any evidence that the appellant's uncle and father might have given, had they been able to give evidence.

*(ix) Orchestrated scheme: Collection by DEL, or delivery to DEL, direct from supplier*

277. Our ninth reason for our orchestration findings is that DEL either had to collect from the supplier to Gempost or Just Beer, or had goods delivered to DEL by the supplier to

Gempost or Just Beer, because neither Gempost nor Just Beer had its own warehouse. We accept that it follows that DEL must have been aware of the identity of the suppliers to Gempost and to Just Beer, at least after the first supply in which DEL would see the identity of the company that DEL went to collect from or received delivery from. We did not accept the appellant's evidence that, despite collecting or receiving direct from Gempost's or Just Beer's supplier, DEL was not aware of the identity of that supplier. DEL must have known to what company it was sending its van drivers, and must have known what company's drivers were coming to DEL's warehouse. Even if, which was not suggested and is unlikely, Just Beer and Gempost's suppliers delivered to DEL in an unmarked van, it is inconceivable that DEL would not know what company the van came from, just by having contact with the driver on handover at DEL's warehouse. Again, the operation of a legitimate and commercial market would result in DEL bypassing Gempost or Just Beer, and going direct to their suppliers, to maximise DEL's profit margin. We accept that the fact that Gempost and Just Beer remained in these deal chains despite DEL's knowledge of who was supplying to them is highly indicative of the contrived nature of the deal chains.

*(x) Orchestrated scheme: Non-payment or delay in payment*

278. Our tenth reason for our orchestration findings relates to non-payment and delay in payment. Ms Robinson for HMRC questioned the appellant particularly about whether and when DEL had made payment to each of Aphrodite and Phoenix.

Phoenix

279. As to Phoenix, there was no written evidence of payment by DEL to Phoenix for 17 of the 23 purchases from Phoenix. And the appellant was unable to say whether those 17 purchases had been paid for. He did explain that the liquidator had taken all the records. But we do not accept that the appellant would not know whether DEL had paid invoices of some £700,000. Nor do we accept that the liquidator's possession of the documents precluded the appellant from finding out that specific information. We do not see why he could not have requested a further visit to the liquidator to look for that information. We do not therefore find, on the evidence before us, that DEL paid Phoenix for those 17 transactions.

Aphrodite

280. As to Aphrodite, we accept that it took from 13 October 2014 to 5 March 2015 for DEL to pay Aphrodite's invoice. In response to Ms Robinson's question "*Was [Aphrodite] clamouring at your doors to get paid for these transactions?*" the appellant said only "*I think there might have been one or two reminders. Off the top of my head, I can't remember*". Asked "*Did you not have a chain of angry emails from Mr Picknell saying "where is my money"?*" the appellant replied only that "*I didn't deal directly with Mr Picknell*". We had no evidence that Aphrodite did send one or two reminders; the appellant said only that "*there might have been*". Without evidence that there were reminders, we do not find that there were any reminders from Aphrodite. We do not accept that, in a genuine commercial relationship, Aphrodite would not have been chasing payment in some four and a half months.

281. Moreover, the appellant accepted – and we find – that Aphrodite could not get the goods back in the four and half months that it took DEL to pay the invoice of over £120,000; the goods had already gone from DEL's cash and carry to the retailer and had we find probably been consumed. That too does not in our judgment reflect a genuine commercial relationship.

*(xi) Orchestrated scheme: Phoenix (and Just Beer and Gempost) had a history of being involved in tax loss supply chains*

282. Our eleventh reason for our orchestration findings is that Phoenix (and Just Beer and Gempost) had a history of being involved in tax loss supply chains. That renders it more likely that those companies were part of an orchestrated scheme in the present case, compared with if they had not previously been involved in tax loss supply chains.

*(xii) Orchestrated scheme: Aphrodite's inconsistent beauty classification and other discoverable red flags*

283. Our twelfth reason for our findings as to orchestration is that, on 22 October 2015, Officer Cole issued another tax loss letter to DEL, informing DEL of two transactions in period 04/15 which had been traced to a tax loss in the sum of £21,415.47. The supplier on that occasion was Aphrodite. It was common ground that, before this tax loss letter, HMRC had never told DEL that Aphrodite had been involved in fraudulent tax losses. DEL's purchases from Aphrodite preceded that tax loss letter.

284. However, Aphrodite had declared in registering for VAT that its intended business activity was the supply of beauty products. But it sold alcohol (to DEL). The very fact that Aphrodite was registered for something other than alcohol sales (and not even remotely connected with supply of food or drink) and yet sold alcohol, is strong evidence that the sales by Aphrodite to DEL were in an orchestrated scheme to defraud (indeed, Aphrodite was the defaulting trader in those two transactions).

285. The appellant's evidence as regards vetting suppliers included this, in his first witness statement—

> "17. My responsibilities also included arranging for due diligence to be carried out into suppliers. DEL utilised the services of DDE, who were a professional third-party due diligence service provider. We used DDE to carry our due diligence checks over a period of many years and throughout the relevant time period in this appeal. The way this operated was Ravinder would inform me of any new suppliers that he wanted DEL to deal with and I would arrange for DDE to carry out the necessary due diligence. Once DDE provide their report, I would consider the reports with Ravinder and we would jointly decide whether to proceed with sourcing goods from the supplier concerned. Once we had started dealing with suppliers then I liaised with DDE periodically with obtain updated due diligence as required"[186].

286. The record of a visit by HMRC officers to DEL on 1 September 2010 had recorded that the appellant told HMRC, as to checks made by DEL—

> "RJ and his team also carry out their own DD checks on high value traders, minimum checks – visit premises ensure as described on paperwork, check directorship, VAT certificate, utility bills, passport/driving licence for ID" [187].

287. The appellant was asked about that in cross-examination[188]. He did not resile from the proposition that he and his team checked the VAT certificate of prospective trading partners.

288. But, despite the appellant's evidence that DEL would check the VAT certificate, no VAT certificate was obtained by DEL for Aphrodite, prior to DEL's purchases from Aphrodite. Had the VAT certificate been received by DEL, the certificate would have told DEL (if DEL did not already know) that Aphrodite did not, according to HMRC, trade in

186 AWS/5.

187 RWS9/19.

188 Transcript 14/7/22, pages 139 and 140.

wholesale alcohol. That would, as Ms Robinson submitted, have been a negative indicator to be acted upon by an innocent trader. Mr Farrell submitted for the appellant that there was no evidence that the appellant had ever dealt with Aphrodite. That does not in our judgment help the appellant. We accept Ms Robinson's submission that the appellant's failure on behalf of DEL to do what was squarely within his accepted role within DEL, to insist on sight of the VAT certificate, was too much of a coincidence to be genuine. As Ms Robinson pointed out, this was the one certificate which did not show the trader to trade in alcohol. It is too convenient that DEL did not see it prior to buying from Aphrodite.

289. There were other problems with Aphrodite that, as with the VAT registration, were readily discoverable. The address from which Aphrodite operated was residential[189]. Although the appellant had said he would do a drive-by for some prospective trading partners, he did not do so in relation to Aphrodite. Had he done so, he would have seen that the premises were residential, which he accepted would have been significant. Moreover, Aphrodite was not prepared to declare its estimated annual turnover. This gave the appellant no means by which to ascertain whether Aphrodite was a company able to participate in transactions of a high value.

*(xiii) Orchestrated scheme: DEL purchased from Beer Bhai via Gempost and via Just Beer despite also purchasing direct from Beer Bhai*

290. Our thirteenth reason for our orchestration findings is that, again in relation to purchases from Just Beer and from Gempost, DEL transacted directly with Beer Bhai in three deals in period 04/15. In the same period, Beer Bhai also transacted with Gempost and with Just Beer, both of which then made onward sales to DEL. There was no commercial reason, or other innocent reason, for the insertion of Just Beer or Gempost into those transaction chains. Neither Gempost nor Just Beer added value. And their presence in the chains (given that Beer Bhai and DEL must have been known to each other at least after the first transaction in the three-part chains starting with Beer Bhai) was demonstrative of the contrived nature of those three-part chains.

*(xiv) Orchestrated scheme: Generally*

291. A reminder of what the Upper Tribunal said in *Pacific Computers* (our emphasis)—

> "76. HMRC's closing submissions invited the FTT to find that the evidence showed that the level of orchestration in the deal chains was very high. It was then submitted that two questions arose: first, how did the orchestrators of the fraud manage it so well, and secondly how likely was it that an orchestrator of such a fraud would involve an unknowing party and why? The submission was that the only way in which the orchestrators of such a fraud could ensure a carousel pattern and speed was to tell each party from whom to purchase, to whom to sell and at what price. It was argued that the carousel, circularity and timings that occurred simply could not have happened without that level of instruction. It was further submitted that, because a fraudster would wish to retain control of the component parts of such a fraud, it was highly improbable that an orchestrator of such a fraud would involve an unknowing party.".

292. The 120 deal chains involving DEL's purchases other than direct from Beer Bhai had significant similarities to each other as to the identity of each middleman trader (the so-called "buffer") and the identify of each defaulting trader—

[189] RWS7/65.

(i) in 31 transactions, the common middleman was Gempost. The defaulting trader was East Sussex in 27 of those transactions, so in all but four;

(ii) in 64 transactions, the common middleman was Just Beer. The defaulting trader was East Sussex in 61 of those transactions, so in all but three; and

(iii) in 23 transactions, the common middlemen were, without exception, A K Suppliers and Phoenix (in that order). In those 23 transactions, the defaulting trader was without exception the trader purporting to be Lupt.

293. Returning to the two questions mentioned in *Pacific Computers*: (i) how did the orchestrators of the fraud manage it so well, and (ii) how likely was it that an orchestrator of such a fraud would involve an unknowing party, and why would it do so? We accept that the only way in which the orchestrators of the frauds in this case could ensure that the frauds worked so well was to tell each party from whom to purchase, to whom to sell and at what price. We accept that the pattern of transactions, and in particular the same-day timings (except for one transaction in one deal chain; paragraph 28 above), simply could not have happened without that level of instruction. It is highly unlikely that the orchestrator of the frauds in this case would have involved an unknowing party, and we find that the orchestrator did not involve an unknowing party (apart from Lupt whose vat registration number was hijacked); there were simply too many fraudulent transactions to take that risk. So DEL must have been told from whom to purchase and at what price. These reasons about the orchestrated scheme would, alone, suffice for us to infer DEL's knowledge. But our judgment in relation to the orchestrated scheme is not the only factor suggesting an inference that DEL knew, as we set out below. (We come later to why we find that that knowledge was via the appellant.)

294. That accounts for 118 of the 120 transactions in relation to which we are dismissing the appeal.

295. The other two transactions in relation to which we are dismissing the appeal had just Aphrodite and DEL in the deal chain. Those two transactions did not have common middlemen because there was no middleman. And, being just two transactions, the transactions were not on the face of it as orchestrated as the other 118. But we nonetheless dismiss the appeal in relation to DEL's two purchases from Aphrodite for reasons set out below; in particular the convenient failure to obtain the VAT certificate which inconveniently would have shown that Aphrodite's intended business was said to be the sale of beauty products.

296. We turn now to the other factors which, taken together, show in our judgment that DEL knew that its purchases were connected to a fraudulent tax loss.

### *(b) DEL's knowledge: DEL's awareness (via the appellant) of the fact, and prevalence, of missing trader fraud in the sector in which DEL traded*

297. It did not appear to be disputed that DEL and the appellant were aware of fraud within DEL's industry, the alcohol industry. We find in any event that the appellant was aware of that fraud. That awareness affects the appeal as follows.

#### *(i) Awareness of MTIC fraud in alcohol sector: Notice 726*

298. Much was made for HMRC about the relevance of Notice 726. We find that on or within a few days after 15 September 2011, the appellant (and so DEL) was aware of the fraud indicators in Notice 726 and that they related to DEL's industry. So the appellant was

not merely aware of MTIC fraud in the alcohol industry; he was also aware of indicators of such fraud. We say that for the following reasons.

299. Notice 726 started by saying "*Find out how you could be made liable for the unpaid VAT of another VAT-registered business when you buy or sell specified goods*". Specified goods were defined, in paragraph 1.4 of the notice, as computers, telephones and other electronic equipment.

300. Paragraph 1.3 of Notice 726 said—

> "**Who should read this notice**
>
> If. you're a VAT-registered business and buy or sell certain specified goods mentioned in paragraph 1.4, you should read this notice".

301. So, the appellant was not, on the face of Notice 726, required even to read it, according to paragraph 1.3 of the notice. But we accept that he was made aware of its relevance to the alcohol industry by the HMRC officers who visited DEL on 15 September 2011. The visit record for that date[190] does not say in terms that the officers made him aware of it. But the tenor of the visit record as a whole shows that MTIC fraud was the focus of the visit, and one of the officers supplied to the appellant with a letter dated the same day[191], a copy of Notice 726 along with the leaflet on "*How to spot missing trader fraud*". So, at the latest on receipt of Notice 726 and the "*How to spot missing trader fraud*" leaflet, either on or shortly after 15 September 2011, the appellant was aware that the list of indicators of fraud in Notice 726 (and in the leaflet) applied to the alcohol industry too.

302. Notice 726 included, at its paragraph 2.3, a description of missing trader fraud in these terms—

> "Missing trader fraud involves a 'missing' or 'defaulting' trader who deliberately fails to pay its VAT liability for taxable supplies made in the UK. Those supplies may pass through a number of intermediary traders before they are either sold to an end user in the UK or dispatched/exported to an overseas customer. These supply chains are known as 'tax loss chains'"[192].

303. The notice went on to advise, at paragraph 4.5[193], that it was good commercial practice to carry out checks to establish the credibility and legitimacy of customers, suppliers and supplies, needed to be more extensive in business sectors that are commercially risky or vulnerable to fraud and other criminality, of which the wholesale alcohol sector was one. The notice gave guidance as to the sort of checks that a trader might make to avoid dealing with high-risk businesses or high-risk individuals.

304. Notice 726 also gave examples of the kind of indicators of fraud to look out for. Those examples included—

(i) the supplier's history in the trade;

(ii) whether the supplier offered a deal which carried no commercial risk for DEL; for example, no requirement for DEL to pay for goods until payment is received from DEL's customer;

(iii) whether the goods are adequately insured;

(iv) whether the deals are "*high value*" deals offered with no formal contractual arrangements;

---

[190] RWS1/543.

[191] RWS1/549.

[192] RWS1/512.

[193] RWS1/516.

(v) whether HMRC had specifically notified DEL that previous deals including that supplier had been traced to a VAT loss;

(vi) whether it is commercially viable for the price of goods to increase within the short duration of the supply chain;

(vii) what recourse there is if the goods are not as described.

305. As Ms Robinson pointed out for HMRC, there were some of those indicators in the present case. Aphrodite had no history in the trade. All the deals carried no commercial risk for DEL (i) because – as the appellant appeared to accept – DEL did not pay until DEL received payment, and (ii) because title in the goods supplied to DEL remained with some exceptions (where the invoice did not say[194]) in the supplier, so any loss or damage of goods was not on the face of it DEL's risk, even while the goods were in DEL's possession. As to whether the goods were adequately insured, the appellant was unable to point to terms or conditions whether oral or written that dealt with insurance, so DEL was not in a position to know that the goods were adequately insured. HMRC had specifically notified DEL that previous deals with the suppliers had been traced to a VAT loss, with the exception of Aphrodite. As to what recourse there is if the goods are not as described, again, the appellant was unable to point to any terms or conditions, oral or written, that dealt with that.

*(ii) Awareness of MTIC fraud in alcohol sector: DEL's tax adviser*

306. DEL engaged the services of tax specialist Vincent Curley & Co Ltd as tax adviser. Mr Curley's letter head described his company as "*The Specialists in VAT Excise Duties, Customs Duties, Tribunal Appeals and Tax Investigation*". It was not disputed that Mr Curley's areas of experience included missing trader fraud. The appellant accepted that it was he within DEL who liaised with Mr Curley. Mr Curley's experience was evidenced by, for example, his letter to HMRC's Specialist Investigation Department dated 10 August 2011, on behalf of DEL, setting out "*issues which have arisen in our dealings with your department on behalf of taxpayers over many years…*"[195]. We accept that it is reasonable to infer, and we do infer, that Mr Curley was a source of information for DEL (via the appellant), in respect of missing trader fraud within DEL's business sector.

*(iii) Awareness of MTIC fraud in alcohol sector: Visits from MTIC officers*

307. Prior to the deals in question in this case, DEL had received visits from HMRC Specialist Investigations Officers (MTIC officers). We accept that the officers must have been a ready source of information for DEL about the nature and prevalence of fraud in the market. We accept too that the officers must have been a ready source of advice about steps that might be taken by a legitimate business to avoid participation in deal chains tainted by fraud. (The appellant accepted that it was he within the business who liaised with and engaged with HMRC.)

*(iv) Awareness of MTIC fraud in alcohol sector: Veto letters*

308. DEL had received VETO letters, informing DEL of the deregistration of a trading partner, on the following dates: 19 February 2007 (Mert Liquors Ltd)[196], 28 February 2011

[194] Beer Bhai's invoices. One Just Beer invoice: RSW1/321 dated 13 November 2014, which had no text at the bottom. Two East Sussex invoices: RWS1/249 dated 22 September 2014 and RWS1/356 dated 23 February 2015.

[195] RWS1/532.

[196] RWS1/526.

(Lid UK Ltd)[197], 17 August 2011 (Dentile Ltd)[198], and 15 November 2011 (Sharabi Ltd)[199]. The record of HMRC's 15 September 2011 visit to DEL said that the appellant said he had received VETO letters in the past which advised of the deregistration of businesses that he had dealt with. Given that the entire tenor of the visit was fraud, we find that the appellant knew from that visit, if not before, that the VETO letters related to fraud in his industry.

*(v) Awareness of MTIC fraud in alcohol sector: Additional information from HMRC*

309. On 16 September 2011, HMRC sent DEL an MTIC awareness letter, advising that MTIC fraud was prevalent in the wholesale commodity sector, and estimating the levels of tax loss believed to accrue from such fraud. The letter advised the verification of new trading partners with the Wigan HMRC office[200]. The 16 September 2011letter also said—

> "Although the Commissioners may validate VAT registration details, it does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquiries in relation to proposed transactions. It has always remained a trader's own commercial decision whether to participate in transactions or not and transactions may still fall to be verified for VAT purposes.".

310. On 12 March 2012, HMRC issued DEL with a further letter informing DEL of fraud within DEL's sector, and directing DEL to HMRC's website for further information about MTIC fraud. The letter set out the requirement that companies provide HMRC with details of their trading on a monthly basis. It also specified the need to verify the VAT status of new or potential customers and suppliers[201].

311. We accept therefore that DEL knew (via the appellant whose role it was to deal with HMRC and with DEL's tax adviser) of the existence and characteristics of fraud within the wholesale alcohol industry. DEL also knew, via the appellant, what indicators to look out for.

312. We turn next to the third factor showing DEL's knowledge that the purchases were connected with a fraudulent tax loss: that the real number of such purchases was higher.

***(c) DEL's knowledge: The real number of deal chains in which DEL participated which according to HMRC had traced to a tax loss was significantly higher***

313. Another factor contributes in our judgment to the inference that DEL knew that at least 120 of its purchases were connected to a tax loss. As Ms Robinson submitted, the true number of deal chains in which DEL had participated which – according to HMRC at least – were connected with a tax loss was significantly higher than in the present case.

314. We say that in view of the tax loss letters to DEL listed at paragraph 103 above. The letters advised DEL of 35 transactions (12+1+4+7+6+5), other than those in this appeal, in which DEL had purchased from Gempost and which HMRC had traced back to tax losses. Similarly, the tax loss letters listed at paragraph 103 above advised DEL of 32 transactions (12+1+4+7+5+3), other than those in this appeal, in which DEL had purchased from Just Beer and which HMRC had traced back to tax losses. The appellant did not deny seeing those tax loss letters.

---

[197] A trader from whom DEL had received supplies in July 2009 and which supplies traced back to a tax loss RWS1/530. RWS1/529.

[198] RWS1/541.

[199] A trader from whom DEL had received supplies in July to October 2011 (AWS/632 to 682), the last supply invoiced on 31 October 2011, two weeks before Sharabi's deregistration. RWS1/554.

[200] RWS1/550.

[201] RWS1/555.

315. There were also two tax loss letters to DEL about two other companies (both Jabble family companies) from whom DEL had made purchases that traced back to tax losses. One was the letter dated 26 May 2011 advising DEL of tax losses in VAT period 07/09 in excess of £82,000 relating to 26 purchases by DEL from Barrel Beers (director Ravinder Jabble, also the appellant's fellow director in DEL). The other tax loss letter not relating to Gempost or Just Beer was that dated 19 February 2014, advising DEL of tax losses in VAT period 07/13 of £12,607 relating to four purchases by DEL from Red Dust (Australia) Limited (director Kulvinder Jabble). The letter also advised that Red Dust "*were deregistered during the period of these transactions and remain deregistered*".

316. The appellant's evidence was, as to the Barrel Beers tax loss letter, that he and Ravinder would both have had sight of it, but that he did not remember receiving it and that it was a bit difficult to recall it. In re-examination, Mr Farrell made the point, by a series of questions, that the letter was not telling the appellant not to trade with people. The appellant's evidence as to the Red Dust tax loss letter was that he had "*received many letters from HMRC. This letter in particular -- as I say, I received lots of letters from HMRC*". Asked did he remember receiving that letter though, he replied that he "*might -- as I said, I might well have. I can't remember precisely. I ...*". In re-examination, he was asked "*Do you recall this letter?*" to which the appellant replied "*Not before this conversation took place yesterday or so*".

317. Mr Farrell submitted that the appellant had not come to the tribunal to lie to the tribunal. Mr Farrell argued that there were only a very small number of Red Dust transactions and that, in the great scheme of things, it was not highly significant.

318. We do not accept that the appellant would not, at the time of DEL's receipt of those Barrel Beers and Red Dust tax loss letters (or shortly after that), have seen that DEL had received a letter, that it was about Barrel Beers and Red Dust respectively, and that it talked about tax losses. It was part of the appellant's role to deal with HMRC. He had been a director of DEL since 2004. So the 26 May 2011 tax loss letter about Barrel Beers, and the 19 February 2014 tax loss letter about Red Dust, must both have come to his attention. Even a quick skim would have told him that the letters spoke of tax losses in relation to Barrel Beers and Red Dust in DEL's transactions with those companies. Even if the appellant did not, by the time of the tribunal hearing, recall either of those tax loss letters, that does not alter their significance in relation to DEL's awareness of tax fraud in deals in which DEL had participated (and in which the companies were family companies). By the time DEL came to make the first purchases in issue in this appeal, DEL had received the Barrel Beers tax loss letter three years previously in 2011, and had received the Red Dust tax loss letter just a month or so earlier than the first purchase in issue in this appeal. The number of transactions in each letter does not affect the general point that DEL knew (via the appellant, as we will come to) of tax fraud in the alcohol industry, and in particular that there were additional deals connected with tax losses.

### *(d) DEL's knowledge: DEL's continued trade with family companies after tax loss warning letters*

319. The tax loss letters about Gempost and Just Beer are relevant not only to DEL's general awareness (via the appellant) of tax fraud in the alcohol industry, but also of course to whether DEL knew that the deals with Gempost and with Just Beer in this appeal were connected to a fraudulent tax loss. We mentioned in discussing orchestration above that DEL continued to purchase from Gempost and from Just Beer after receiving tax loss letters about previous deals between Gempost and DEL, and between Just Beer and DEL.

320. Ms Robinson submitted for HMRC that it is disingenuous to suggest that the appellant was unaware of the tax losses in deal chains involving Just Beer and those involving Gempost. Both were run by close family members, she said. Moreover, the appellant lived with his father, director of Just Beer, throughout the period in question in this appeal. Both companies were located (together) – she pointed out – in the same building as DEL, for a significant period of time. So, argued Ms Robinson, the appellant and therefore DEL knew specifically, because of the tax loss letters, that Gempost and Just Beer were each in chains that commenced with a defaulting trader. Despite the tax loss letters to DEL about Gempost and about Just Beer, DEL continued to trade with both those companies.

321. Mr Farrell submitted that the appellant took immediate action upon receipt of the June and July 2014 tax loss letters and discussed them with both his father (Just Beer) and his uncle (Gempost). Both of them confirmed, he said, that they were not aware of what was alleged but that they would locate new suppliers, and that they had carried out due diligence and that any new suppliers would be checked in accordance with relevant HMRC guidance. It was reasonable, submitted Mr Farrell, for the appellant to accept what he had been told by his father and uncle, both of whom he respected, trusted and looked up to as senior family members, and in Sikh culture family elders are trusted and treated with respect. Mr Farrell argued that it was not unreasonable for the appellant to have behaved in the way that he did upon receipt of the first tax loss letters about Gempost and Just Beer, and that the appellant took immediate action upon receipt of the February 2015 tax loss letters about those companies. In any event, said Mr Farrell, it cannot be concluded from the fact that the letters were sent by HMRC to DEL that this proves the appellant knew that DEL's transactions were part of a contrived scheme to defraud HMRC of VAT.

322. We do not accept Mr Farrell's argument, for three broad reasons. First, the appellant's evidence as to what he did after receiving the tax loss letters changed several times. Second, we do not accept that DEL was legally obliged to continue purchasing stock. Third, we do not accept that the appellant did in fact talk to his father and uncle and receive comfort. We take each of those three points in turn.

*(i) Continued trade with family companies: Changes in appellant's evidence*

323. As Ms Robinson pointed out, the appellant's evidence changed over time with regard to what he did after receiving the tax loss letters about Gempost and Just Beer. In his first witness statement, dated 2 July 2019, the appellant said "*the proper response by a company director*" advised by HMRC of tax losses in supply chains was to cease making purchases from the suppliers identified in such tax loss letters[202]. He said in paragraph 117 of his first statement, addressing paragraphs 132 and 133 of Officer Cole's first witness statement—

> "117. … As soon as officer Cole informed me of alleged tax losses in relation to purchases made from these companies [Gempost Ltd and Just Beer Ltd], I took the decision to stop sourcing goods from both of these companies, at personal angst to myself because of the family connections to the Directors of these businesses."[203].

324. We accept Ms Robinson's point that the import of that declaration of principle in the appellant's first statement was that the action of a responsible director, on being advised of tax losses in identified supply chains, is to cease trading with that supplier. Moreover, the appellant said in that first statement that he did in fact take the decision to stop sourcing from Gempost and Just Beer. Although "*tak[ing] the decision to stop*" is not strictly the same as actually stopping, the appellant's statement that he had taken the decision to stop suggested

[202] AWS/24 (6.2(iii) to 6.2 (xi), 6.2(ii)).

[203] AWS/35 (addressing 132 and 133).

that no further supplies were sourced from Gempost or Just Beer once that decision had been made. That turned out not to be true, as we know; it was common ground that DEL continued to buy from Gempost and from Just Beer after receipt of the 30 June and 2 July 2014 tax loss letters.

325. The appellant's evidence as to when DEL stopped buying from Gempost and Just Beer changed in his second witness statement, dated 23 October 2020[204]. He said in it that, on receipt of the 30 June 2014 and 2 July 2014 tax loss letters, he discussed the contents with Jagjit Singh Jabble (his uncle, director of Gempost) and Makhan Singh Jabble (his father, director of Just Beer) together and was satisfied and "*comforted*" with their responses, such that DEL continued to source goods from both Gempost and Just Beer. In that second statement, the appellant said that the next tax loss letter relating to Gempost and Just Beer was dated 22 June 2015, and that it was after receiving that letter that the appellant informed his uncle and father that DEL would cease to purchase from both Gempost and Just Beer.

326. In fact, there were, as Ms Robinson pointed out, other tax loss letters about Gempost and Just Beer sent to DEL after the 2 July 2014 letter and before the 22 June 2015 letter. Those other tax loss letters were dated 4 September 2014 (about one transaction with Gempost and one with Just Beer), 1 October 2014 (four transactions with Gempost and four with Just Beer), 18 February 2015 (seven transactions with Just Beer), 19 February 2015 (seven transactions with Gempost), and 1 April 2015 (six with Gempost, five with Just Beer). The appellant's written evidence on this topic underwent a second shift, in his fourth statement, in which he addressed the 18 and 19 February 2015 letters[205]. In that fourth statement, dated 5 January 2021, the appellant suggested that he took the decision to cease trading after receipt of the February 2015 letters (which – according to his witness evidence – were the second set of tax loss letters about Gempost and Just Beer), and that any transactions which occurred after that (and we have accepted that there were at least nine: paragraph 45 above) were the result of existing commitments—

> "15. I believe that the last transaction that took place with either JBL and/or GL was in or around March 2015, this was for stock that had already been ordered and therefore we were obliged to purchase it and/or as a result of Ravinder continuing to order stock without my knowledge"[206].

327. As we explain below, we do not accept that DEL was under a legal obligation to continue purchasing stock from Gempost or from Just Beer.

328. In any event, that was not the final shift in the appellant's evidence on this topic, as Ms Robinson pointed out. In cross-examination, the four sets of tax loss letters pertaining to Gempost and Just Beer were put to the appellant[207]. His account changed once again in light of the October 2014 tax loss letter. He said in cross-examination that, after the June and July 2014 letters and the October 2014 letter, he spoke with his uncle and father and made the decision each time to continue trading with their companies, apparently satisfied and comforted by what his father and uncle had told him. The appellant added, for the first time, that he took advice from Vincent Curley, who wanted to challenge some of the assertions made in the tax loss letters.

329. As Ms Robinson submitted, the appellant was not clarifying some minor error in an early statement. He was talking about a highly significant topic: what he did after receiving tax loss letters about DEL's purchases from companies; and not just from any companies, but from his father's and uncle's companies. While we accept that the liquidator's possession of

---

204 AWS/86 (viii) to AWS/87 (xviii).

205 AWS/549 to 550.

206 AWS/550.

207 Transcript 15/7/22, pages117 to 137.

the documents might have caused the additional tax loss letters to be available again to the appellant, we do not accept that not having them in front of him when making earlier witness statements was the reason why the appellant had made inaccurate statements of fact as to what DEL did after each set of tax loss letters. He did not need sight of the letters to know in broad terms whether or not he ceased trading with the companies mentioned in them, especially given that they were his uncle's company and his father's company. But we do accept that, as it began to appear that more tax loss letters would be put before the tribunal, the appellant tried to explain away what Ms Robinson described as "*an emerging picture of the "volume" of tax loss letters sent to DEL about supplies from Gempost and/or Just Beer*". We accept that the fact that the appellant's account changed to fit the evidence damages his credibility: one of a number of factors contributing to our judgment on credibility.

*(ii) Continued trade with family companies: No legal obligation to continue purchasing stock*

330. Returning to one of the reasons the appellant advanced for continuing to purchase, Ms Robinson submitted for HMRC that there can be no suggestion that DEL had ordered stock that it was then obliged to purchase. We accept that there was no legal obligation on DEL to make further purchases from Gempost or from Just Beer after DEL's receipt of the two February 2015 tax loss letters. Apart from the text at the bottom of Gempost's and Just Beer's invoices saying that title remains with the supplier until payment is made, there was – on the appellant's own evidence – no term or condition between DEL and Gempost, or between DEL and Just Beer, which defined circumstances in which DEL might cancel a stock order. DEL did not pay for goods until after receiving them. We find that there was no obligation to purchase whatsoever. That was not therefore a reason why DEL continued to purchase from Gempost and from Just Beer after receiving tax loss letters about those companies.

*(iii) Continued trade with family companies: No conversation with and comfort from father and uncle*

331. Returning to the third of the three points mentioned at paragraph 322 above, we accept Ms Robinson's point that the appellant was unable to detail with any specificity the conversations with his father and uncle. First, he was unable to specify what his father and uncle had told him they were doing in respect of further due diligence. We accept Ms Robinson's point that, even if a conversation of the sort described by the appellant did take place, it could only have provided comfort to him if he understood the process by which Gempost and Just Beer each did business, and the changes to that process that were to take place as a result of the information imparted to his uncle and father by the appellant. But there is no detail of that nature reported in the appellant's evidence about talking to his uncle and father.

332. Second, the appellant told the tribunal moreover what he would have said, and would have done (our emphasis)—

> "Q. Did you ever think about speaking perhaps to your uncle or your father?
>
> A. I <u>would have</u> raised those questions with them, yes.
>
> Q. Might you have said -- what question did you raise with them?
>
> A. I said -- sorry --
>
> Q. -- can you help us? You tell us what you raised with them.

A. Yes, a conversation would have taken place at the time regarding those letters and what they felt about them and how they could assure me that -- or how they would work -- if concerned, they were able to assure me and they did".

333. Despite Ms Robinson asking what question the appellant "*did*" raise, and what "*you raised*", in other words, what he actually did, the appellant still replied only with what he "*would have*" done. If he were remembering actual conversations, he would be able to say what he did do. We do not accept that he would not remember conversations with his uncle and father on this important topic if he really was not aware of the fraud and really was seeking comfort.

334. So, while we accept that the appellant may well have talked to his father and uncle about the tax loss letters, we do not accept that any comfort was imparted to him in those conversations.

335. It is for the reasons at paragraphs 319 to 334 above that we consider that DEL's continued trade with Gempost and with Just Beer after tax loss letters about those companies is a factor strongly suggestive of DEL's knowledge that transactions with each of those companies were connected with a fraudulent tax loss.

### *(e) DEL's knowledge: Despite the appellant's awareness of fraud in the alcohol industry, DEL chose to transact with suppliers without adequate due diligence information*

*(i) Choosing to transact without adequate due diligence: HMRC submissions*

336. It was common ground that it was the appellant's responsibility within DEL to arrange for due diligence to be done in respect of prospective suppliers[208]. Ms Robinson submitted that the reports from The Due Diligence Exchange were inadequate, in that the reports did little more than establishing the physical existence of the company and the identity of the company officers. Specifically—

(1) Ms Robinson pointed out that each report was supplied with a covering letter stating that the financial assessment was not (at the date of the covering letter) available, because The Due Diligence Exchange awaited receipt of references. Despite the promise in the covering letter that the financial assessment would be produced in due course, no financial assessment appears to exist in relation to any of the five suppliers in this case.

(2) None of the reports from The Due Diligence Exchange, said Ms Robinson, covered the prospective supplier's compliance history with HMRC. None of the reports covered the prospective supplier's due diligence procedures. None of the reports sought information about other companies with which the prospective supplier's director had been involved, or about the trading history of those other companies. All of those matters might well have assisted DEL in determining the integrity of potential suppliers and potential supplies.

(3) None of the reports, submitted Ms Robinson, appeared to test independently any assertion made by the prospective supplier's officer (for example, as to background in the industry, or turnover of the company).

*(ii) Choosing to transact without adequate due diligence: Appellant's submissions*

337. Mr Farrell submitted as follows—

(1) In determining what the trader should have known, the tribunal must place itself in the position of the trader at the time and must not, with the benefit of hindsight,

[208] Transcript 14/7/22, pages 93 and 94.

improperly elevate what may have been grounds for suspicion into means of knowledge.

(2) In determining whether the appellant should have known that a transaction was connected to fraud, it is not sufficient for the respondent simply to point to failures to conduct particular checks. For a failure to perform a particular check to amount to a means of knowing that the transaction was connected to a fraud, it must be established that the failures, together with other matters, would have made a reasonable trader realise that the only reasonable explanation for the transaction was that it was connected to fraud (citing paragraph 88 of *The Commissioners for Her Majesty's Revenue & Customs v Livewire Telecom Limited and Olympia Technology Limited* [2009] EWHC 15 (Ch), [2009] BTC 517).

(3) A trader is not a fraud investigator and should only be expected, as a reasonable trader, to make reasonable checks on its trading partners to ascertain their trustworthiness (citing paragraphs 59 to 65 of *Mahagében and Dávid v Hungary* C-80/11 and C-142/11).

338. We did not have evidence of what might be considered "normal" due diligence, against which to measure the reports of The Due Diligence Exchange in this case. We do not therefore make a finding as to whether all of the measures at paragraph 336 above would reasonably be expected to feature in a normal, adequate due diligence report. We accept also that traders are not meant to be detectives.

339. We do accept however that, even if it was normal to say that financial reports would be supplied later, it was DEL's choice not to await those reports before trading with the prospective supplier in question.

340. Moreover, DEL chose to trade with each of Aphrodite, Phoenix, Just Beer and Gempost despite the following due diligence points.

*(iii) Choosing to transact without adequate due diligence: Aphrodite*[209]

341. DEL chose to trade with Aphrodite despite the following—

(i) The Due Diligence Exchange Report was not provided to DEL until 21 November 2014, over a month after DEL's two purchases from Aphrodite. In other words, DEL chose to transact with Aphrodite without waiting for The Due Diligence Exchange report.

(ii) Despite the appellant's evidence that he would obtain a VAT certificate for prospective trading partners, uniquely, DEL obtained no VAT certificate for Aphrodite. As we saw above, Aphrodite's VAT1 declared that Aphrodite's intended business activity was the supply of beauty products. The VAT certificate, therefore, would have given DEL (via the appellant, whose responsibilities covered due diligence) the negative indicator that Aphrodite did not, according to HMRC, trade in wholesale alcohol. By not obtaining the VAT certificate, DEL avoided having, on paper, the knowledge that the declared business activity was not alcohol. It was simply too convenient in our judgment that this was the one VAT certificate that DEL did not obtain, whether via The Due Diligence Exchange or from Aphrodite directly.

(iii) The address from which Aphrodite operated was a residential address[210]. This was not reported by The Due Diligence Exchange. But, had the appellant not been aware of

[209] RWS1/799 to 855.

[210] RWS7/65.

fraud in relation to transactions that DEL was entering into and had he done the drive-by that he had said he does for local businesses, he would have discovered that Aphrodite's premises were residential. This was a further negative indicator to an innocent enquirer.

(iv) Aphrodite was not prepared to declare its estimated annual turnover. This gave DEL and the appellant no means by which to ascertain whether Aphrodite was able to participate in transactions of a high value.

(v) The questionnaire declared that Aphrodite began trading in November 2014, despite the two deals completed with DEL in October 2014.

*(iv) Choosing to transact without adequate due diligence: Gempost*

342. The appellant did receive for DEL further due diligence about Gempost, with The Due Diligence Exchange's cover letter dated 18 September 2014. That letter came after DEL's receipt of the first and second tax loss letters about Gempost, dated 30 June and 4 September 2014. Whether or not that further due diligence was commissioned as a result of tax loss letters, it had information gaps: it did not identify that Gempost and Just Beer operated from the same office premises as each other, or that the sole director of each company assisted in the operation of the other company (which the appellant accepted "*sounds right*"[211]), or that Gempost had no premises in which to store stock. The appellant knew those three points anyway. But that known points were not reported in the further due diligence material suggests that DEL chose to continue to trade with Gempost despite obvious gaps in the due diligence. That in turn suggests that DEL did not in reality depend on the content of the due diligence reports in deciding whether or not to trade with the appellant's uncle's company, Gempost.

*(v) Choosing to transact without adequate due diligence: Just Beer*[212]

343. The only available report for Just Beer was provided to DEL with a cover letter dated 22 October 2012. That report was provided to HMRC with a cover letter dated 20 March 2016. In his fourth witness statement, the appellant said at paragraph 9 "*I cannot now recall whether the Company instructed the DDE to carry out an update report on JBL, I can only assume that we were satisfied with the due diligence that the Company had at that time in relation to JBL*"[213]. In cross-examination, however, the appellant said (paragraph 202 above) that – after the second tax loss letter in respect of each of Gempost and Just Beer – "*I believe I had instructed the Due Diligence Exchange to carry out further due diligences*", "*I believe I would have asked them to undertake a thorough -- a more thorough -- due diligence exercise*", in respect of "*both*" companies. The questioning continued—

> "Q. … Is there a reason why we have already established that the only Just Beer material we have is from 2012. Is there any reason why we wouldn't have that available to us?
>
> A. I can't explain that. The files did change hands a number of times.
>
> Q. They didn't change hands, of course, before 2016 when Mr Cole was provided with materials.
>
> A. No, you are right, yes.

211 Transcript 15/7/22, page 100.

212 RWS1/857 to 914.

213 AWS/550.

Q. So is there any reason why what was provided to Mr Cole was only the version we looked at this morning for Just Beer?

A. I can't -- no, I am not sure what the reason for that was.

Q. No. Is it possible that you, in fact, didn't update any due diligence at all?

A. No, I remember undertaking -- I remember requesting -- and I am firm as I can be that we received the files as well.

Q. What did you learn in this due diligence that you tell us you received?

A. I was as satisfied as I could be that they continued to operate ...".

344. So, what the appellant said in cross-examination about due diligence on Just Beer had changed from being unable in his fourth witness statement to recall whether DEL had instructed The Due Diligence Exchange to carry out an update report, and assuming that "*we were satisfied with the due diligence that the Company had*", to "*No, I remember undertaking -- I remember requesting -- and I am firm as I can be that we received the files as well*" in relation to Just Beer. We do not accept on the evidence before us that DEL did receive updated due diligence in respect of Just Beer after any of the tax loss letters. The only due diligence material available in relation to Just Beer was with the cover letter dated 22 October 2012. We accept that the liquidator's actions did not preclude the availability of documents in 2016, when DEL's documents were being supplied to HMRC. The appellant told the tribunal, and we accept, that all due diligence materials were filed in a particular location in a spare office in the building. We accept that, if an update report existed, it would have been available, would have been provided to HMRC in 2016 and would be in evidence. So what the appellant said in cross-examination – that DEL had received further due diligence files about Just Beer – was inaccurate. Whether or not he commissioned further due diligence on Just Beer after any tax loss letter, DEL continued to trade with Just Beer without receiving any further due diligence on Just Beer. In addition, that the appellant changed his account on this important topic was another factor damaging to his credibility generally.

*(vi) Choosing to transact without adequate due diligence: Phoenix*[214]

345. Mr Farrell submitted that Officer Cole's witness statement was wrong in saying that no due diligence was provided by DEL in respect of Phoenix, because The Due Diligence Exchange did provide a report to DEL about Phoenix on 7 March 2013[215]. We accept that. However, the supplier declaration by Phoenix included one section entirely scored out[216]. DEL chose to buy from Phoenix without seeking clarification of that.

346. DEL's choices mentioned at paragraphs 339 to 342 above suggest – and we find – that DEL did not in fact care about avoiding fraud in relation to trades with each of Aphrodite, Phoenix, Just Beer and Gempost.

### *(f) DEL's knowledge: The association between Rashpal Jabble (appellant), Ravinder Jabble, Kulvinder Singh Jabble, Jagjit Singh Jabble, Makhan Singh Jabble, and other family members, and their respective companies*

347. DEL, Barrel Beers, Red Dust, Gempost and Just Beer (all of which engaged to some degree in wholesaling alcohol), as well as Keyrange Limited, were all Jabble companies. Each of them had some association with one of more of the others—

214 AWS/893 to 957.

215 RSJ/24 the letter exhibited to the appellant's statement dated 23 October 2020, and the full report exhibited to his third statement, dated 11/12/20, Appendix 4.

216 AWS/933.

(i) In 2009, DEL made purchases of alcohol from Barrel Beers[217] at a time when Ravinder Jabble was a director of both Barrel Beers and DEL[218]. The appellant said, "*Barrel Beers was provisionally opened for us to be able to sell to the on trade*"[219]. We accept that he was well aware of that company, and of his cousin's role in it.

(ii) In July 2013, DEL made purchases of alcohol from Red Dust (Australia) Limited, at a time when Red Dust was a deregistered trader[220]. That was another family company. Kulvinder Singh Jabble was its director. He too had some involvement in DEL. He was a keyholder for DEL on 2 June 2011[221], and a letter from HMRC dated 12 March 2012 was addressed to K Jabble at DEL[222].

(iii) DEL purchased from Just Beer, the appellant's father's company, and the appellant lived with his father throughout the period covered by the purchases from Just Beer in this case.

(iv) DEL also purchased from Gempost, the appellant's uncle's company.

(v) An overdraft facility was extended to DEL on 19 June 2013 (a month before the Red Dust transactions) supported by guarantees given by (among others) Kulvinder Singh Jabble (director of Red Dust) and Barrel Beers (with whom DEL had traded at least in June to August 2012)[223].

(vi) Keyrange Limited rented to DEL business premises at Unit A3 Bridge Road. Shortly after DEL's departure from those premises, Keyrange Limited rented those premixes to Phoenix, a supplier to DEL in 23 of the deal chains in question.

348. That these companies and their directors were all linked in various ways suggests a level of family interaction – and of knowledge between family members – that supports an inference that the appellant must have known that purchasing from Gempost and from Just Beer involved tax fraud.

### *(g) DEL's knowledge: The uncommercial trading model whereby goods were released to DEL prior to DEL's receipt of payment, and prior to those further up the chains receiving payment, and the consequent lack of risk for DEL in the transaction chains*

349. The business model in operation in these transactions was uncommercial, vested all the risk in traders further up the chains, yet created no risk whatsoever for DEL. That was a specific indicator of fraud mentioned in Notice 726 (and we found at paragraph 298 above that the appellant was aware of the indicators in that notice on or within a few days after 15 September 2011). In that model[224], DEL's supplier supplied goods to DEL or to another cash and carry, the cash and carry supplied goods to a retailer, and the retailer sold to the public. The goods were released to DEL (and, subsequently, to a retailer) despite the fact that DEL had not made payment for those goods, and had not been paid for those goods. DEL did not receive payment for the goods until the trickle down from the public, to the retailer and then to DEL. In other words, the original suppliers were not getting their money, yet the goods were long gone. That model was, we accept, too good to be true.

---

217 RWS1/530.

218 AWS/182.

219 Transcript 14/7/22, page148.

220 RWS1/606.

221 AWS/633.

222 RWS1/555.

223 AWS/701 to 704.

224 Transcript 15/7/22, pages 56 and 90.

350. An obvious inference to be drawn is that each supplier in the chain, but specifically DEL, knew that the transactions would be honoured despite their uncommercial aspects. As to how they would know that, an obvious inference is that DEL knew the transactions were contrived. In relation to Gempost and Just Beer, DEL and the appellant might have had a different reason for knowing the transactions would be honoured, that reason being DEL's and the appellant's trust of his father and uncle. But the fact remains that buying from Just Beer and Gempost was uncommercial, and after seeing who their suppliers were following the first delivery or collection from their supplier, DEL had no commercial reason to continue purchasing from Gempost or Just Beer.

### *(h) DEL's knowledge: Other aspects evidencing uncommercial relationships with competitor traders*

351. A meeting visit report for 1 September 2010 recorded that—

> "RJ said he would prefer to work through buying groups – he cannot compete with the buying power of large organisations. RJ agreed that more wholesalers in a supply chain eats into profit. Drinks have a "pile it high, sell it cheap" approach – high turnover, low margin" [225].

352. Despite that, the appellant did not suggest that he was concerned by the role of middleman played by each of Gempost and Just Beer in the deal chains involving those companies. He knew that neither Gempost nor Just Beer had a warehouse facility. He knew that goods purchased by DEL from Gempost or Just Beer had to be delivered to, or collected from, their supplier directly to DEL. Moreover, absent any warehousing from which to split a purchase before converting it into a supply, Gempost and Just Beer could not, on the face of it, make such a split. It is clear on the evidence that neither Gempost nor Just Beer added value to the transaction chain. We find that DEL must have known that fact. In view of that, and of the appellant's statement that "*more wholesalers in a supply chain eats into profit*", there was no genuine commercial reason for DEL to continue to buy from Gempost or from Just Beer.

### *(i) DEL's knowledge: Appellant's (and so DEL's) knowledge from at least his father*

353. We found above that Gempost and Just Beer both knew, via the appellant's uncle and father, that the transactions involving each of Gempost and Just Beer supplying to DEL were connected with a fraudulent tax loss. The appellant lived with his father throughout the time of all these transactions, and prior to their start, and saw his uncle regularly. We do not accept the appellant's evidence that he did not know, from his father at least, that DEL's purchases from both Gempost and Just Beer were connected with a fraudulent tax loss. It is unlikely, and we do not accept, that the appellant could live in such close proximity to his father for all those years – starting at least some four or five years before the transactions in question – and yet not be told by his father, or come to understand from his father, that the transactions were so connected. We accept Mr Farrell's point, to a degree, about the family hierarchy. It might well have meant that the appellant felt unable to protest to either his father or his uncle at the prospect of DEL being involved. But we do not accept that the hierarchy went so far as to mean that his father, at least, would manage to keep from him for years – while seeing him every morning and evening and at weekends – that DEL's transactions in question were to be connected with a fraudulent tax loss. So DEL knew, from the appellant's father and via the appellant, that DEL's purchases from both Gempost and Just Beer were connected with a fraudulent tax loss.

[225] RWS9/19.

### *(j) DEL's knowledge: Conclusion*

*(i) DEL's knowledge: Conclusion: Aphrodite*

354. Some of our reasoning at paragraphs 259 to 353 above does not apply to DEL's purchases from Aphrodite: that is, the reasoning at paragraphs 267, 273 to 277, 282, 290, 319, 347, 351 and 353 above. Moreover, unlike with Gempost and Just Beer, we were not pointed to any tax loss letters which told DEL that previous purchases by DEL from Aphrodite – prior to the purchases in deal chains 65 and 66 – had been connected with a tax loss. The tax loss letter to DEL about purchases from Aphrodite was dated 22 October 2015. Nonetheless, for the reasons in the other parts of paragraphs 259 to 353 above, we find that DEL knew that its purchases from Aphrodite were connected with a fraudulent tax loss. Particularly striking were (i) the inconsistent VAT registration specifying beauty products and not alcohol, and DEL's failure to obtain the VAT certificate, and (ii) that it was too good to be true that Aphrodite went four and a half months without payment and did not do something memorable by way of chasing (the appellant's evidence was "*I think there might have been one or two reminders. Off the top of my head, I can't remembe*r"[226]). As Ms Robinson said, it is not what one would expect in a legitimate transaction.

*(ii) DEL's knowledge: Conclusion: Gempost and Just Beer*

355. For the reasons at paragraphs 259 to 353 above, except for those specific to Aphrodite and to Phoenix, we find that DEL knew that its purchases from Gempost, and DEL's purchases from Just Beer, were connected with a fraudulent tax loss.

*(iii) DEL's knowledge: Conclusion: Phoenix*

356. Some of our reasoning at paragraphs 259 to 353 above also does not apply to DEL's purchases from Phoenix: that is, the reasoning at paragraphs 259(d), (f) and (i), 262(vi) to (ix), (xii) and (xiii), 274 to 277, 279, 280, 282 to 288, 290 and 294 above. Moreover, as with Aphrodite, and unlike with Gempost and Just Beer, we were not pointed to any tax loss letters which told DEL that previous purchases by DEL from Phoenix – prior to the purchase in deal chain 87 (the first of the deal chains in this appeal in which DEL purchased from Phoenix) – had been connected with a tax loss. The tax loss letter to DEL about purchases from Phoenix was dated 17 November 2015. Nonetheless, for the reasons in the other parts of paragraphs 259 to 353 above, we find that DEL knew that its purchases from Phoenix were connected with a fraudulent tax loss. Particularly striking was that there was no documentary evidence before the tribunal of DEL having paid Phoenix in 17 of the deals, and the appellant's oral evidence was not to the effect that DEL did pay Phoenix: he said merely that he would have endeavoured to pay Phoenix as far as he could remember, and that he could not think of any reason why he would not pay Phoenix [227]. That Phoenix waited without chasing was too good to be true, especially given that, according to Phoenix's director, DEL was Phoenix's only customer[228]. As Ms Robinson said, it is not what one would expect in a legitimate transaction.

357. We turn next to the deal chains in respect of which we are allowing the appeal, deal chains 84 to 86, purchases from Beer Bhai. After that, we will address whether the

[226] Transcript 15/7/22, page 57.

[227] Transcript 15/7/22, page 161.

[228] According to the record of what Mr Zaheer told Officer Mandalia at HMRC's visit to Phoenix of 29/9/15, RWS4, page 286.

inaccuracies in the returns regarding the other 120 transactions were deliberate, which will include our judgment that the appellant had DEL's knowledge mentioned above.

(B) Deal chains 84 to 86: Beer Bhai selling directly to DEL

358. In the transactions in deal chains 84 to 86, Beer Bhai sold directly to DEL. They were the twentieth, twenty-first and twenty-second deals in period 04/15, made on 7 April 2015, 7 April 2015 again, and 13 April 2015. Our reasons for not finding that DEL knew that those transactions were connected with a fraudulent tax loss are as follows.

359. Beer Bhai was the only supplier, of all 123 deal chains, which had supplied via Gempost and Just Beer in addition to supplying direct to DEL. In deal chains 77, 79, 80 and 82, Beer Bhai supplied to Gempost who then supplied to DEL. In deal chains, 78, 81 and 83, Beer Bhai supplied to Just Beer who then supplied to DEL. After having supplied to Gempost and to Just Beer in those deal chains, Beer Bhai supplied direct to DEL in deal chains 84 to 86.

360. Ms Robinson invited us to infer that the appellant knew not only that the deal chains with Gempost or Just Beer as the middleman were connected with a fraudulent tax loss but also that the appellant (and DEL) knew that the ones in which DEL bought direct from Beer Bhai were so connected.

361. There was no tax loss letter regarding the deal chains which had Beer Bhai at the start and Just Beer or Gempost in the middle – deal chains 77 to 83 – although those deal chains do appear in the assessment. HMRC discovered later that those chains were connected with a fraudulent tax loss, but did not tell the appellant so until issuing the assessment. So when, in deal chains 84 to 86, DEL bought direct from Beer Bhai, it seemed we must be being asked to infer from matters other than tax loss letters about chains 77 to 83 that the appellant knew that the three transactions direct with Beer Bhai were connected with a fraudulent tax loss.

362. We asked whether HMRC were saying that DEL and the appellant knew that, when DEL purchased from any inserted traders, especially Gempost and Just Beer, the inserted trader was sourcing the supply (a) form another supplier, and (b) from a supplier from whom DEL also received direct supplies in other deal chains. Ms Robinson accepted that the position was different in relation to Beer Bhai. She submitted that the pattern of the deals is that Gempost and Just Beer cover the majority of the deals. Alongside that, DEL was receiving tax loss letters. It was only after the April 2015 tax loss letter, she said, that DEL stopped trading with Gempost and Just Beer and started purchasing from Beer Bhai. She submitted that the timing of that change was no accident, because by then the appellant would have seen the fourth Gempost tax loss letter, and trading could not then continue after four of them. She submitted that, as observed in *Fonecomp*, the knowledge to be proved is that the transaction was connected with fraud, not who the participants were or precisely how the fraud would work. Why didn't the appellant ask himself, said Ms Robinson, "*Why didn't Beer Bhai come to me after they knew of my existence?*". She submitted that the fact that Beer Bhai had not come to DEL earlier was evidence of contrivance; Beer Bhai was happy to get less profit from supplying via a middleman (Gempost and Just Beer) rather than supply direct to DEL. She submitted that it was therefore an example of something the appellant would know, in other words, something he would specifically know at the time, as well as being an example of contrivance, from which the tribunal can make a finding of contrived deal chains and of an orchestrated scheme to defraud.

363. We consider that those arguments could take the case either way – 50:50 – in terms of the appellant's knowledge that the three transactions direct with Beer Bhai were connected with fraudulent tax losses. We say that for the following reasons.

364. We have accepted for reasons elsewhere in this decision that the appellant knew that all of DEL's transactions covered by this appeal with Gempost and Just Beer were connected with fraudulent tax losses**.** So that means that he knew that DEL's purchases from Gempost and from Just Beer in deal chains 77 to 83 (in which Gempost and Just Beer sourced from Beer Bhai) were connected with fraudulent tax losses. But we see no reason why his father, uncle or anyone else would have needed to tell him who was the supplier to Gempost and Just Beer in those deal chains. So we do not infer that he was told that by someone other than HMRC. And it is common ground that he was not told that by HMRC either, prior to DEL starting to buy direct from Beer Bhai; there was no tax loss letter telling him that Beer Bhai was the supplier to Gempost and Just Beer in those deal chains.

365. But even if the appellant knew, because of DEL receiving or collecting goods direct from Beer Bhai (given Gempost's and Just Beer's lack of warehouse), that Beer Bhai had been the supplier to Gempost and to Just Beer in those deal chains (which, applying paragraph 51 of the Court of Appeal judgment in *Fonecomp,* he did not need to know), that does not necessarily mean that he knew that DEL's purchases direct from Beer Bhai were connected with fraudulent tax losses. Yes, we accept that DEL had finally decided that it could not with impunity continue to purchase from Gempost and from Just Beer after receiving repeated tax loss letters about those companies. That in turn means that DEL needed – if it was to continue making purchases at all – to buy from someone other than Gempost and Just Beer. We need to bear in mind however that DEL did not exist – or at least it was not suggested that DEL existed – merely to perpetrate fraud; it was a business and needed to buy alcohol in any event. Once DEL had decided that it was no longer safe to buy from Gempost or Just Beer, DEL had to look for who else to purchase from. Even if the appellant knew, when DEL started buying direct from Beer Bhai, that Beer Bhai had been the supplier to Gempost and to Just Beer in fraudulent tax loss chains, that does not mean that he knew that changing to buy direct from Beer Bhai must mean continuing with fraud. He might have strongly suspected that those deals too were connected with fraudulent tax losses (and might either have been content or have felt unable to refuse to cooperate). But a strong suspicion is not enough. He might even have been told by his father, uncle or someone else (although not by HMRC) that buying direct from Beer Bhai in those three deals would mean continued involvement in fraud, and being told would be enough (absent, at least, good reason not to believe it). Or he might even have worked it out for himself, and working it out for himself would, too, be enough to mean actual knowledge.

366. But we saw no reason to infer that he must have been told, or that he must have worked it out for himself. And might have been told, or might have worked it out for himself, do not suffice, given that the burden of proof lies with HMRC.

367. Had the burden been on the appellant for these three deals, our 50:50 view would mean instead that he had not discharged it, and so we would have found against him on those deals too. But the burden was on HMRC. We find that HMRC have not quite tipped the scales beyond 50% as to those three transactions direct with Beer Bhai. So HMRC have not discharged their burden in respect of those three transactions.

**(5) Analysis: Issue 5: Whether the inaccuracies in DEL's VAT returns were deliberate: appellant's knowledge**

368. Yes, the inaccuracies in DEL's VAT returns were deliberate, because of the appellant's knowledge and actions.

369. We have considered – as required by the Supreme Court judgment in *Commissioners for Her Majesty's Revenue and Customs v Tooth* [2021] UKSC 17, [2021] WLR 2811 –

whether the statement in the return that DEL was entitled to deduct the input tax was, when made, deliberately inaccurate. Except in relation to transactions in deal chains 84 to 86, we find that it was, for the simple reason that we find that the appellant actually knew that he was on behalf of DEL claiming input tax on transactions which he knew had been connected to fraudulent tax losses. We so find for the following reasons.

370. HMRC came to agree that they are required to prove that the appellant must have known that DEL's transactions were connected to a fraudulent tax loss and that, for a deliberate penalty, "*should have known*" would not suffice.

371. Ms Robinson did also submit that, while it appeared that the observations of the Supreme Court in *Tooth* on recklessness were *obiter*, nonetheless, it was significant that the Supreme Court did not exclude recklessness as a sufficient basis, and indeed, contemplated that it might well be a sufficient basis for a finding that behaviour was deliberate[229].

372. We have not needed to consider whether recklessness would suffice in the present appeal because we found above that DEL had actual knowledge, which we now explain was also the appellant's actual knowledge.

### *Appellant's knowledge: Appellant's submissions*

373. As to the appellant's knowledge, Mr Farrell submitted as follows—

(1) Regarding the appellant's role within DEL—

(a) HMRC had misunderstood the appellant's role within DEL. He and his fellow director, his cousin Ravinder Jabble, had had separate roles in DEL for the last eight years. Ravinder was responsible for sales and purchases. It was he and not the appellant who dealt with the suppliers in this appeal. The appellant was responsible for the administration of DEL, and for business management including overseeing the accounts department, having contact with the accountants and dealing with HMRC. The appellant made periodic payments to suppliers upon Ravinder's recommendation. Although the appellant commissioned the due diligence reports from The Due Diligence Exchange, he was entitled to rely upon them. The Due Diligence Exchange was operated by a former HMRC officer and was respected in the drinks industry; and

(b) the material from the liquidator showed that Ravinder Jabble was heavily involved in running DEL, ordering stock, dealing specifically with the medium/small suppliers and customers, jointly signing business documentation, having equal responsibilities to those of the appellant, and jointly dealing with banking issues. Moreover, in his sixth witness statement, dated 27 January 2022, the appellant responded to the fifth witness statement of officer Cole, dated 12 October 2021. In particular the appellant noted that Ravinder's statement in the liquidation proceedings (PC108) confirmed the division of roles and that Ravinder was responsible for ordering stock, for sales and for ensuring that there was sufficient stock in the warehouse.

(2) Mr Farrell submitted that a number of the letters and notices sent to DEL by HMRC were in fact not specific to the alcohol trade. They were standard letters. For example Notice 726 appears to be aimed at mobile 'phone traders.

(3) An awareness of MTIC fraud does not, said Mr Farrell, prove that the appellant had the relevant knowledge or means of knowledge. It was well known in the drinks

[229] Ms Robinson's addendum to opening submissions, 5/7/22, paragraph 16.

industry that there was fraud in the market place. Both DEL and the appellant took appropriate steps to ensure that DEL's transactions were not connected to tax losses.

(4) As to the tax loss letters—

(a) the appellant took immediate action upon receipt of the June and July 2014 tax loss letters. He discussed the letters with both his father (Just Beer director) and his uncle Jagjit (Gempost director), both of whom confirmed that they were not aware of what was alleged but that they would locate new suppliers. They also told the appellant that they had conducted due diligence and that any new suppliers would be checked in accordance with relevant HMRC guidance. Following these assurances DEL continued to trade with Gempost and Just Beer. As a result of the June and July 2014 tax loss letters, the appellant also commissioned a further due diligence report about Gempost. Nothing adverse was highlighted in that report and DEL continued to trade with Gempost. HMRC's 1 October 2014 letter mentioned tax losses for the quarters 01/14 and 04/14, the trading periods prior to the first tax loss letters received from HMRC. Taking into account the earlier reassurances of his father and uncle, and after discussing the matter with Ravinder, the appellant decided that the trade with both Gempost and Just Beer could continue;

(b) however, having received further letters from HMRC dated 18 and 19 February 2015 (identifying tax losses in the quarter 07/14) a second meeting took place between the appellant and his father and uncle Jagjit, in which DEL decided no longer to trade with Gempost and Just Beer;

(c) the last trades with Gempost and Just Beer were in March 2015, but were for stock which had been ordered by Ravinder and not by the appellant; and

(d) it was reasonable for the appellant to accept what he had been told by his father and uncle, both of whom he respected, trusted and looked up to as senior family members. In Sikh culture, family elders are trusted and treated with respect and there is a cultural pecking order. It was not unreasonable for the appellant to have behaved in the way he did upon receipt of the first tax loss letters from HMRC, and he took immediate action upon receipt of the February 2015 letters. In any event, it cannot be concluded from the fact that the letters were sent by HMRC to DEL that the appellant knew his transactions were part of a contrived scheme to defraud HMRC of VAT.

(5) There is no evidence in the witness statements of the HMRC officers that the appellant knew that the transactions were connected with fraud.

(6) It is not possible to draw adverse inferences against the appellant, as suggested by HMRC, based on the appellant's failure to call as witnesses DEL's counterparties.

(7) It is misplaced for HMRC to criticise DEL for receiving cash payments and to suggest that this is indicative of involvement in fraud. Cash payments were common in the drinks industry and DEL accounted for the transactions. DEL was registered as a high value dealer and it was well known to HMRC that DEL was receiving large amounts of cash.

(8) DEL bought the goods in this appeal at normal market prices.

***Appellant's knowledge: HMRC's submissions***

374. As to the appellant's knowledge, Ms Robinson submitted for HMRC as follows—

(1) The respondents have placed before the tribunal a body of evidence which, it is contended, is sufficient, and sufficiently cogent, to enable the tribunal to conclude that DEL knew that the VAT returns were inaccurate and that the inaccuracies were attributable to the appellant. It is accepted that there is no *direct* evidence of the appellant's knowledge. That is not unusual in cases of this sort. Direct evidence in a case of this sort might comprise an admission by the appellant that he knew the transactions were connected with fraud, or evidence of a fraudulent scheme written by the appellant's hand. Neither exists, of course, and it is a rare case indeed in which direct evidence of that sort could be placed before the tribunal. HMRC's case relies rather on indirect evidence, the combination of which, and the cumulative effect of which, enables the tribunal to make a finding of knowledge in this case. Ms Robinson cited *Mobilx* in which the Court of Appeal noted that the burden of proof rests with HMRC (in a Kittel case), but made clear that that "*is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant*…".

(2) As to the division of roles between the appellant and his cousin Ravinder, Ms Robinson pointed to Officer Cole's second witness statement (made before the liquidator's papers were inspected and some put to the tribunal). Officer Cole had had responsibility as control officer for DEL since 27 June 2013, but had never once met or corresponded with Ravinder Jabble; none of the visit reports available for the period between 2008 and 2015 recorded Ravinder Jabble as having attended a single meeting with HMRC; and none of the visit reports recorded the appellant mentioning Ravinder Jabble in any active role with the company. Indeed, such references as there are in the visit reports recorded that it was Rashpal Jabble who took responsibility for buying and selling stock.

(3) It is disingenuous to suggest that the appellant was unaware of the tax losses in deal chains involving Just Beer and Gempost. Both were run by close family members; indeed, the appellant lived with his father, director of Just Beer, throughout the period of the transactions in this case. Both companies were located (together) in the same building as DEL for a significant period of time.

(4) The appellant knew specifically, because of the tax loss letters, that certain of DEL's suppliers were in chains that commenced with a defaulting trader. Despite the provision of tax loss letters to it, DEL continued to trade with companies named in those letters.

(5) The seismic shifts in the appellant's evidence, on the highly significant topic of what he did after receiving each set of tax loss letters, were deliberate. The appellant here was not seeking to clarify some minor error in an early statement. His initial statement of principle was clear and unobjectionable. He was required to move to shifting sands in order to explain away what he saw as an emerging picture of the volume of tax loss letters sent to DEL about supplies from Gempost and/or from Just Beer. The appellant could never admit to the tribunal that he/DEL did nothing on receipt of those letters, but the appearance of four sets of letters meant that his initial statement of principle could no longer hold good for him. That is why his account changed; the fact that it changed to fit around the evidence is a very good reason why the appellant's evidence is unreliable and incredible.

(6) The appellant accepted that it was he who was responsible for arranging for due diligence to be carried out in respect of prospective suppliers to DEL[230]. DEL's due diligence checks were not credible; they were not carried out with the genuine aim of

[230] Transcript 14/7/22, pages 93 to 94.

checking the integrity of suppliers or the supply chain; and the company did not act on negative indicators presented. The due diligence performed by the appellant was no more than an exercise in window dressing, whose only aim was to satisfy HMRC in the event that enquiries were made. We have set out in more detail earlier in this decision the points made for HMRC about the due diligence.

(7) The factors relied on by HMRC as showing DEL's knowledge were also relied on as showing the appellant's knowledge—

(a) the association between Rashpal Jabble, Ravinder Jabble, Kulvinder Singh Jabble, Jagjit Singh Jabble, Makhan Singh Jabble, and other family members, and their respective companies.

(b) despite the value of the transactions, DEL did not enter into any (or any formal) contracts with its suppliers, nor did it provide terms and conditions in respect of any of the supplies/suppliers in question;

(c) the uncommercial trading model whereby goods were released to DEL (and, potentially, to DEL's customer) prior to receipt of payment, and prior to those further up the chains receiving payment, and the consequent lack of risk for DEL in the transaction chains;

(d) other aspects evidencing uncommercial relationships with competitor traders;

(e) delivery or collection from Gempost's and Just Beer's suppliers; and

(f) what Ms Robinson described as the deliberate tactic engaged by DEL to avoid MTIC monitoring by HMRC; and a similar tactic employed by Gempost and Just Beer.

***Appellant's knowledge: Analysis***

375. We accept Mr Farrell's submission for the appellant that points (7) and (8) at paragraph 373 above do not help HMRC's case. We draw no inference of knowledge from the fact that DEL received cash payments. As to the fact that the appellant did not call as witnesses DEL's counterparties in the transactions in question, we need not make a finding as to whether that helped HMRC's case, given our other findings. As to prices, we did not understand Ms Robinson to argue for HMRC that the goods were not purchased by DEL at market prices. So we place no reliance one way or another on the assertion that the prices were normal market prices.

376. Nonetheless, we find that the appellant knew that 120 of the transactions were connected with fraud, for the following reasons.

377. First, we do accept that there was some division of roles between the appellant and his cousin, fellow director Ravinder Jabble. There was bound to be between two directors. But we do not accept that the appellant was not party to decisions as to which suppliers to use. In cross-examination, his own witness, Ms Bhatti, accepted that the appellant had responsibility for deciding which suppliers to use—

> "Q. Was it Rashpal who was responsible for deciding which of the customers or suppliers the company might deal with?
>
> A. I think sometimes Rash -- Ravinder would have a say as well"[231].

378. Mr Farrell sought to undo that in re-examination—

[231] Transcript 15/7/22, pages 183 and 184.

"Ms Bhatti, just a couple of questions in re-examination about Ravinder. Was he responsible for dealing with some of the medium to smaller customers and suppliers --

A. Yes. Yes.

Q. So is that right?

A. That's right, yes.

Q. And was he -- he wasn't -- was he in the office sort of less doing administrative tasks on the computer and rather dealing with the customers face to face and suppliers?

A. Yes.

MR FARRELL: Yes. Thank you very much".

379. That re-examination evidence did not, in our judgment, undo Ms Bhatti's cross-examination evidence, for the following reasons—

(i) Ms Bhatti's evidence in cross-examination had specifically addressed Ravinder's role in addition to the appellant's: "*I think sometimes Rash – Ravinder would have a say as well*". So Ms Bhatti specifically had Ravinder in mind too. This was the appellant's own witness. She had given detailed oral evidence about where Ravinder and Rashpal (the appellant) each sat (Ravinder at the front because he dealt with sales), and about where she sat, at each of DEL's two addresses. That evidence established that Ms Bhatti was in a position to see what went on, and full-time (given her evidence that she was full-time); indeed, that was the very purpose for which the appellant had called her. There is no reason for the tribunal to disbelieve Ms Bhatti when she says "*I think sometimes Rash – Ravinder would have a say as well*". That evidence clearly meant that, apart from "*sometimes*", the appellant had responsibility for deciding which suppliers to deal with.

(ii) Even the reference to Ravinder having a say "*sometimes*" was not evidence that he had a say to the exclusion of the appellant; he sometimes had a say "*as well*" as the appellant, said Ms Bhatti.

(iii) The questions put in re-examination used only "*dealing*" and not "*deciding*". Deciding had been the subject of the cross-examination question. Ms Bhatti's answers in re-examination were about dealing. There is an obvious distinction between "*dealing with suppliers*" and "*being responsible for deciding which ... suppliers the company might deal with*". It is not inconsistent for Ms Bhatti to say that it was Rashpal (the appellant) who had responsibility for deciding which suppliers DEL would deal with (with Ravinder sometimes having a say as well), and then to say also that Ravinder would be the one to deal with them. Dealing with them comes after the decision to use them.

380. Second, even if the appellant did not have a role in deciding which suppliers to use, we do not accept that, by the time of the transactions in this case, the appellant did not realise, even if he had not been told, that they were connected with a fraudulent tax loss, in view of the following additional points—

(1) We found above that the orchestrator of the scheme did not involve an unknowing party and that DEL must have been told from whom to purchase and at what price. Even if the orchestrator of the scheme had told only Ravinder from whom to purchase and at what price (meaning that Ravinder must have known of the orchestrated scheme) it is improbable – and we do not accept – that Ravinder would not have told the

appellant that the transactions were part of an orchestrated scheme. On the appellant's own evidence, the appellant was responsible for the administration of the company and, among other things, for paying suppliers. It would be too risky for Ravinder to rely on the appellant blindly following Ravinder's recommendations as to who to pay and in what amounts. The appellant did not strike us as the kind of person who would blindly follow instructions or recommendations; he was clearly intelligent and had no obvious reason to defer in hierarchical terms to Ravinder.

(2) In relation to purchases from Gempost and from Just Beer, the appellant must have known that Gempost and Just Beer were middlemen, because he accepted that he knew – at the time of DEL's purchases from each of those companies – that neither had a warehouse. So he knew that DEL was receiving or collecting goods direct from Gempost's suppliers and from Just Beer's suppliers. DEL had either to collect the goods from Gempost's and Just Beer's suppliers, or to take delivery of the goods direct from those suppliers. The appellant did not accept that this meant that he knew who those suppliers were. We disagree. It is unlikely – and we do not accept – that he did not know where DEL's drivers were going when they were collecting goods. That knowledge was relevant to justifying mileage and petrol costs and, among other things, to how long drivers were off-site and potentially to whether to authorise overtime. Moreover, the appellant was just one of two directors. It is inconceivable that the appellant would be so far removed from Ravinder's tasks and daily activities that the appellant would not know where DEL's drivers were going. The likelihood that the appellant knew who Gempost's and Just Beer's suppliers were is even stronger where those suppliers were delivering direct to DEL. The appellant worked alongside Ravinder at the same site as the warehouse which took deliveries. It is highly unlikely – and we do not accept – that the appellant did not know, whether by hearing it from warehouse staff or other staff, or by seeing the van livery where the supplier used its own vans, what company was supplying the stock that was being delivered to DEL.

(3) The appellant was on his own account responsible for paying suppliers and for the administration of DEL. It was he who would know whether there were any terms or conditions with the suppliers in question in this case. Apart from the text on the bottom of invoices which said only that title remained with the supplier until payment, the appellant was unable to point to any terms or conditions, except for his evidence that DEL was to pay Gempost and Just Beer as soon as possible although with no long-stop date for payment. The fact of absence of provision for who carries the risk, and the facts of late payment to Aphrodite and partial non-payment to Phoenix, were too good to be true, and related to matters within the appellant's role at DEL. He must have been aware of those facts. In addition, on the appellant's own evidence, DEL did not pay until DEL had received payment. That too was too good to be true. He knew therefore of those significant too-good-to-be-true fraud indicators. He is a bright gentleman. We do not accept that he was, despite those indicators, ignorant that the transactions were connected to fraud.

(4) The appellant said and we accepted that he understood that the more suppliers in the chain, the less profit was to be made. He also knew, as we found above, that Gempost and Just Beer were middlemen and that DEL collected or received goods direct from Gempost's and Just Beer's suppliers. He knew therefore that there was no valid commercial reason for the inclusion of Gempost and Just Beer in any of the chains. Yet he did not on his own evidence object to that (prior to eventually ceasing purchasing from each of those companies).

(5) DEL continued to transact with both Just Beer and Gempost despite receiving tax loss letters about those two companies. The appellant knew about those tax loss letters; they came to him as part of his administrative, tax and accounting role. He also knew that DEL continued to purchase from Gempost and from Just Beer. We found above that Gempost and Just Beer both knew, via the appellant's uncle and father, that the transactions involving Gempost and Just Beer supplying to DEL were connected with a fraudulent tax loss. We accepted above that the appellant may well have talked to his father and uncle about the tax loss letters. But we did not accept that any comfort was imparted to him in those conversations. We said at paragraph 353 above that we do not accept that the appellant could live in such close proximity to his father for all those years – starting at least some four or five years before the transactions in question – and yet not be told by his father, or come to understand from his father, that the transactions with both Gempost and Just Beer were connected with fraudulent tax losses. This was the appellant's knowledge, whether or not also Ravinder's.

(6) We said above that Aphrodite's VAT1 declared an intended business activity (beauty products) other than the sale of alcohol, and that Aphrodite had other readily discoverable red flags, yet DEL chose to buy from Aphrodite without seeing the certificate or checking other matters. It was the appellant's responsibility, on his own evidence, to obtain due diligence. Moreover, having said that he would obtain VAT certificates, he conveniently did not obtain one for Aphrodite. That is too much of a coincidence in our judgment. We find that the reason he continued without that VAT certificate is because he knew that it would show a business that was not the sale of alcohol.

(7) We found above that DEL knew that additional deals were connected with tax losses. The tax loss letters to DEL mentioned at paragraph 314 above went to the appellant. DEL's knowledge of the tax loss connection of those additional deals must have been the appellant's knowledge (whether or not also Ravinder's).

(8) We mentioned above DEL's choice to transact with companies despite DEL's awareness of VAT fraud in the alcohol industry. Our findings above were that that awareness was the appellant's awareness. We do not accept that the appellant knew so little about the company's operations – with just one other director, and his cousin at that – that he did not know until the time came to pay, who DEL's suppliers were. Even his own witness, Ms Bhatti, did not say that Ravinder dealt exclusively with the suppliers in question in this case. In re-examination, she was asked "*Was he [Ravinder] responsible for dealing with <u>some</u> of the medium to smaller customers and suppliers?*" (our emphasis). The reference in the re-examination question to Ravinder dealing with "*some of*" the medium to smaller customers and suppliers meant that Ms Bhatti's affirmative answer to that question did not amount to evidence that Ravinder dealt with <u>all</u> of the medium to smaller customers and suppliers (which in submissions had included the suppliers to DEL in the present case) or that Ravinder did so to the exclusion of the appellant. In other words, Ms Bhatti's evidence did not amount to saying that the appellant did not deal with the suppliers in question in this case.

(9) Finally, as we found at paragraph 348 above, the family connections and situation support an inference that the appellant must have known that purchasing from Gempost and from Just Beer involved tax fraud. Not merely DEL; the appellant.

*Appellant's knowledge: Conclusion*

381. It is for the above reasons that we find that the appellant knew that 120 of the transactions were connected with a fraudulent tax loss (whether or not his cousin and fellow director, Ravinder, also knew).

**(6) Analysis: Issue 6: Whether the inaccuracies in DEL's VAT returns were attributable to the appellant**

382. Yes, the inaccuracies in DEL's VAT returns were attributable to the appellant. We found above that he knew that the transactions were connected with a fraudulent tax loss. His own witness accepted, and we found, that he was responsible for deciding which suppliers to use (although she said that she thought Ravinder sometimes had a say as well; as well not instead). And as Ms Robinson submitted, and which was common ground—

(i) the appellant was in charge of the company finances;

(ii) he dealt with the operation of the company bank accounts (it was he who authorised payment for specific transactions);

(iii) it was he who ensured compliance with money-laundering regulations;

(iv) it was the appellant who dealt with the company accountants and with HMRC;

(v) he was responsible for the provision of information to the accountants from which the accountants would prepare the company's VAT and tax returns;

(vi) it was he who was responsible for liaison with Vincent Curley, the company's tax adviser; and

(vii) it was the appellant who provided the information for the claims to input tax credit.

383. We have already found that the appellant knew that the input tax claimed was in respect of 120 transactions connected with fraudulent tax losses. He knew therefore that he was providing information for DEL's claims to input tax when DEL was not in fact entitled to that input tax. The inaccuracies in DEL's VAT returns were therefore attributable to the appellant.

**(7) Analysis: Issue 7: Whether the quantum of the penalty is correct**

384. No, the quantum of the penalty is not correct.

385. We do not disturb HMRC's decision so far as relating to the reduction to be applied. The potential lost revenue was £576,611.51. The deliberate nature of the inaccuracies in this case mean that the penalty range, before reduction, is between 30 and 70% of the potential lost revenue. We accept that the disclosure was "*prompted*" because DEL did not tell HMRC about the inaccuracy before HMRC had reason to believe that HMRC had discovered or was about to discover it. We accept that the appropriate reduction was 10%; the trader provided some, but not all information, and did not provide it in a timely fashion. The trader did not tell HMRC about the inaccuracy or assist HMRC in understanding it, but did provide some access to business records so as to permit such a reduction.

386. We do however find that the quantum of the penalty is not correct for a different reason. That is because we find, as set out above, that HMRC have not discharged their burden of proving that the appellant knew that DEL's purchases at the bottom of deal chains 84 to 86 were connected to fraudulent tax losses.

387. The amended grounds of appeal dated 18 June 2018 said—

> "c. The amount of the penalty assessment (and corresponding PLN) is too high.".

388. In other words, the appeal was made under paragraph 15(2) of Schedule 24, in addition to paragraph 15(1) of that schedule. Pursuant to the power in paragraph 17(2)(b) of Schedule 24 to the Finance Act 2007, the tribunal reduces the amount payable by the appellant by such amount of the total as relates to deal chains 84 to 86.

## (8) Analysis: Generally

### *HMRC's conduct: allowing frauds to run*

389. The appellant criticised HMRC for, in his words, "*allow[ing] frauds to continue without taking action to intervene and prevent the frauds from continuing*". The appellant questioned some of the HMRC's witnesses about that.

390. We accept HMRC's submission that, whether or not HMRC knowingly allowed a fraud to run, the tribunal has no jurisdiction to undertake any review of HMRC's conduct in that regard. Moreover, it is not relevant to the determination that the tribunal has to make whether HMRC could or should have done more to prevent fraudulent trading. If HMRC's conduct had been such that the inaccuracy was not (even partly) attributable to the appellant, that might be different. But we did not understand that to be Mr Farrell's position.

## F. CONCLUSION

391. It is for all of the above reasons that we dismissed the appeal except in relation to such amount of the penalty as related to deal chains 84 to 86.

## G. APPEALING AGAINST THIS DECISION

392. 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 the First-tier Tribunal not later than 56 days after this decision is sent to the party making the application. 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.

**RACHEL PEREZ**
**TRIBUNAL JUDGE**

**Release date:**
**17th FEBRUARY 2023**

**Annex 1**
**to First-tier Tribunal decision**

**Deal chains chronologically**

**Rashpal Singh Jabble v HMRC TC/2018/00666**

| | Period | | Deal chain | | | | Exhibit page reference | DEL's supplier invoice no. | DEL's supplier invoice date | VAT amount on invoice to DEL | Defaulting trader |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (1) | 10/14 | 1 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/183 | 2983 | 1.8.14 | £4,013.97 | East Sussex Distribution Limited |
| (2) | 10/14 | 2 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/185 | 2984 | 4.8.14 | £3,814.42 | East Sussex Distribution Limited |
| (3) | 10/14 | 3 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/187 | 2985 | 4.8.14 | £3,924.68 | East Sussex Distribution Limited |
| (4) | 10/14 | 4 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/189 | 2993 | 12.8.14 | £4,117.45 | East Sussex Distribution Limited |
| (5) | 10/14 | 5 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/191 | 2994 | 13.8.14 | £3,865.71 | East Sussex Distribution Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (6) | 10/14 | 6 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/193 | 3009 | 2.9.14 | £4,411.16 | East Sussex Distribution Limited |
| (7) | 10/14 | 7 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/195 | 3015 | 10.9.14 | £3,884.16 | East Sussex Distribution Limited |
| (8) | 10/14 | 8 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/197 | 3016 | 11.9.14 | £3,702.49 | East Sussex Distribution Limited |
| (9) | 10/14 | 9 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/199 | 3017 | 12.9.14 | £3,473.87 | East Sussex Distribution Limited |
| (10) | 10/14 | 10 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/201 | 3024 | 24.9.14 | £4,063.80 | East Sussex Distribution Limited |
| (11) | 10/14 | 11 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/204 | 3025 | 25.9.14 | £3,967.94 | East Sussex Distribution Limited |
| (12) | 10/14 | 12 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/224 | 3033 | 8.10.14 | £6,747.30 | East Sussex Distribution Limited |
| (13) | 10/14 | 13 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/226 | 3036 | 10.10.14 | £4,441.15 | East Sussex Distribution Limited |
| (14) | 10/14 | 14 | East Sussex | Gempost | --------- | DEL | RWS1/228 | 3037 | 10.10.14 | £3,781.77 | East Sussex |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Distribution Limited | Limited | | (app's company) | | | | | Distribution Limited |
| (15) | 10/14 | 15 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/230 | 3043 | 21.10.14 | £4,292.89 | East Sussex Distribution Limited |
| (16) | 10/14 | 16 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/232 | 3044 | 22.10.14 | £4,835.43 | East Sussex Distribution Limited |
| (17) | 10/14 | 17 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/234 | 3058 | 21.11.14 | £3,396.38 | East Sussex Distribution Limited |
| (18) | 10/14 | 18 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/236 | 3057 | 20.11.14 | £3,493.58 | East Sussex Distribution Limited |
| (19) | 10/14 | 19 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/238) | 3673 | 2.10.14 | £3,805.76 | East Sussex Distribution Limited |
| (20) | 10/14 | 20 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/240 | 3672 | 2.10.14 | £3,773.94 | East Sussex Distribution Limited |
| (21) | 10/14 | 21 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/242 | 3671 | 1.10.14 | £3,579.13 | East Sussex Distribution Limited |
| (22) | 10/14 | 22 | East Sussex Distribution | Just Beer Limited | --------- | DEL (app's | RWS1/244 | 3670 | 1.10.14 | £4,228.42 | East Sussex Distribution |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Limited | | | company) | | | | | Limited |
| (23) | 10/14 | 23 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/246 | 3669 | 25.9.14 | £4,213.73 | East Sussex Distribution Limited |
| (24) | 10/14 | 24 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/248 | 3664 | 22.9.14 | £3,743.33 | East Sussex Distribution Limited |
| (25) | 10/14 | 25 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/250 | 3662 | 17.9.14 | £4,030.77 | East Sussex Distribution Limited |
| (26) | 10/14 | 26 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/252 | 3661 | 16.9.14 | £3,514.93 | East Sussex Distribution Limited |
| (27) | 10/14 | 27 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/254 | 3655 | 5.9.14 | £4,158.96 | East Sussex Distribution Limited |
| (28) | 10/14 | 28 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/256 | 3654 | 4.9.14 | £3,855.00 | East Sussex Distribution Limited |
| (29) | 10/14 | 29 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/259 | 3651 | 2.9.14 | £4,271.90 | East Sussex Distribution Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (30) | 10/14 | 30 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/261 | 3642 | 19.8.14 | £4,187.23 | East Sussex Distribution Limited |
| (31) | 10/14 | 31 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/263 | 3641 | 18.8.14 | £4,065.60 | East Sussex Distribution Limited |
| (32) | 10/14 | 32 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/265 | 3640 | 18.8.14 | £4,108.61 | East Sussex Distribution Limited |
| (33) | 10/14 | 33 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/267 | 3638 | 13.8.14 | £4,298.56 | East Sussex Distribution Limited |
| (34) | 10/14 | 34 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/269 | 3633 | 7.8.14 | £3,959.61 | East Sussex Distribution Limited |
| | | | | | | | | | | | |
| (35) | 01/15 | 1 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/272 | 3742 | 27.1.15 | £3,567.24 | East Sussex Distribution Limited |
| (36) | 01/15 | 2 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/274 | 3740 | 21.1.15 | £4,325.79 | East Sussex Distribution Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (37) | 01/15 | 3 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/276 | 3738 | 14.1.15 | £3,786.82 | East Sussex Distribution Limited |
| (38) | 01/15 | 4 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/278 | 3737 | 13.1.15 | £3,844.32 | East Sussex Distribution Limited |
| (39) | 01/15 | 5 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/280 | 3736 | 12.1.15 | £3,917.62 | East Sussex Distribution Limited |
| (40) | 01/15 | 6 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/282 | 3735 | 9.1.15 | £2,296.48 | East Sussex Distribution Limited |
| (41) | 01/15 | 7 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/284 | 3734 | 8.1.15 | £3,236.10 | East Sussex Distribution Limited |
| (42) | 01/15 | 8 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/286 | 3733 | 7.1.15 | £4,926.76 | East Sussex Distribution Limited |
| (43) | 01/15 | 9 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/289 | 3732 | 6.1.15 | £4,937.18 | East Sussex Distribution Limited |
| (44) | 01/15 | 10 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/292 | 3731 | 6.1.15 | £4,579.99 | East Sussex Distribution Limited |
| (45) | 01/15 | 11 | East Sussex | Just Beer | --- | DEL | RWS1/294 | 3724 | 17.12.14 | £4,066.66 | East Sussex |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Distribution Limited | Limited | | (app's company) | | | | | Distribution Limited |
| (46) | 01/15 | 12 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/296 | 3723 | 16.12.14 | £4,147.30 | East Sussex Distribution Limited |
| (47) | 01/15 | 13 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/298 | 3722 | 15.12.14 | £4,146.84 | East Sussex Distribution Limited |
| (48) | 01/15 | 14 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/300 | 3721 | 12.12.14 | £4,445.79 | East Sussex Distribution Limited |
| (49) | 01/15 | 15 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/303 | 3720 | 11.12.14 | £3,940.38 | East Sussex Distribution Limited |
| (50) | 01/15 | 16 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/305 | 3719 | 10.12.14 | £4,099.98 | East Sussex Distribution Limited |
| (51) | 01/15 | 17 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/307 | 3718 | 9.12.15[232] | £3,911.00 | East Sussex Distribution Limited |
| (52) | 01/15 | 18 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/309 | 3717 | 5.12.14 | £2,854.38 | East Sussex Distribution Limited |
| (53) | 01/15 | 19 | East Sussex | Just Beer | --- | DEL | RWS1/311 | 3716 | 4.12.14 | £3,099.83 | East Sussex |

[232] The 2015 date is on the invoice but must have been a typo for 2014.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Distribution Limited | Limited | | (app's company) | | | | | Distribution Limited |
| (54) | 01/15 | 20 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/313 | 3714 | 2.12.14 | £2,924.77 | East Sussex Distribution Limited |
| (55) | 01/15 | 21 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/315 | 3710 | 27.11.14 | £4,008.00 | East Sussex Distribution Limited |
| (56) | 01/15 | 22 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/317 | 3707 | 25.11.14 | £4,145.17 | East Sussex Distribution Limited |
| (57) | 01/15 | 23 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/319 | 3699 | 17.11.14 | £3,800.70 | East Sussex Distribution Limited |
| (58) | 01/15 | 24 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/321 | 3697 | 13.11.14 | £3,609.22 | East Sussex Distribution Limited |
| (59) | 01/15 | 25 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/323 | 3696 | 12.11.14 | £3,626.78 | East Sussex Distribution Limited |
| (60) | 01/15 | 26 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/325 | 3695 | 12.11.14 | £3,793.74 | East Sussex Distribution Limited |
| (61) | 01/15 | 27 | East Sussex Distribution | Just Beer Limited | --- | DEL (app's | RWS1/328 | 3694 | 11.11.14 | £4,032.47 | East Sussex Distribution |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Limited | | | company) | | | | | Limited |
| (62) | 01/15 | 28 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/331 | 3692 | 5.11.14 | £4,295.94 | East Sussex Distribution Limited |
| (63) | 01/15 | 29 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/334 | 3691 | 4.11.14 | £3,984.81 | East Sussex Distribution Limited |
| (64) | 01/15 | 30 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/336 | 3690 | 3.11.14 | £4,004.30 | East Sussex Distribution Limited |
| | | | | | | | | | | | |
| (65) | 04/15 | 1 | Aphrodite Sales Limited | --- | --- | DEL (app's company) | RWS1/340 | 141 | 13.10.14 | £10,646.16 | Aphrodite Sales Limited |
| (66) | 04/15 | 2 | Aphrodite Sales Limited | --- | --- | DEL (app's company) | RWS1/342 | 144 | 15.10.14 | £10,769.30 | Aphrodite Sales Limited |
| (67) | 04/15 | 3 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/344 | 3751 | 17.2.15 | £4,405.03 | East Sussex Distribution Limited |
| (68) | 04/15 | 4 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/346 | 3752 | 17.2.15 | £4,445.50 | East Sussex Distribution Limited |
| (69) | 04/15 | 5 | East Sussex Distribution | Just Beer Limited | --- | DEL (app's | RWS1/348 | 3753 | 18.2.15 | £4,488.74 | East Sussex Distribution |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Limited | | | company) | | | | | Limited |
| (70) | 04/15 | 6 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/350 | 3754 | 19.2.15 | £4,635.03 | East Sussex Distribution Limited |
| (71) | 04/15 | 7 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/353 | 3755 | 20.2.15 | £4,666.70 | East Sussex Distribution Limited |
| (72) | 04/15 | 8 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/355** | 3756 | 23.2.15 | £3,966.66 | East Sussex Distribution Limited |
| (73) | 04/15 | 9 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/357** | 3757 | 24.2.15 | £4,069.30 | East Sussex Distribution Limited |
| (74) | 04/15 | 10 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/359** | 3758 | 25.2.15 | £4,131.68 | East Sussex Distribution Limited |
| (75) | 04/15 | 11 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/361** | 3759 | 26.2.15 | £4,110.41 | East Sussex Distribution Limited |
| (76) | 04/15 | 12 | East Sussex Distribution Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/363** | 3760 | 27.2.15 | £3,917.93 | East Sussex Distribution Limited |
| (77) | 04/15 | 13 | Beer Bhai Cash and Carry | Gempost Limited | --- | DEL (app's company) | RWS1/365 | 3121 | 19.3.15 | £4,317.62 | Beer Bhai Cash and Carry Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Limited | | | | | | | | |
| (78) | 04/15 | 14 | Beer Bhai Cash and Carry Limited | Just Beer Limited | --- | DEL (app's company) | **RWS1/367** | 3768 | 20.3.15 | £4,029.70 | Beer Bhai Cash and Carry Limited |
| (79) | 04/15 | 15 | Beer Bhai Cash and Carry Limited | Gempost Limited | --- | DEL (app's company) | RWS1/369 | 3122 | 20.3.15 | £4,064.21 | Beer Bhai Cash and Carry Limited |
| (80) | 04/15 | 16 | Beer Bhai Cash and Carry Limited | Gempost Limited | --- | DEL (app's company) | RWS1/371 | 3123 | 30.3.15 | £4,163.94 | Beer Bhai Cash and Carry Limited |
| (81) | 04/15 | 17 | Beer Bhai Cash and Carry Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/373 | 3769 | 30.3.15 | £4,006.10 | Beer Bhai Cash and Carry Limited |
| (82) | 04/15 | 18 | Beer Bhai Cash and Carry Limited | Gempost Limited | --- | DEL (app's company) | RWS1/375 | 3124 | 31.3.15 | £3,800.44 | Beer Bhai Cash and Carry Limited |
| (83) | 04/15 | 19 | Beer Bhai Cash and Carry Limited | Just Beer Limited | --- | DEL (app's company) | RWS1/377 | 3770 | 31.3.15 | £4,646.88 | Beer Bhai Cash and Carry Limited |
| (84) | 04/15 | 20 | Beer Bhai | --- | --- | DEL | RWS1/379 | DCC070 | 7.4.15 | £7,838.88 | Beer Bhai |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Cash and Carry Limited | | | (app's company) | | 41502 | | | Cash and Carry Limited |
| (85) | 04/15 | 21 | Beer Bhai Cash and Carry Limited | ---------- | --------- | DEL (app's company) | RWS1/380 | DCC070 41501 | 7.4.15 | £9,219.60 | Beer Bhai Cash and Carry Limited |
| (86) | 04/15 | 22 | Beer Bhai Cash and Carry Limited | ---------- | --------- | DEL (app's company) | RWS1/381 | DCC130 41501 | 13.4.15 | £9,822.27 | Beer Bhai Cash and Carry Limited |
| | | | | | | | | | | | |
| (87) | 07/15 | 1 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/382 | DE36 | 4.6.15 | £5,074.52 | Lupt Utama Limited |
| (88) | 07/15 | 2 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/384 | DE37 | 5.6.15 | £2,586.40 | Lupt Utama Limited |
| (89) | 07/15 | 3 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/386 | DE38 | 8.6.15 | £5,523.26 | Lupt Utama Limited |
| (90) | 07/15 | 4 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/388 | DE39 | 10.6.15 | £4,892.90 | Lupt Utama Limited |
| (91) | 07/15 | 5 | Lupt Utama | AK Suppliers | Phoenix | DEL | RWS1/390 | DE40 | 16.6.15 | £4,742.10 | Lupt Utama |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Limited | Ltd | Wholesalers Limited | (app's company) | | | | | Limited |
| (92) | 07/15 | 6 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/392 | DE41 | 19.6.15 | £4,912.13 | Lupt Utama Limited |
| (93) | 07/15 | 7 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/394 | DE42 | 24.6.15 | £5,025.83 | Lupt Utama Limited |
| (94) | 07/15 | 8 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/396 | DE43 | 1.7.15 | £6,316.00 | Lupt Utama Limited |
| (95) | 07/15 | 9 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/398 | DE45 | 2.7.15 | £5,389.04 | Lupt Utama Limited |
| (96) | 07/15 | 10 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/400 | DE44 | 2.7.15 | £8,478.94 | Lupt Utama Limited |
| (97) | 07/15 | 11 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/402 | DE47 | 3.7.15 | £7,200.35 | Lupt Utama Limited |
| (98) | 07/15 | 12 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/404 | DE49 | 6.7.15 | £6,743.98 | Lupt Utama Limited |
| (99) | 07/15 | 13 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers | DEL (app's | RWS1/406 | DE48 | 6.7.15 | £8,324.00 | Lupt Utama Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Limited | company) | | | | | |
| (100) | 07/15 | 14 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/408 | DE50 | 15.7.15 | £5,711.32 | Lupt Utama Limited |
| (101) | 07/15 | 15 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/410 | DE51 | 15.7.15 | £5,982.78 | Lupt Utama Limited |
| (102) | 07/15 | 16 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/412 | DE52 | 16.7.15 | £8,238.05 | Lupt Utama Limited |
| (103) | 07/15 | 17 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/414 | DE53 | 21.7.15 | £3,506.43 | Lupt Utama Limited |
| (104) | 07/15 | 18 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/416 | DE54 | 21.7.15 | £8,583.44 | Lupt Utama Limited |
| (105) | 07/15 | 19 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/418 | DE55 | 27.7.15 | £8,142.53 | Lupt Utama Limited |
| (106) | 07/15 | 20 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/420 | DE57 | 28.7.15 | £4,175.25 | Lupt Utama Limited |
| (107) | 07/15 | 21 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers | DEL (app's | RWS1/422 | DE56 | 28.7.15 | £7,784.77 | Lupt Utama Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Limited | company) | | | | | |
| (108) | 07/15 | 22 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/424 | DE58 | 29.7.15 | £7,777.54 | Lupt Utama Limited |
| (109) | 07/15 | 23 | Lupt Utama Limited | AK Suppliers Ltd | Phoenix Wholesalers Limited | DEL (app's company) | RWS1/426 | DE59 | 30.7.15 | £11,585.84 | Lupt Utama Limited |
| (110) | 07/15 | 24 | East Sussex Distribution Limited | Gempost Limited | ---------- | DEL (app's company) | RWS1/428 | 3105 | 17.2.15 | £4,259.90 | East Sussex Distribution Limited |
| (111) | 07/15 | 25 | East Sussex Distribution Limited | Gempost Limited | ---------- | DEL (app's company) | RWS1/430 | 3106 | 17.2.15 | £4,318.18 | East Sussex Distribution Limited |
| (112) | 07/15 | 26 | East Sussex Distribution Limited | Gempost Limited | ---------- | DEL (app's company) | RWS1/432 | 3107 | 18.2.15 | £4,308.10 | East Sussex Distribution Limited |
| (113) | 07/15 | 27 | East Sussex Distribution Limited | Gempost Limited | ---------- | DEL (app's company) | RWS1/434 | 3108 | 19.2.15 | £5,146.48 | East Sussex Distribution Limited |
| (114) | 07/15 | 28 | East Sussex Distribution Limited | Gempost Limited | ---------- | DEL (app's company) | RWS1/436 | 3109 | 19.2.15 | £4,784.38 | East Sussex Distribution Limited |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (115) | 07/15 | 29 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/438 | 3110 | 23.2.15 | £3,966.41 | East Sussex Distribution Limited |
| (116) | 07/15 | 30 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/440 | 3111 | 24.2.15 | £4,004.26 | East Sussex Distribution Limited |
| (117) | 07/15 | 31 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/443 | 3112 | 25.2.15 | £3,896.75 | East Sussex Distribution Limited |
| (118) | 07/15 | 32 | East Sussex Distribution Limited | Gempost Limited | --------- | DEL (app's company) | RWS1/445 | 3113 | 2.2.15 | £4,047.68 | East Sussex Distribution Limited |
| (119) | 07/15 | 33 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/447 | 3762 | 2.3.15 | £3,957.76 | East Sussex Distribution Limited |
| (120) | 07/15 | 34 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/450 | 3763 | 3.3.15 | £4,600.51 | East Sussex Distribution Limited |
| (121) | 07/15 | 35 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/452 | 3764 | 4.3.15 | £4,073.74 | East Sussex Distribution Limited |
| (122) | 07/15 | 36 | East Sussex Distribution Limited | Just Beer Limited | --------- | DEL (app's company) | RWS1/454 | 3765 | 4.3.15 | £5,094.57 | East Sussex Distribution Limited |
| (123) | 07/15 | 37 | East Sussex | Just Beer | --------- | DEL | RWS1/456 | 3766 | 5.3.15 | £4,138.81 | East Sussex |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Distribution Limited | Limited | | (app's company) | | | | | Distribution Limited |

**[End of Annex 1]**

**Annex 2**
**to First-tier Tribunal decision**

**Deal chains by category**

**Rashpal Singh Jabble v HMRC TC/2018/00666**

**Three-part chains:**

- East Sussex – Gempost – DEL: deals 1 to 18, 110 to 118
- East Sussex – Just Beer – DEL: deals 19 to 64, 67 to 76, 119 to 123
- Beer Bhai – Gempost – DEL: deals 77, 79, 80, 82
- Beer Bhai – Just Beer – DEL: deals 78, 81, 83

**Two-part chains:**

- Beer Bhai – DEL: deals 84 to 86
- Aphrodite – DEL: deals 65 and 66

**Four-part chains:**

- Lupt (highjacked VRN) – AK – Phoenix – DEL: deals 87 to 109

**[End of Annex 2]**

**Annex 3**
**to First-tier Tribunal decision**

**Extracts from counsel Ms Robinson's submissions for HMRC about Gempost and Just Beer**

**Rashpal Singh Jabble v HMRC TC/2018/00666**

"181. From their VAT registration, the companies had significant contact with HMRC, including:

(a) On 17 March 2000, officers visited JBL's premises in connection with a repayment claim that was reduced to nil because the trader did not initially provide evidence to support the claim. The visiting officer was concerned that many suppliers appeared to be missing traders, having not rendered VAT returns. The VAT repayment in question was later repaid by HMRC, albeit subject to a deduction because insufficient evidence in support had been provided [**RWS3/156**].

(b) On 26 July 2006, officers conducted an unannounced visit to both Gempost and JBL. Mr Jabble stated that he was the director of Gempost, albeit he had involvements in other companies. He said that his accountants would provide a list of those other companies in which he was involved. Mr Jabble was asked for the names of suppliers to Gempost and JBL, but said he was unable to remember any names because there were many suppliers. He identified some checks which he said he performed before purchasing goods and said he kept a file with information from his checks. When asked for the file, he said he was not sure whether officers from a different HMRC office had uplifted the records. Mr Jabble said that he did not hold stock, and that all goods were delivered direct to his customers, with transport, insurance and other costs included in the price. He was asked why he needed to run two companies dealing in the same goods. He said that JBL was his first company and that before that he had Five Rivers International Ltd, now dormant. When asked if he purchased any goods from Europe, Mr Jabble said that he used to buy goods from Bond but stopped doing so. He said his margin was low, 50p a case, and that he was paid mostly by cheque with the rest by direct debit or cash. Mr Jabble said he paid his suppliers in cash. He said he did not ask his supplier if duty and VAT had been paid, but assumed that it had been [**RWS3/172**].

(c) On 8 September 2006, HMRC officers visited Gempost and JBL again. They collected the due diligence file which had not been with the other HMRC office at all. He said that he now conducted very thorough checks on his suppliers, and said there was very little that he could do if his supplier went missing [**RWS3/185**].

(d) On 17 November 2006, HMRC sent both JBL and Gempost an MTIC awareness letter outlining HMRC's concerns in respect of the trade sector, and outlining the clearing procedure for suppliers and customers, and a request for monthly sales and purchase listings [**RWS3/188**].

(e) On 14 December 2006, Officer Gajjar issued assessments against each of JBL (total £4,682,002) and Gempost (total £3,573,167) because the invoices submitted previously were not sufficient to satisfy HMRC that either company had an entitlement to claim the VAT sum shown on the invoices. Those assessments were subsequently amended as a result of further information.

(f) On 10th May 2011, Gempost was placed on the Continuous Monitoring Programme [**RWS3/18, RWS3/33**].

(g) On 7 June 2011, HMRC officers visited Gempost. Makhan and Jagjit Singh Jabble were present, together with Mr Curley, their representative. During the visit, HMRC officers warned the brothers of fraud in the alcohol sector, and issued PN726 and the 'How to Spot Fraud' leaflet. Mr Jabble expressed concern that inclusion on the CMP would be over-intrusive, and Mr Curley said that Mr Jabble did not keep vast deal paperwork, but simply the sales invoice, purchase invoice and a payment report.

[**RWS3/222**].

(h) On 7 October 2011, HMRC issued a letter to Gempost and JBL in respect of Dentile Ltd, a company with which they had dealt [**RWS3/249**]. The letter advised the Gempost in particular of tax losses in 19 transaction chains conducted with Dentile Ltd in May, June and July 2011. A second letter, advising of further tax losses in transaction chains in August 2011 with Dentile Ltd, was sent to Gempost on 22 November 2011 [**RWS3/308**].

(i) On 12 October 2011, JBL was informed by letter that it too would be subject to monthly monitoring [**RWS3/263**].

(j) On 17 November 2011, HMRC officers visited both traders. Makhan and Jagjit Singh Jabble were present, as was Mr Curley. Jagjit Singh Jabble confirmed he was the sole director of Gempost, and employed no staff, although his brother acted as company secretary. The brothers were provided with PN726, and a leaflet called 'How to spot MTIC fraud'. Mr JS Jabble said he had been in the alcohol trade since 1981 and had a vast knowledge of the trade. He said most new suppliers and customers were recommended to him, but he still performed due diligence via a company called the Due Diligence Exchange. He said he would stop trading with a company if he received a VETO letter about them. He said there was no set agreement in place with any customer or supplier, and pricing varied from deal to deal. Stock was never held and it was the supplier's responsibility to ensure safe delivery, as Gempost conducted no inspections and carried no insurance [**RWS3/265**].

(k) A further visit was conducted on 15 November 2012. During the visit, the officers examined cash sheets which showed payments of approximately £20,000 - £30,000. Mr Makhan Jabble was reminded of the money laundering regulations in relation to cash payments in those sums. He said, when asked, that he did not take out insurance against bad debts, and said that he still did not have warehouse space, and so shipments continued to be made from his supplier directly to his customer. When asked, he said that he didn't know if his supplier had a warehouse. Mr Jagjit Singh Jabble joined the meeting and said that he too did not know whether his customer had a warehouse or not. Both brothers were advised that HMRC suspected there to be tax losses in their trading chains [**RWS3/272**].

(l) On 12 August 2013, HMRC sent Gempost and JBL a letter with regard to Arete Systems Ltd [**RWS3/303**]. The letter advised Gempost that 44 of its transaction chains commenced with a defaulting trader, Arete Systems Ltd. A letter of the same date was sent to JBL advising of tax losses in 44 chains in which it too had been supplied by Arete Systems Ltd [**RWS3/310**].

(m) There followed correspondence between the representative for Gempost and JBL and HMRC. HMRC tried, unsuccessfully, to arrange a visit to Gempost and JBL (there having been no visit since November 2012) and tried to secure the provision of further documents, none having been provided since April 2013. On 19 February 2014, HMRC issued an Information Notice and schedule to produce records [**RWS3/369**]. On 25 April 2014, after the provision of two extensions, the requested documentation was received. Paperwork was subsequently provided on a more regular basis.

(n) On 14 July 2014, HMRC issued a tax loss letter to Gempost in respect of transactions conducted in June 2013 with Golden Harvest Wholesale Ltd, 12 of which traced back to a tax loss [**RWS3/392**].

(o) On 4 September 2014, HMRC issued a tax loss letter to JBL with regard to a transaction conducted in January 2014 with Phoenix Wholesalers Ltd which traced back to a tax loss [**RWS3/398**].

(p) On 14 April 2015, HMRC issued a tax loss letter to JBL with regard to transactions conducted with East Sussex Distribution Ltd in July 2014, five of which had traced back to a tax loss [**RWS3/406**].

(q) On 28 May 2015, HMRC officers carried out a visit to the traders. Jagjit Singh Jabble, Makhan Jabble and Mr Curley were in attendance. Mr Curley took exception during the visit to the term 'missing traders', and indicted that he had been able to call the traders himself. Later in the same visit, he said that he didn't trace transaction chains for his clients for reasons of confidentiality. The officers clarified

that the traders in question had not submitted and paid the VAT returns, creating a tax loss [**RWS3/411**].

(r) On 5 June 2015, HMRC issued a tax loss letter to Gempost in respect of a tax loss identified in one transaction chain in which Gempost had been supplied by Phoenix Wholesalers Ltd [RWS3/417].

(s) On 24 August 2016, Officer Reynolds conducted a visit to the traders' premises. Nobody was present. Officer Reynolds concluded that both readers were missing and as such, Mr Reynolds left 7-day deregistration letters at the address for each company [**RWS3/25, RWS3/436**].

(t) Gempost and JBL appealed against their earlier assessments and lodged appeal proceedings before the First-tier Tribunal. Those appeals were struck out on 22 September 2016 for a failure to comply with directions [**RWS3/444**].

(u) On 28 September 2016, Officer Fu Lam issued AWRS refusal letters to Gempost and JBL. He said, in his letter, that both companies had not responded to his calls, email or letters, and had no choice but to refuse the application [**RWS3/451**].

(v) In October 2017, Officer Reynolds had some communication with Mr Mithu, the director of Gempost and JBL since June 2016. Mr Mithu said he would not appeal against the deregistration, the AWRS refusals and the strike-outs of the assessments. He said that he had ceased trading [**RWS3/26**].

182. Much about the trading activity and trading patterns of both Gempost and JBL strongly suggests that both were part of an organised scheme to defraud the Revenue:

(a) Both traders were well aware of fraud in their trade sector, having been warned of the same several times by HMRC.

(b) There were no written terms of business and no negotiations despite the high value of goods traded.

(c) Such due diligence as was produced to HMRC by the traders tended to confirm only the existence of the company researched, without any substantive information as to its credibility or risk. In any event, no due diligence was received by HMRC relating to Beer Bhai Cash and Carry Ltd, or East Sussex Distribution Ltd, defaulting traders in the chains which included DEL.

(d) The deals were conducted back to back, with Gempost and JBL able to source precisely the right quantity, of precisely the type of alcohol sought, from a single supplier. This pattern, repeated with an alarming frequency, appears unrealistic and indicative of contrivance.

(e) The mark-ups applied were remarkably consistent, at 50p on every unit sold which had been soured from East Sussex Distribution Ltd (40p a unit on one or two products) irrespective of type or brand.

(f) Neither trader had a facility to store goods such that goods were delivered straight from supplier to customer. The value added by Gempost or JBL is not clear.

(g) Neither trader insured the goods traded.

(h) Neither trader inspected the goods traded.

(i) Whilst the traders did have a bank account, payments were made by cash. Insufficient records were held and insufficient due diligence was performed in respect of those cash payments in accordance with money laundering regulations.

**(j)** Over a number of years, each of these traders was supplied by defaulting traders, one defaulting

| |
|---|
| trader replacing another as soon as HMRC took action to deregister.” |

**[End of Annex 3]**