

APPENDIX 1

The Contra-Traders

(1) JSR

1. JSR appeared in Asylum's deal chains April 1, 4, 7 & 8 and May 1 as the importer, on the first three occasions buying from Fine Arts and selling to Hass Packaging, and on April 8 and May 1 also buying from Fine Arts, but selling on to PMTC, who is also the supplier to Asylum in Asylum's March 7 and 8 deals and later was a second level contra-trader (see below).

2. JSR had been incorporated on 6 May 2005 and registered for VAT on the basis of quarterly returns with effect from 8 July 2005 as a "seller of Electrical Goods, eg Radios, Toasters, TVs, Video (sic)". It stated that it expected its taxable supplies to be £70,000 and it was not likely to buy or sell to other EC Member States. It did not submit a return for period 03/06 and submitted its first return (for period 06/06) late, on 14 November 2006, covering 1 January 2006 to 30 June 2006. Its final return was for the period 09/06 and was again submitted late, on 7 February 2007. Its first return was a repayment claim £1,100,450.66, and in period 09/06 there was a reclaim for £669,055.93.

3. Shortly after the deals in 06/06 and 09/06 had been completed, JSR became a non-compliant trader and effectively disappeared. Requests by the Commissioners to JSR and its representative, CTM (who was also Asylum's representative) to produce evidence of various aspects of its trade remained unanswered.

4. Extended verification of its deals in period 06/06 revealed that JSR had undertaken 82 deals, 54 of which were broker deals, generating an input tax reclaim of £10,336,353.36. The remaining 28 deals were acquisition deals generating an offset output tax liability of £8,938,430.37. Its broker deals were traced to fraudulent defaults and its acquisition to various broker traders, including Asylum. These deals in period 06/06 relate to the period when it was acting as a first level contra-trader. Its reclaim in period 09/06, in which it had undertaken 47 deals, 9 of which were broker deals which generated an input tax reclaim of £318,584.79 and 38 were acquisition deals which generated an offset output tax liability of £988,164.84, were related to the period when it was acting as a second level contra-trader when, as in period 06/06, its broker deals were traced to fraudulent defaults and its acquisition to various broker traders. On 17 September 2007 the Commissioners raised an assessment for over £10,000,000 against JSR, which was subsequently amended to just over £9,000,000 on 30 October 2007; this assessment has neither been paid nor appealed.

(2) AIC

5. AIC appeared in Asylum's deal chains for April 2, 4, and 5 as the importer from Fine Arts and supplier to PMTC. It was incorporated on 28 April 2005 and registered for Value Added Tax on the basis of quarterly returns with effect from 11 July 2005;

its main business activity was described as “food production, other wholesale, other catering equipment”. Its declared anticipated turnover was £80,000. It did negligible trading in its first two quarters and between 28 April 2005 and 30 November 2005 its turnover was only £8,265. On 30 April 2006, it formally requested its trade class for VAT to be changed to “wholesale of other electronic and equipment (sic)”. AIC only started to trade in March 2006, nonetheless between 1 December 2005 and 31 August 2006, its turnover was £85,371,614. AIC banked with both FCIB and ICB.

6. In period 05/06 AIC had undertaken 16 deals, 8 broker deals, 7 acquisition deals and 1 UK-UK buffer deal. Extended verification of these deals reveals that the broker deals generated an input tax claim of £2,353,522.59 and its 7 acquisition deals generated an offset output tax liability of £2,132,404.04. These relate to a time when it was acting as a first level contra-trader.

7. In 08/06 extended verification by the Commissioners revealed that AIC had undertaken 39 deals, 29 of which were broker deals generating a reclaim of £10,374,994.83 and 10 were acquisition deals which generated an offset output tax liability of £10,150,156.62. These relate to a time when the evidence makes clear that it was acting as a second level contra-trader. In both period 05/06 and 08/06, its broker deals were traced to fraudulent defaults and its acquisition deals were traced to broker traders such as Asylum which generated substantial input reclaims.

8. The Commissioners had conducted various visits to AIC in 2006 in the course of which its director and sole shareholder, Mr Asif Amijee, made a series of contradictory statements and refused to let the officers see its FCIB statements or remove the business records for inspection. All questions about AIC’s finances were referred to AIC’s purported accountant who when contacted said that he had no knowledge of AIC or Mr Amijee. There were further meetings in 2007 which followed a similar pattern, and at which it emerged that third party payments had been paid to AIC in approximately 10 of its deals. The evidence leaves us with no doubt that AIC was knowingly involved in a scheme to defraud the Revenue.

(3) A-Z

9. A-Z appeared only in Asylum’s deal April 6, but it also appeared in ITW’s deal, April 10 and was a contra-trader in that deal. On both occasions A-Z had been the importer of goods from Kom Team Sarl and was the supplier to Stardex.

10. A-Z was registered for Value Added Tax with from 1 November 2001, it stated on its VAT 1 that it did not expect to receive regular VAT repayments and its expected turnover would be £65,000. It had low levels of turnover until period 11/05 when it reached £2,295,081. Extended verification of its deals in period 05/06 revealed 337 deals, 116 of which were broker deals generating an input tax reclaim of £32,006,562.55, 148 of these were acquisition deals which generated an offset output tax liability of £32,065,332.13 and 73 were UK-UK buffer deals which have no material effect on the contra-scheme. Its broker deals were traced to fraudulent defaults and its acquisition deals were traced to broker traders, including Asylum and ITW, which generated large input tax reclaims. A-Z was a first-level contra trader and a defaulter in Asylum’s deals. It had a very poor history of compliance including failure to provide its returns to the Commissioners on time or to comply promptly with the Commissioners request, for information. This failure of compliance was so

persistent and over such an extended period of time that we concur with the Commissioners conclusion that it was intended to frustrate the Commissioners' extended verification of its deal chains so that any repayment due to the broker traders involved would be made before a full investigation into the fraud present in A-Z's deal chains had been made. On 16 November 2007 A-Z went into liquidation with debts of £33,702,865, of which £582,482.92 was owed to the Commissioners.

(4) BIP

11. BIP was Asylum's supplier in March deal 1 and it had purchased the goods from Hass Packaging. BIP was also the direct supplier to Asylum in June deal 1 when it had purchased the goods from Fine Arts, and in respect of which it acted as a contra-trader, via AIC and JSR where the evidence shows a double contra-fraud via these latter two traders.

12. BIP had been incorporated on 7 January 2005 and registered for VAT on 10 January 2005, being placed on quarterly returns. Its main activity was initially described as "petrol filling station" and its annual turnover was estimated at £3,000,000. There is no evidence that it ever traded as a filling station. By a letter dated 5 February 2005 it informed HMRC that its main business activity had been changed to the wholesale of clothing, and again on 19 October 2005, the Commissioners were advised that it had changed to "Wholesaler - Fabric, Computer Components etc".

13. Extended verification of its 07/06 VAT deals revealed that it had undertaken 9 deals, 5 of which were broker deals which generated an input tax reclaim of £1,793,844.48 and 4 were acquisition deals which generated an offset output tax liability of £1,579,347.48. There were also buffer to buffer transactions.

14. Its broker deals were traced to second level contra-traders, AIC and JSR, and on to fraudulent defaults. Its acquisition deals were traced to a single broker, Asylum, generating the repayment claim the subject of this Appeal for the relevant periods. By a letter dated 24 June 2008 the Commissioners denied BIP's claim for input tax for the period 07/06 and raised an assessment for £1,005,214.82 because of the connection with the fraudulent evasion of VAT. This assessment has not been paid or appealed.

15. BIP traded from a residential block of apartments. There is extensive evidence of BIP being warned of the risks of MTIC Fraud and being told of tax losses in its supply chains prior to its deals with Asylum. One of its trading partners in the period 10/05 was Morning Dew (Asylum's customer in deal March 3). On 19 March 2006, CTM (acting here for BIP) had provided a due diligence report on Asylum, RHI and ITW for BIP, and also one on BIP for Asylum. However BIP had previously traded with Asylum on 28 October 2005. Neither Asylum nor BIP had queried whether CTM had a conflict of interest. BIP banked at the FCIB and also the ICB.

(5) JPC

16. JPC was the supplier to Asylum in deals March 2, April 1 and 8, May 1 and August 1. In deal August 1 it was also the contra-trader via PMTC and JSR

17. It was incorporated on 14 March 2005 and registered for VAT as from 1 June 2005. On its VAT 1 it described its business activity as “import and export of clothes, wholesale” and estimated its turnover in the first twelve months as £500,000. By a letter dated 12 July 2005 to HMRC, it requested a change of trade class from “Textures” to either “General Trade” or “Electrical Goods”, and referred to trading in computer components and mobile telephones inter alia. It was placed on quarterly returns.

18. Its quarterly sales in 09/05 were £3,500,000 plus. In 03/06 £6,718,879, in 06/06 £8,008,345.00 and in 09/06, £5,365,785. Extended verification of its 09/06 return revealed 6 deals, five of which were broker deals generating an input tax reclaim of £920,789.94 and one acquisition deal generating an offset output tax liability of £489,746.94. Its broker deals were traced to second level contra-traders, PMTC and JSR, and thence to fraudulent defaults. Its one acquisition deal was to Asylum, generating the repayment claim which is subject of this appeal. By a letter dated 16 July 2008, the Commissioners denied JPC’s reclaim for input tax in the sum of £673,293.35 in period 09/06 because of its connection with the fraudulent evasion with VAT. JPC lost its appeal against this decision in the Tribunal. JPC’s Director, Mr Prithpal Johal, was found to have knowingly participated in transactions connected with the fraudulent evasion of VAT.

19. JPC had traded with Asylum in period 12/05 when a company called Bronteum was also a customer. Bronteum was identified as a financier in the money-chain transactions. HMRC’s denial of JPC’s input tax reclaim in this period was the subject of an appeal to the Tribunal which did not succeed. Between 10 August 2005 and 27 February 2006, JPC received ‘veto’ letters from the Commissioners advising of the de-registration for VAT of companies with which JPC had traded, or intended to trade.

20. JPC had been referred to FCIB by Arm Gibraltar (see Ketan t/a Arm, see above) for a fee. At a visit by the Commissioners to JPC on 7 February 2006 it was noted that Arm Gibraltar had paid JPC for a deal in August 2005 in which JPC had in fact sold not to Arm Gibraltar but to another company, ‘Boonico’ and JPC therefore knew that Arm Gibraltar was a third party payer. CTM was advisor to JPC. JPC also banked with the ICB.

(6) PMTC

21. PMTC was the supplier to Asylum in deals March 7 and 8, and had been the supplier to JPC, who was Asylum’s supplier, in deals March 2, April 1, April 8 and May 1. In deals April 2, 3, 4, 5, and 7, PMTC was again the supplier to Asylum. In deals April 2, 3 and 5, PMTC had purchased from AIC who was the contra trader in these deals. In deals April 1, 4 and 7 PMTC had purchased from Hass Packaging. In deal May 1, PMTC had purchased from JSR, the contra-trader in the deal, and in August 1 PMTC had purchased from JPC, the first level contra-trader, and was itself a double contra-trader in that deal which led to a fraudulent default.

22. PMTC’s was incorporated on 18 November 2002 initially as P&M Transport Ltd and was registered for VAT with effect from 1 August 2003. Its main business activity was described as “haulage contractor” and it operated as such until 31 October 2005. On 31 August 2005, the Commissioners were advised of a change in

the company name to “P&M Communications Ltd”, and also a change of address. They were advised that the company would be dealing in transportation and selling navigation systems, small screen televisions, iPods, flat screens.

23. PMTC’ first mobile telephone deal occurred on 24 November 2005. In that period 10/05 its declared sales were £1,237.00. By 01/06 this had increased to £33,000,334 as a result of UK-UK buffer deals. In 04/06 it had increased its turnover to a £172,802,736 which included acquisition and broker deals with companies from outside the UK, as it did in 07/06 when its declared sales were £9,574,917. It banked with the FCIB and also the ICB.

24. Extended verification of its trading in 10/06 revealed twelve deals, three of which were broker deals generating input tax reclaim of £490,050.76, two were acquisition deals which generated and offset output tax liability of £352,661.22. Seven of the deals were UK-UK buffer deals. PMTC’s broker deals were traced to fraudulent defaults and its acquisition deals to a single broker, the first level contra-trader, JPC. By a letter dated 24 April 2008, the Commissioners denied PMTC its input tax reclaim and raised an assessment for £313,401.22 because the transactions were connected to the fraudulent evasion of VAT. That decision has not been appealed.

25. In deal April 1, in which PMTC was the supplier to JPC who was Asylum’s supplier, the allocation and release notes show that PMTC directed the goods to be released direct to Asylum, and not to its own customer, JPC. When asked about this, the Director of PMTC, Phillip Temme, had said “Regarding Asylum, we are aware of this company as we have sold to them in the past, if we have sent an allocation and release with their name on this is a pure mistake, and yes we have tried to sell to them direct but they want to maintain their business relationship with JP Commodities and do not want to cut them out.” We accept the Commissioners’ submission that this indicates that the trading between Asylum and PMTC was not legitimate, commercial trading, there being no reason for Asylum not to purchase direct from PMTC rather than allowing another company, JPC, to make a small profit on the deal.

Contra-traders connected with ITW’s deals

26. We will only deal here with RHI, as we have already referred to the role of A-Z as a contra-trader connected with ITW’s deal chain in April 2006 and the other two contra-traders, Worldwide UK Import Export Ltd and Jag-tec Ltd do not feature in Asylum’s deal chains.

27. In ITW’s April deals 1, 3, and 4 RHI was the importer from a company in Malta, Bruins Consortium Ltd. In May deal 1 it was the importer from the French company Kom Team SARL.

28. Extended verification of its deals in 03/06 showed that RHI had undertaken fourteen deals: three were broker deals generating input tax reclaims of £6,500,899.13 and eleven acquisition deals generating offset output liabilities of £6,426,015.75. Its broker deals were traced to other broker traders that generated input tax reclaims related to fraudulent VAT defaults. Extended verification of its period 06/06 showed 51 deals (one of which was cancelled): 25 were broker deals generating an input tax reclaim of £13,619,429.96, and 25 were acquisition deals generating an offset output

tax liability of £13,589,656.42. Its broker deals were traced to fraudulent defaults, its acquisition deals were traced to broker traders including ITW, which generated input tax reclaims similar to those which are the subject of this appeal.

29. We accept the submissions on behalf of the Commissioners that RHI was contra-trading in periods 03/06 and 06/06, at a time when Marcello Auletta was a director of both that company and Asylum as well as being Company Secretary of ITW. By two letters dated 9 January 2008, HMRC denied RHI's reclaims of input tax in VAT periods 03/06 and 08/06 and raised assessments which totalled £7,005,915.73. These assessments have not been paid nor appealed.