



TC03059

Appeal number: TC/2010/06699

VAT – Whether Appellant knew or should have known that its transactions were connected to fraudulent evasion of VAT – Yes – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SYNECTIV LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
ELIZABETH BRIDGE**

**Sitting in public at 45 Bedford Square, London WC1 on 15 – 19, 22 – 24 July and
1 October 2013**

**Simon Farrell QC and Robert Morris, instructed by JTK Associates LLP, for the
Appellant**

**Christopher Kerr and James Onalaja, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

Introduction

1. This appeal, by Synectiv Limited (“Synectiv”), is against the decision of HM Revenue and Customs (“HMRC”), contained in a letter dated 16 February 2010, which denied a claim for deduction of £1,418,900 input tax. This sum consists of £788,900 incurred in relation to six transactions during the VAT period ending 30 April 2006 (04/06) and £630,000 incurred in relation to three transactions during for the VAT period ending 30 June 2006 (08/06).

2. HMRC’s primary case is that these nine transactions were connected to Missing Trader Intra-Community (“MTIC”) fraud and that Synectiv knew of that connection. Alternatively HMRC contend that Synectiv should have known that the nine transactions were connected to MTIC fraud.

3. As MTIC fraud has been described many times by this Tribunal and the appellate Courts and Tribunals (eg by Roth J at [1] – [3] of *POWA (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC)), it is not necessary for us to explain either its operation or variations. Similarly, we do not consider it necessary to explain the jargon such as “broker” and “buffer” to describe the role participants play in deals.

4. In the present case the transactions are alleged to have involved “typical” or “basic” MTIC fraud and during the periods in question Synectiv entered into both broker and buffer deals.

5. Synectiv was represented by Simon Farrell QC and Robert Morris. Christopher Kerr and James Onalaja appeared for HMRC. Although throughout this decision we have referred to the respondents as HMRC this should also be read, where appropriate, as a reference to HM Customs and Excise.

Law

6. HMRC bears the burden of proof in this appeal. As Moses LJ said, in the conjoined appeals of *Mobilx Ltd (in Administration) v HMRC; HMRC v Blue Sphere Global Ltd (“BSG”); Calltel Telecom Ltd and another v HMRC* [2010] STC 1436 (“*Mobilx*”), at [81]:

“It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion.”

7. Although the standard of proof was not considered in *Mobilx* it is accepted that the civil standard, the balance of probabilities, applies (see *Re B* [2009] 1 AC 1). As Lady Hale giving the judgment of the Supreme Court in *Re S-B (Children)* [2010] 1 AC 678 said, at [34]:

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

8. The right to deduct input tax is now derived from Articles 167 and 168 of Council Directive 2006/112/EC (previously Article 17 of the Directive 1977/388/EEC, the Sixth Directive). This has been implemented into UK domestic law by ss 24-26 Value Added Tax Act 1994 and Regulation 29 of The VAT Regulations 1995.

9. However, an exception to this right was identified by the European Court of Justice (“ECJ”) (as the Court of Justice of the European Union (“CJEU”) was then known) in its judgment of 6 July 2006, in the joint cases of *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2006] ECR I – 6161 (“*Kittel*”) in which it stated:

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

[52] It follows that, where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void, by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller, causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.”

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

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

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

[59] Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and do so even where the transaction in question meets the objective criteria which form the basis of the concept of “supply of goods effected by a taxable person acting as such” and “economic activity”.

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

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10. The decision of the ECJ in *Kittel* was considered by the Court of Appeal in *Mobilx* where Moses LJ, giving the judgment of the court, said:

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

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

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11. On 21 June 2012 judgment was given by the Court of Justice of the European Union in the joined cases of *Mahagében kft v Nemzeti Adó-és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* and *Péter Dávid v Nemzeti Adó-és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* [2012] EUECJ C-80/11.

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12. In *Mahagében* the question before the CJEU was whether the Hungarian tax authority could refuse the right to deduct on the grounds of improper conduct on the part of one of his suppliers without establishing whether the taxpayer had been aware of that improper conduct. In *Péter Dávid*, heard at the same time as *Mahagében*, the issue before the CJEU was whether the tax authority could refuse the right to deduct on the grounds that the taxpayer had not satisfied himself of specific matters relating to his supplier. Both decisions were consistent with the principles the ECJ had enunciated in *Kittel*.

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13. As Moses LJ noted when dismissing an oral application for permission to appeal from the Tax and Chancery Chamber of the Upper Tribunal in *POWA (Jersey) Ltd v HMRC* [2013] EWCA Civ 225 at [11], the Court:

“... was accepting the principle that, so far as participation in the fraud was concerned, if a person had knowledge or the means of knowledge that fraud was being carried out at an earlier stage in the chain of supply, that would denote that he was a participant in the fraud and thereby lose his right to deduct. That is plain from *Optigen*; it is plain from *Kittel*; and the court in *Mahageben* was saying nothing different.”

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Evidence

14. We were provided with witness statements made by the following officers of HMRC:

- (1) Patricia Mary Westwell in respect of Synectiv;
- 5 (2) Anthony Peter Mullarkey in respect of Kingswood Limited;
- (3) John Paul McPartlin in respect of Udeil Solutions;
- (4) Timothy Reardon in respect of Computec Solutions Limited;
- (5) Jane Humphrey in relation to Colston Associates Limited;
- 10 (6) Rod Stone whose first witness statement consists of generic evidence relating to MTIC fraud and whose second statement is in response to the first witness statement of Asif Chandoo, the company secretary of Synectiv;
- (7) Gary Felix Saul in respect of SS Enterprises GB Limited;
- (8) Paul Cole in relation to Universal Appliances Limited;
- 15 (9) Stephen Jenner in respect the analysis of data from the First Curacao International Bank (“FCIB”);
- (10) Andrew Letherby in relation to the methods of data recovery and technical aspects of data recovered from the FCIB;
- (11) Simon Marsh in respect of JD Telecom UK Limited;
- 20 (12) Gordon Smith whose evidence in respect of Synectiv was to replace that of Ms Westwell who had conducted the initial verification of Synectiv but who had subsequently retired from HMRC. In making his statement Mr Smith had relied on the work undertaken by Ms Westwell and the evidence gathered by her and others in support of the original decision to deny the claim for input tax; and
- (13) Terence Mendes in respect of the movement of funds in FCIB accounts.

25 15. Having read these witness statements it is apparent that, in addition to dealing with factual matters, they also include the comments and opinions of the officers concerned.

30 16. In *Chandanmal t/a C Narain Bros v HMRC* [2012] UKFTT 188 (TC) Judge Mosedale, having found that there was opinion evidence in the witness of HMRC Officer Rod Stone, said, at [22]:

35 “Witnesses give evidence of fact from which the Tribunal forms its own opinion of the facts; opinion evidence is where the witness’ *opinion* on the facts may be relied on by the Tribunal in reaching its own decision. There is therefore a very crucial distinction between fact and opinion evidence. As the Tribunal’s duty is to form its own opinion on the facts, opinion evidence is only necessary where the matter is a specialist area outside the tribunal’s general knowledge.”

17. In considering how to deal with this in a proportionate manner she did not agree with the contention of the appellant that “it was necessarily prejudicial for witness statements containing opinion to be before the Tribunal hearing the substantive appeal” saying, at [48]:

5 “A Judge will exclude from his mind opinion evidence given by witnesses of fact. The panel member(s) will be instructed to do likewise.”

18. In a recent decision on an application to exclude evidence in *Megantic Services Ltd v HMRC* [2013] UKFTT 492 the Tribunal (Judge Berner and Judge Walters QC) observed at [15] with regard to an expression of a view that certain payments demonstrated circularity:

15 “... is not a matter of fact but a matter of opinion. It is merely a view of a witness on a matter on which the tribunal itself must reach its own conclusion, and as such is of no value as evidence. Such evidence may rightly be excluded on that basis. In most cases, however, we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude.”

The Tribunal also noted, at [20], that:

25 “... we indicated to the parties that there were in the witness statements clear expressions of view on the conclusions that could be drawn from the analysis presented, and that such expressions of view, on matters which it is for the tribunal to determine, did not amount to evidence to which the tribunal would have regard. ... the tribunal itself is quite capable of distinguishing between the evidence on which a conclusion falls to be drawn by the tribunal and an attempt by a witness to draw that conclusion themselves.

19. We have adopted such an approach in the present case in respect of the opinions, comments and conclusions drawn by witnesses of fact.

35 20. In addition to the witness statements from their Officers, HMRC provided us with witness statements from Catherine Clark of Nokia UK Limited and Gary Taylor a director of PriceWaterhouseCoopers LLP (“PWC”).

40 21. Ms Clark’s statement dealt with the wholesale prices charged by Nokia for their N70, 9300i, 9500, N91, N80, N90 and 8800 mobile phones in 2006. Mr Taylor’s statement was in the form of an “Expert Report” into the grey market for UK-based distributors of new mobile handsets in 2006. Although it mainly deals with what Mr Taylor described as “generic material” prepared in late 2009, it also contains the comments of Mr Taylor in relation to Asif Chandoo’s first witness statement and one of Synectiv’s deals with which this appeal is concerned, deal A10 (see below).

22. We heard oral evidence from Officers Gordon Smith and Terence Mendes and also from Mr Gary Taylor, all of whom were cross-examined by Mr Farrell.

23. Mr Farrell submitted that we should treat Mr Taylor's evidence with caution, contending that it was far from clear that it was reliable or independent expert evidence because :

(1) Mr Taylor's evidence was not dispassionate, eg when asked, in relation to the transactions involving Nokia 8800s Deal J5, which HMRC alleged had been bought and sold at a suspiciously high price his answer was:

“Wow! Does that count as a comment? It's £100 ... I mean, this is just ... I'm struggling for words on how implausible that is. It's just ... utterly ... no one pays £100 more than list price for a handset, it's not even in the realms of [the] possible.”

(2) There is no recognised body of knowledge or academic research covering the grey market in mobile phones and Mr Taylor's evidence does not relate to any recognised standards or rules relating to trade in this market, matters considered to be a pre-requisite in Civil Courts before evidence can amount to expert evidence to ensure such evidence is reliable and can be properly assessed, considered and challenged (*Barings Plc & Anor v Coopers & Lybrand (a firm) & Ors* [2001]PNLR 22);

(3) Mr Taylor's work has not been published or reviewed by anyone operating in the industry;

(4) Although Mr Taylor did explain his work had been reviewed by others within PricewaterhouseCoopers (“PWC”) and KPMG he refused to name the individuals concerned and by not setting out the names of those who worked under his directions Mr Taylor has not complied with Part 35 of the Civil Procedure Rules; and

(5) PWC and KPMG, Mr Taylor's previous and present employers, have manufacturers and authorised distributors of mobile phones as clients. These firms have a clear interest in restricting the grey market for mobile phones, and therefore, as Nelson J said in *Armchair Passenger Transport Ltd v Helical Bar Plc* [2003] EWHC 367 (QB) at [29]:

“If the expert has an interest which is not sufficient to preclude him from giving evidence the interest may nevertheless affect the weight of his evidence.”

24. However, Mr Kerr referred us to *Mobile Export/Shelford Ltd v HMRC* [2009] EWHC 797 (Ch) in which Sir Andrew Park specifically considered the issue of the expertise, relevance and admissibility of Mr Taylor's evidence saying, at [17]:

“(1) ...

(2) It is said that Mr Taylor is not an expert. I do not accept that his evidence should be excluded on this ground. I make three specific points in support of my conclusion.

5 (a) For most purposes, I think that Mr Taylor can be regarded as an expert. He has considerable past experience, which he describes in his witness statement, of the mobile telephone business generally, even though he has not himself worked in the particular sector of it in which the appellants have operated. Further, an important point in my opinion is that Mr Taylor appears to be KPMG's internal expert upon the mobile telephones sector. In that role it must be expected that he would have acquired a great deal of specialist knowledge of the business. And the content of his evidence displays to my mind that he plainly does have extensive knowledge and understanding of the field to which the evidence is directed.

10 (b) In any case the Value Added Tax Tribunal rules provide as follows in paragraph 28:

15 "28. Evidence at a hearing"
"(1) ... a tribunal may direct or allow evidence of any facts to be given in any manner it may think fit and shall not refuse evidence tendered to it on the grounds only that such evidence would be inadmissible in a court of law."

20 This rule is not an open sesame for any party to an appeal to call anyone to give evidence on anything. It does however relax, and in my judgment is intended to relax, some of the more rigid evidential rules which can arise in High Court proceedings. I do not accept the submission that the rule comes close to being a one-way option in favour of appellants. If HMRC wish to adduce in evidence a competent and informative analysis of a sector of business and of an appellant's activities within it, rule 28(1), in my judgment, enables them to do that without having to meet technical arguments about whether the witness does or does not strictly rank as an expert.

25 (c) I should, however, say that I do accept that there are some respects in which what the Tribunal has said on this aspect of the case is not very happily expressed. I quote paragraph 1(1) of the directions:

30 "The evidence of Gary Taylor of 14/03/08 is admitted as evidence of fact but with no special status as expert evidence."
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40 Then the Tribunal reverted to this topic in paragraph 5 of the reasons (which I have quoted earlier and do not repeat here). It is not altogether clear to me whether the Tribunal takes the view that all the evidence of Mr Taylor was evidence of fact and admissible as such or whether all that it was saying was that, given that the rules applicable to VAT tribunals draw no distinction between factual evidence and expert evidence, it does not matter whether Mr Taylor's evidence is categorised as expert evidence or not. Although the Tribunal's reasons are somewhat obscure on this, my own opinion is that the categorisation of the evidence as expert or not does not matter. As I have said, I have read Mr Taylor's evidence. It appears to me potentially helpful to the Tribunal, and it seems to me entirely proper for the Tribunal to have accepted it.

(3) It is submitted that Mr Taylor's evidence is not relevant. I cannot agree with this. In my judgment the evidence is relevant. The Tribunal may or may not in the end accept it, but I cannot conceive of it as being regarded as irrelevant.”

5 25. It should be noted that Rule 28 of the Value Added Tax Tribunal Rules, to which Sir Andrew Park referred, has been replaced by Rule 15(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 which, insofar as is relevant to the present case provides that the Tribunal may “admit evidence whether or not the evidence would be admissible in a civil trial in the United Kingdom.”

10 26. We also note that when it was put to him in cross examination that:

“... before you said what you said today [regarding prices of certain Nokia mobile phones and whether they were unusual], I understood your case to be, and you may not know what it is, to be that these phones were not of any unusual price; did you know that?”

15 Mr Taylor’s reply was:

“I don’t see HMRC as my side.”

27. Although we have taken account of these matters, and notwithstanding having given it careful consideration, we derived little assistance from Mr Taylor’s evidence.

20 28. We did not hear from any other witnesses on behalf of HMRC but as their evidence, as contained in their respective witness statements, was not challenged these were admitted in evidence.

29. Asif Chandoo, Synectiv’s company secretary, made three witness statements on its behalf. He also gave oral evidence and was cross-examined at length by Mr Kerr.

25 30. We were also provided with extensive documentary evidence which included eg invoices, purchase orders, inspection reports and correspondence between the parties.

31. On the basis of this evidence we make the following findings of fact

Facts

Background

30 32. Connective (UK) Limited was incorporated on 2 February 1999. On 24 March 1999 it changed its name to Synectiv. Its original director was Kamal Uddin and Suraiya Iqbal was the company secretary. Both resigned on 18 November 1999 following a dispute between Kamal Uddin and Arif Chandoo who became a director and company secretary on 16 November 1999. Aqeel Ali was also appointed as a director on 16 November 1999 until his resignation on 27 December 2001. Arif
35 Chandoo resigned as company secretary on 22 November 1999 and was replaced by Malika Chandoo until 19 February 2001.

33. Arif Chandoo is now the sole director of the company and his brother, Asif Chandoo became company secretary on 1 January 2002. The Chandoo brothers are equal shareholders each owning 500 ordinary £1 shares in Synectiv.
34. Before becoming a director of Synectiv, Arif Chandoo had lived in Dubai where he, with others, had founded Axiom Telecom which, we are told, is now the largest retailer of mobile phones in the Middle East. On 15 December 1999 Synectiv Limited was incorporated by Arif Chandoo to prevent Kamal Uddin using a similar name for his business.
35. In March 1999 an application was made to register Synectiv (or Connective (UK) Limited as it was then known) for VAT with effect from 8 March 1999. The application form, Form VAT1, was signed by Kamal Uddin on 5 March 1999 and stated that the company intended to make taxable supplies with an estimated turnover of £100,000 in the next 12 months and that there would not be any regular repayments of VAT. The main business activity of the company was stated to be the “wholesale and retail of consumer electronics”. It was not clear from the form whether it was anticipated that there would be any sales or supplies from the European Union (“EU”).
36. HMRC registered the company for VAT, as requested, from 8 March 1999 and other than its first VAT return which covered the period from registration until 30 April 1999 all subsequent returns have been for calendar months. All VAT returns have been submitted other than that for the VAT accounting period 04/07 and it appears that the figures which should have been declared by Synectiv for this month were erroneously included on the VAT return of Foneplanet.com Limited, an associated company.
37. As a result of Arif Chandoo’s connections Synectiv’s export trade was with initially with the Middle East. In early the 2000s Synectiv was appointed as authorised dealer by Siemens, Alcatel and Samsung. Also appointed by Siemens as its “online fulfilment partner” and, as such was required to fulfil all internet orders generated on the Siemens website. In 2003-04 Siemens announced losses in its mobile phone divisions. It underwent a re-organisation and terminated its contract with Synectiv. However, Synectiv was able to utilise the experience gained under the arrangement with Siemens to open its own online web store selling mobile handsets and accessories under the name Foneplanet.com.
38. During a VAT visit, on 26 May 1999, to examine the documents in support of a claim by Synectiv HMRC officer A J Beale spoke with Sandeep Golechha who he described as a “director” on the ‘Summary of Trading Activities and Records’ form (Form VAT 465A). Although not a director of Synectiv Mr Golechha was a director of Jainex International Limited which at that time shared a principal place of business with Synectiv.
39. Synectiv’s turnover and VAT reclaimed in its first period of trading, which was from 8 March 1999 to 31 March 2000 was as follows:

	VAT Period	Turnover £	Input VAT reclaimed £
	04/99	53,000.00	1,029.53
	05/99	456,652.00	33,006.12
5	06/99	590,223.00	62,383.43
	07/99	1,170,098.00	90,586.08
	08/99	1,109,827.00	139,026.62
	09/99	2,162,869.00	184,398.04
	10/99	2,791,010.00	183,071.96
10	11/99	3,618,990.00	273,313.05
	12/99	2,040,945.00	76,785.04
	01/00	562,393.00	77,363.72
	02/00	415,472.00	65,178.54
	03/00	<u>1,135,333.00</u>	<u>114,639.48</u>
15	Total	<u>16,106,812.00</u>	<u>1,300,781.61</u>

40. In the year ended 31 March 2001 its turnover more than doubled to £36,167,479.00 increasing to £82,715,479.00 and £105,882,031.00 in the years to 31 March 2002 and 2003 respectively before falling to £16,093,811.00 in the year ended 31 March 2004. Synectiv reclaimed VAT of £2,354,169.73 during the year to 31 March 2001, £2,975,001.42 the following year (to 31 March 2002). In the year to 31 March 2003 despite its increased turnover the VAT reclaimed fell to £96,781.41 reflecting its business activities that year. However, the reverse was true in the year ended 31 March 2004 where, although its turnover fell the VAT reclaimed increased on the previous year to £207,416.94.

25 *Operation Venison*

41. On 3 November 2001 former directors of Synectiv, Aqeel Ali and Kamal Uddin along with Amjad Baig, were arrested in connection with MTIC fraud. On 7 January 2002 all three were charged with conspiracy to cheat the revenue. On 5 February 2002 Arif Chandoo was arrested and charged with conspiring with Aqeel Ali and others to cheat the revenue during the period between 16 November 1999 and 4 November 2001. Sandeep Golechha was also charged with the same offence in August 2002

42. Although the matter did proceed to trial, on 24 June 2005 the judge, Crane J, stayed the proceedings finding that, as HMRC had withheld vital evidence from the Defendants, there had been an abuse of process.

35 *Contact with HMRC*

43. On 21 January 2002 a Senior Investigation Officer from HMRC wrote to Pannone and Partners, solicitors acting for Synectiv, in regard to a claim for a VAT repayment of £677,707.83.

44. After referring to previous correspondence and a telephone conversation the letter continued:

5 For your information, since the arrest of Aqeel Ali, the trading activities of Synectiv Limited and its directors have been under investigation. Evidence has been produced to show that that the company has traded directly or indirectly with so-called 'missing traders', who have failed to account for VAT paid to them, whilst the evidence of Mr Ali's conversation with others demonstrates that he had knowledge of those facts. Mr Ali was then a director of the company, though you tell me he has now resigned. I note that Mr [Arif] Chandoo, who presumably remains a director, has been the usual signatory to the company VAT returns.

10 For these reasons alone, while the investigation continues and the loss to the Crown is properly quantified, repayment will be withheld.

15 Any future trading by the company is a commercial decision and entirely a matter for the directors. Future VAT returns would be subject to verification by the Local VAT Office.

45. On 30 January 2002, Pannone and Partners wrote to Synectiv's local VAT office in Wembley referring to the 21 January letter stating:

20 You will note that there is no objection from NIS to further trading and exporting. This is a commercial decision for the Company. Therefore our client is to commence exporting. Not to do so would force the Company out of business.

25 I have tried to contact you on a number of occasions without success. This was to discuss as to whether or not you would require any additional reassurance/supervision in respect of exports. In the absence of such a discussion I propose that my client Company copies you in on each individual transaction. Invoices etc., could be faxed to your office. Is this a suitable course of action?

30 46. HMRC replied in a letter dated 31 January 2002 as follows:

35 Further to our conversation this afternoon, and with regards to your letter dated 30 January 2001 (sic), I am writing to confirm that Synectiv will be clearing all new supplies and customers through the Wembley office. This includes European traders. Furthermore, deal sheets for exports may also be sent through to Wembley.

47. Between 4 May 2001 and 30 January 2002 there were 13 telephone calls to HMRC's National Advice Service ("NAS") to validate VAT numbers. However, following the correspondence between HMRC and Synectiv's solicitors on 12 February 2002 Arif Chandoo telephoned HMRC's Wembley office regarding the procedure for clearing new suppliers and was advised to fax details of transactions to the office and if confirmation was required this would be sent back by fax or letter depending on the urgency. However, there two calls made to the NAS to verify VAT numbers on 26 February and 25 March 2002.

48. On 4 April 2002 in a letter from HMRC's Wembley office Synectiv was requested to contact that office to verify all suppliers and customers before trading with them for the first time and to provide copies of monthly sales and purchase lists by the 5th of each month. The letter warned that that:

5 You should note that any confirmation of VAT number validity is not to be regarded as an authorisation by this Department for you to enter into any commercial transaction with any trader

It also stated:

10 You may continue to use the nation VAT advice centre number for any general VAT/Intrastat queries you may have. You may no longer use this number to validate VAT numbers.

The letter concluded by requesting an up-to-date list of VAT numbers of all of Synectiv's customers and suppliers within two weeks.

49. Although the information requested was provided by either Synectiv's bookkeeper, Nurudin Jafferji or its director, Asif Chandoo, between 5 April 2001 and 16 January 2003 Synectiv telephoned the NAS a further seven times to validate VAT numbers of various companies.

50. On 7 October 2002 HMRC wrote to Synectiv concerning the "ongoing problems with businesses in your trader sector" and requested that VAT numbers be validated via HMRC's Dorset office with effect from 1 October 2002.

51. HMRC wrote again to Synectiv on 14 April 2003 as "a trader who deals in the buying and selling of mobile phones/CPU's/Memory and other similar goods from the European Community and/or from within the United Kingdom" to bring the company's attention to the Budget Notices CE14 – *Extension of Security Powers*, CE 15 – *A New Joint and Several Liability Provisions* and CE17 – *Evidence for Input Deduction* which had been published following the 2003 Budget. Copies of the Notices were enclosed with the letter:

52. In a further letter, dated 28 July 2003, from HMRC to Synectiv it was stated that:

30 Missing Trader Intra-Community (MTIC) VAT fraud constitutes one of the most costly current forms of VAT fraud within the EU. It is a serious problem for the UK and is Customs' top VAT fraud priority ...

35 Amongst the commodities regularly involved are computer chips and mobile phones and the VAT loss from this type of fraud in the UK alone is between £1.7 and £2.6 billion per annum.

The letter continued to explain that HMRC were experiencing problems in Synectiv's trade sector and that it should, from 4 August 2003, verify the VAT status of new or potential Customers/Suppliers with HMRC's Redhill office and provide the following information:

40 (1) The name of the new or potential Customer/Supplier.

- (2) Their VAT registration number.
- (3) Their contact numbers (including telephone number, fax number, e-mail address and mobile numbers if known).
- (4) The Directors and/or responsible members.
- 5 (5) Whether they were buying or selling goods.
- (6) The nature of the goods.
- (7) The quantities of the goods.
- (8) The value of the goods.
- (9) Their bank sort code and account number.
- 10 (10) A request to forward, on a monthly basis, a purchase and sales list with identifying VAT Registration Numbers against the suppliers/customers, to the trader's local VAT office.

53. On 1 December 2005 HMRC wrote to Synectiv in the following terms:

15 You are a trader who submits VAT returns in which you are declaring a VAT repayment due to you. As you are aware HM Revenue and Customs is empowered, as part of its responsibility for the care and management of the VAT system, to protect the revenue and the interests of all taxpayers by making checks to satisfy ourselves that claims are legitimate and accurate. In order to assist HM Revenue & Customs in making reasonable enquiries into VAT repayment claims, it would be beneficial when you submit VAT returns that you furnish copies of the following business records to support your declared figures:

- 20 • Copy of detailed VAT summary for the period
- 25 • Copies of all export sales invoices
- Copies of all purchase invoices relating to these export sales
- Copies of all credit notes
- Copies of all banking remittance slips relating to these sales, purchases and credit notes
- 30 • Copies of all bank statements for this period
- Export documentation, including shipping documents, ferry tickets, release notes and airway bills
- Export entry declarations forms for non-EU exports

35 The documentation requested is to assist HM Revenue and Customs in verifying who has legal title to these goods, that a transaction has taken place, and that the transaction relates to the goods physically exported. If you are trading in a commodity, you should be able to provide details regarding the goods you are trading in such as serial numbers, part numbers, batch numbers, product details, quantity, price per unit, what market research you carried out, name of manufacturer, website address, contact name and name of the authorised distributor.

40

54. During its VAT accounting periods 01/01 to 03/06 Synectiv had received VAT repayments totalling £10.88m with those relating to accounting periods 04/04, 05/04, 06/04 and 01/06 made on a “without prejudice” basis by HMRC.

55. In its accounts for the year ended 31 March 2006 Synectiv’s turnover was £41m. This can be broken down as follows:

	Wholesale sales outside EU	£20,203,000 (48%)
	Wholesales sales to EU customers	£14,668,000 (35%)
	Wholesale sales to UK customers	£5,635,000 (35%)
	Retail sales	£1,312,000 (3%)
10	Airtime Commission	£93,000 (1%)

56. Asif Chandoo explained that, despite his brother Arif Chandoo being the sole director of Synectiv, he, Asif Chandoo, was responsible for the wholesale trading element of the company’s business. When it was put to him, in cross examination that it was somewhat remarkable that Arif, having been traumatised by Operation Venison did not take a more “hands-on” approach to the wholesale trading, he replied:

“No, like I explained before, it's -- when Venison kicked off in 2001, it affected him badly. He pulled out completely from trading and that's the view he took. He felt that because of what happened, he didn't want to – you know, it's kind of once you are burnt, you didn't want to – so he made it clear how, you know, careful we should be and he took on the responsibility of developing new businesses and business development within our company. So in a way, the tasks were split.”

57. In the circumstances, given Asif Chandoo’s assertion that he had assumed responsibility for Synectiv’s wholesale trade during its 04/06 and 06/06 accounting periods when the transactions which give rise to this appeal concerned, all subsequent references to Mr Chandoo are, unless otherwise stated, to Asif and not Arif Chandoo.

04/06 VAT Accounting Period

58. In its 04/06 VAT period Synectiv undertook nine transactions on which it recovered its input VAT, three of these were for MP3 players which were transferred from the retail side of its business, four transactions involved the sale of mobile phones with two of these being buffer deals and the remaining two deals were transactions involving games consoles.

59. It also entered into the following six wholesale deals involving mobile phones on which it was denied input tax and which are the subject of this appeal.

Deal A10

60. On 25 April 2006 Synectiv sold 4,000 Nokia N90s to a French company URTB Sarl (“URTB”) at a profit of £90,740. Synectiv had acquired the phones from Top Telecoms Limited also on 25 April 2006. Top Telecoms were supplied by The Export

Company Limited (“TEC”) in two consignments of 2,000 units each on separate invoices dated 25 April and 28 April 2006. TEC which was supplied by JD Group PLC (“JD”) in two consignments of 2,000 units dated 25 and 28 April 2006, as was JD which had bought the phones from Regal Portfolio Limited (“Regal”). They
5 bought the goods, in two consignments from Zenith Sports Limited (“Zenith”). Zenith had also acquired the goods from Computec Solutions Limited (“Computec”) in two consignments of 2,000 units on separate invoices dated 25 April and 28 April 2006.

61. A report received by HMRC from the French Authorities advised that URTB, Synectiv’s customer in this deal and deals A11, A14, A15 and J3, which achieved a
10 turnover of over £286m in the months between November 2005 and April 2006, had been deregistered on 28 May 2008. It had also failed to declare intra-community acquisitions including the supplies it has received from Synectiv.

62. Mr Chandoo explained that his contact at, and his reason for trading with, URTB was David Suarez who he had known since 2003 or 2004 when they met at
15 CITA, a trade exhibition in America. At that time Mr Suarez was working for a company called Bluetel based in Spain which was predominantly selling refurbished stock. However, as Synectiv rarely dealt in refurbished mobile phones there had been no trade between the companies. Because Bluetel sometimes traded in what Mr Chandoo described as “obscure SIM-free stock”, ie new, but more obscure models of
20 mobile phones that were not selling well, there was occasional contact between Mr Suarez and Mr Chandoo and Mr Suarez had told Mr Chandoo that he was starting a new company in France selling predominantly SIM-free stock.

63. Synectiv had received an undated and unsigned letter of introduction from a Mr Meyer Uzan a “Director Commercial” of URTB. Mr Chandoo had not spoken to Mr
25 Uzan or asked Mr Suarez anything about him. Not surprisingly the company documents provided to Synectiv as part of its due diligence on URTB were in French. They indicated that the company was established in 2002. Mr Chandoo, who does not speak French, said that if Synectiv was considering entering into trade with a French company he would ask his brother Arif, who does understand French, to look at the
30 documents and advise if there was any issue. In these circumstances Arif Chandoo contributed to the decision as to whether to trade. Synectiv’s first transaction with URTB was concluded in January 2006 and as Mr Chandoo “felt comfortable” trade continued

64. Further information obtained by Synectiv as part of its due diligence on URTB
35 included bank account details, which showed that it had an FCIB account, a copy of the identity card of Mr Suarez and a statement that it wanted its goods delivered to Roissy Airport. There was no other independent documentary evidence obtained by Synectiv on URTB although Mr Chandoo said that he had obtained satisfactory oral references from the freight forwarders, Interken Freighters (UK) Limited (“Interken”).

40 65. Synectiv had previously used Hawks as its freight forwarder but following Operation Venison had resolved to find an alternative. Interken was recommended by friends who operated a similar business to that of Synectiv in East Africa. Mr Chandoo met its director Rajan Ghai and inspected the facilities and, content with its

procedures, agreed that Interken would have sole responsibility for inspecting and handling its stock. Mr Chandoo said that he made regular visits to Interken.

5 66. Top Telecoms, Synectiv's supplier in this deal and deal A15, was incorporated on 15 May 2001 and registered for VAT on 7 August of that year. In addition to its account with FCIB it also had an account with Barclays. A fax, dated 8 October 2002, from Etienne Louw of Top Telecoms to a then employee of Synectiv, Paul Burgess, states:

10 Thank you for your fax. Please find attached our certificate of incorporation as well as our certificate for registration for value added tax.

15 Top Telecoms Ltd is a global distributor of all major global brand mobile phones like Nokia, Ericsson, Siemens and Motorola. The Company was established in 2000 and with a combined experience of over 10 years in the mobile phone industry we are well poised to meet our customers requirements and provide a reliable service, second to none, in a fast moving and dynamic industry.

I look forward hearing from you and establishing a long term mutually beneficial relationship between our companies.

20 67. Mr Chandoo said that he met the director of Top Telecoms, Hussain Awad, at the Mosque in Willesden "more than two years" before the time of the deals under appeal. He explained that as he predominately attended another Mosque he was "not a regular at [the Willesden] Mosque", he did not know Mr Awad's address or ask for proof of identification or seek references but he did obtain the company's incorporation and VAT certificates and he had verified its VAT number with Redhill in April 2005.

68. When asked why he did not ask for references Mr Chandoo replied:

30 "The reference I would have taken would have been from an industry counterpart, let's say, who would have said, "I know the company." I'm seeing the guy in the Mosque week in, week out. Surely there's some credibility – you are seeing the same guy – I accept not every week but you've seen the same guy for over two years. If he's not the guy he is, then there's going to be some difficulty there but I never – it never crossed my mind. It's just a genuine – to take a reference, to ask him: "Mr Awad or Hussain, can I have some identification from you?"

35 I would have thought it silly, to be honest, and if somebody asked me who had been meeting me every week in, week out, I would have said no."

40 69. Although Synectiv did not have an FCIB account all other participants in this and all subsequent transactions that are the subject matter of this appeal did have accounts with FCIB.

70. Analysis of money movements through the FCIB accounts show that on 8 May 2006 TEC paid JD for 4,000 Nokia N90s. The monies moved along the supply chain on the same day through the accounts of JD, Regal, Zenith (via an account in the

name of Zenith Electronics registered in the Netherlands and not the UK registered Zenith) and Computec. Computec paid Megatek SARL (“Megatek”) a French company and the monies then passed in sequence through the accounts of UAB Linis (“UAB”) based in Lithuania, Mortop Global Limited (“Mortop”) based in Israel and
5 the Polish based company Amex FHU (“Amex”) to URTB, Synectiv’s customer. URTB used these monies to pay Synectiv making a payment into Synectiv’s account with Barclays. The transfer of funds from TEC to Synectiv took place in approximately 90 minutes.

71. On receiving the funds Synectiv paid its supplier, Top Telecoms, the VAT
10 inclusive amount into a Barclays account. Also on 8 May 2006 Top Telecoms then transferred funds of £430,650 to TEC from its FCIB account as part payment for 2,000 Nokia N90s. It made a further payment of £535,000 to TEC on 11 May 2006 apparently in part payment of the remaining 2,000 phones.

72. Computec was incorporated on 18 August 2004 and registered for VAT on 1
15 November of that year. It submitted £nil VAT returns for all accounting periods from 11/04 until 02/06 and did not submit any subsequent VAT returns. However, documents obtained from freight forwarders indicated that it had acquired wholesale quantities mobile phones from traders in EU Member States and supplied them to UK traders in deals generating a VAT liability in excess of £100m in April and early May
20 2006. When HMRC officers visited Computec’s premises on 8 May 2006 it was found to be an accommodation address only and no one from the company was present. Correspondence was left at the premises cancelling the VAT registration. Assessments were issued in respect of its VAT liability which have not been challenged or appealed.

25 73. In this deal, as in all subsequent deals each of the traders concerned deducted their margins from the monies received before making payment to their suppliers.

Deal A11

74. The following transactions also took place on 25 April 2006.

75. URTB bought 4,000 Nokia N70s from Synectiv which made a profit of £72,220
30 on the transaction. Synectiv had acquired the goods from TEC which, in turn had been supplied by Tibuski Tech Limited (“Tibuski”). Tibuski’s supplier was Excell Distribution Limited (“Excell”) which had been supplied by Park Supplies Limited (“Park”). Park had purchased the goods from Colston Associates Limited (“Colston”).

76. Mr Chandoo explained that, although the business relationship with TEC
35 (Synectiv’s supplier in this and deal J3) stemmed from contacts made by Paul Burgess, he would regularly meet Vipul Patel TEC’s director and Arshad Mahmud its “main trader” at Interken, the freight forwarders. However, Mr Chandoo did not visit TEC’s premises or obtain a reference saying:

40 “I felt comfortable. I always say this: we are not in the business of ticking boxes. A lot of companies say, "Yes, I've done that, done that, done that." No. I had a personal contact, I felt comfortable to work

with the person. I didn't take identification from them, you are right, but if you are meeting somebody again and again and again, you are not going to ask them that.”

5 77. The information provided to Synectiv by TEC by way of due diligence included an undated and unsigned letter of introduction which appeared to have been sent by fax in January 2006, a copy of its VAT registration certificate showing a date of registration of 1 August 2001, a certificate of incorporation dated 5 February 2001 and bank account details of accounts with Clydesdale Bank and the FCIB.

10 78. On 12 May 2006 UAB made a payment to Mortop of £948,000 in relation to 4,000 Nokia N70s. Mortop paid these monies to Amex as part of a bulk payment of over £2.2m. Amex paid £948,000 to URTB which paid £938,000 to Synectiv. The monies took under an hour to be transmitted from the FCIB account of UAB into Synectiv's Barclays account.

15 79. On 15 May 2006. Synectiv paid TEC in two instalments from its Barclays account into an account held by TEC with Clydesdale Bank. On 16 May 2006 TEC paid Tibuski from its FCIB account and Tibuski paid Excell. Although Excell had been supplied by Park it made payment, less commission, directly to Macdelta on the instruction of Park which had requested that Excell pay it, Park, a commission of £5,000 and the balance to Macdelta. No funds were paid to Macdelta's supplier
20 Colston. On receipt of the funds Macdelata paid UAB £984,700. The transactions starting with TEC and ending with UAB were completed in about an hour.

80. Colston was incorporated on 11 October 2005 and registered for VAT from 29 December 2005. Its VAT return for the 02/06 accounting period was returned to HMRC marked “gone away” although in a subsequent telephone call purporting to be
25 on behalf of the company information was sought as to how to change the address of a principal place of business and HMRC were advised that the business activities had changed. Documents found at a freight forwarder indicated that Colston had been acquiring goods from the EU on 25 April 2006.

81. An officer from HMRC telephoned Colston on 26 April 2006 and spoke to a
30 person who identified himself as a director but was unable to give the address of the company and accepted that he was not a director but was taking calls on the director's behalf. The company was deregistered on 26 April 2006 This was later amended to 30 April 2006 simply because between 25 and 30 April 2006 it had made supplies in excess of £113m with a liability to VAT of £30m. As this had not been declared to
35 HMRC an assessment was issued on the company which has not been challenged or appealed.

Deal A12

82. On 26 April 2006 Synectiv sold 4,000 Sony Ericsson W810is to a Dutch
40 company GSM Touch BV (“GSM”) at a profit of £83,800. It purchased them on the same day from Broadcast Limited (“Broadcast”). The supply chain for these phones has been traced back to Colston via Daraj Trading Limited (“Daraj”), Excell, Xcel

Solutions Limited (“Xcel”), Futuristic Electronics Limited (“Futuristic”) and Fortwell Limited (“Fortwell”).

83. GSM, Synectiv’s customer in this deal and deals A13 and J5, was incorporated by Akmal Atta Mian, a Dutch national and the director of Broadcast (which was
5 Synectiv’s supplier in this and deals A13 and J5) in 2002. It commenced trading in October 2005. Its turnover the following year exceeded £127m. Information obtained by HMRC from the Dutch Revenue Authorities states that GSM “is managed by Bernardus Willy Braams who “does not have any experience in international trade. He worked in the catering industry and with car tyres. He learned the trade from H A
10 Mian.”

84. Shortly after the commencement of trading, in November 2005, GSM sent an unsigned and undated letter of introduction by fax to Synectiv. Also sent with the letter were the company and VAT registration documents of GSM. These showed that GSM was registered for VAT in the Netherlands on 11 October 2005.

85. In January 2006 whilst at Interken, Mr Chandoo happened to meet the director of GSM, Bernardus Willy Braams. Following that meeting Mr Chandoo decided to “do business” with GSM without requiring the supply of any identity documents. He had sought identity documents from URTB and another customer, French company Evolution SARL (“Evolution”) but he decided that in the case of GSM such
20 documents were unnecessary explaining that:

“It [the identity document] may have been forthcoming ... but I didn't particularly go to see Mr Braams, I think I made that clear, and say – I think – he was there, he was seeing Interken, Interken must have been comfortable that this is Mr Braams of GSM and I felt comfortable this
25 is Mr Braams of GSM.”

86. Broadcast, Synectiv’s supplier in this and deals A13 and J5, was contacted by Mr Chandoo. As he explained:

“I was at Interken, a lot of the stock I had seen a label which said "Broadcast" on it. I had made some simple enquiries via Google – it
30 could have been Google or another Internet search company – just to find out where the company was based. I was able to get a number. I contacted the company, and arranged a meeting with the director [at his office in Uxbridge]”

87. As has already been noted (at paragraph 83, above) Akmal Atta Mian, the director of Broadcast, was responsible for the incorporation of GSM (Synectiv’s customer in this deal and deals A13 and J5). Having visited Broadcast’s premises Mr Chandoo was satisfied that it was “fully aware of the need to satisfy itself with the integrity of the supply chain” and the first transaction with Broadcast took place on 28 February 2006.

88. On that day Broadcast sent Synectiv, by fax, an undated and unsigned letter of introduction stating that Broadcast is “a worldwide distributor/exporter of Mobile
40

phones of all leading brands”. It also provided copies of its incorporation and VAT certificates, bank details and a copy of the passport if its director.

89. Macdelta made a payment of £1.1m to Brandsite Market SI (“Brandsite”) on 15 May 2006 in relation to 4,000 Sony Ericsson W810is. Within minutes Brandsite paid the monies, less a commission, to GSM.. On 16 May 2006 GSM paid Synectiv which made a payment of £1,225,337 into the FCIB account of Broadcast in two instalments on 17 May 2006. On the same day funds can be traced through the FCIB accounts of Broadcast, Fortwell, Futuristic and Xcel into the account of Excell with each trader, other than Fortwell deducting its commission. Rather than pay its supplier, Daraj, Excell paid Macdelta. Colston had issued written instructions that payment was to be made directly to Macdelta. Similar instructions had been given by Daraj to Excell.

Deal A13

90. GSM bought 2,000 Nokia 9300is from Synectiv 27 April 2006. Synectiv, which made a profit of £47,360 on the transaction, had been supplied by Broadcast which had been supplied by Fortwell. Fortwell’s supplier was Xcel which had acquired the phones from Excell. It had been supplied by Daraj which had bought the goods from Colston. Colston had been supplied by Macdelta.

91. On 11 May 2006 Macdelta made a payment £637,000 to the account of Fluid Trading Limited (“Fluid”) in relation to 2,000 Nokia 9300i mobile phones. Fluid paid GSM £636,000 on the same day within 12 minutes of receiving the money. On 12 May 2006 GSM paid Synectiv £632,000. Synectiv paid Broadcast on 15 May 2006 which in turn paid Fortwell. Payment continued along the supply line via Fortwell and Xcel to Excell within 45 minutes. However, Excell did not pay Daraj but paid the monies, less commission, to Macdelta.

Deal A14

92. Synectiv sold 2,000 Nokia N70s to URTB on 27 April 2006 making a profit of £35,010. It acquired the goods from Owl Limited (“Owl”) under an invoice dated 28 April 2006. The supply chain, all with invoice dates of 28 April had been traced back from Owl to Grovner Trading Limited (“Grovner”) to Xcel then either Maxwell Trading Limited (“Maxwell”) or Excell. There is some discrepancy in the deal documents as to which was Grovner’s supplier, some indicate Excell others Maxwell. Both businesses raised purchase orders and invoices for the goods, and both made supplier declarations with regard to the sale and purchase of the goods and both issued instructions purporting to release the goods. However, Park, the next company in the deal chain only issued an invoice and payment instructions to Maxwell and instructed the freight forwarder Interken to release the goods to Maxwell.

93. Park obtained the phones from SS Enterprises Limited (“SS”) which in turn acquired them from Macdelta.

94. Mr Chandoo explained that he used to make frequent visits to freight forwarders and suppliers to collect stock for the retail side of Synectiv’s business. In 2005, when

visiting a supplier, New Way International, which had premises opposite Interken's, he met Rakesh "Bobby" Sharma, a representative from Owl who was unloading a vehicle with a colleague and, as Mr Chandoo put it, he "had an opportunity to discuss things with him."

5 95. When asked about the meeting and what was discussed Mr Chandoo said:

10 "He was delivering stock to New Way at the time I was collecting stock from New Way. And I obviously looked at it as an opportunity to – we were always looking for ways to meet new suppliers and new customers. We had a brief discussion about his involvement in the telecom industry. He had actually already known us; Synectiv was quite a well-known company in the trading because of its authorised distributorship. ... So he was aware of us and actually keen to work with us. And we felt that he was supplying stock to a supplier that we were taking stock from, so I felt comfortable to work with him."

15 96. On his return to Synectiv Mr Chandoo mentioned the meeting to his brother Arif who said that he was aware of Owl and had previously met Bobby Sharma. Although an undated and unsigned letter of introduction was sent to Synectiv by Owl together with certificates of incorporation and VAT registration and bank account details, Mr Chandoo did not consider it necessary to obtain any proof of identification
20 or trade references explaining that:

"... by the visit I have obtained verbal references, because if he's supplying stock to New Way, I believe in essence that is a kind of reference. I'm buying from New Way International; he's supplying New Way International."

25 He continued, when asked what verbal references he got in relation to Owl,

"I didn't take another verbal reference. I felt comfortable that if he is supplying a supplier that I'm currently taking stock from, I felt comfortable to purchase from him."

30 97. URTB paid Synectiv for the goods on 9 May 2006 and on 10 May Synectiv paid its supplier, Owl. This was five days after the goods had left the UK and despite Owl's invoices requiring payment on the date of the invoice, 27 April 2006. Owl had already paid Grovner for most of the goods and paid the balance on 11 May 2006. On
35 12 May 2006 the money passed through the accounts of Grovner and Xcel into Excell's account. Again Excell did not pay its supplier Park but paid Macdelta directly. Macdelta had issued written instructions to SS to pay the monies exclusive of VAT into its account. This instruction was relayed by SS to Park and Park issued similar instructions.

40 98. SS was incorporated on 13 February 2006 and VAT registered from 3 April 2006. In its application for registration its business was described as "trading in art, decorations, furniture and rugs". However, documents uplifted from its principal place of business indicated that it has acquired mobile phones worth over £81m from EU traders and sold them in the UK. The principal place of business declared by SS was a residential flat on a council estate but when it was visited by HMRC in

September 2006 it was found to be uninhabited. Assessments for unpaid VAT in excess of £14m have been issued against SS which have remained unpaid, these have not been challenged and no appeal has been made against them.

Deal A15

5 99. On 28 April 2006 Synectiv sold 2,000 Nokia 9500s to URTB at a profit of £52,506. It had purchased the phones from Top Telecoms which in turn had been supplied by TEC. TEC had acquired the goods from JD, its supplier was Regal which had been supplied by Zenith. Zenith had acquired the goods from Computec.

10 100. On 9 May 2006 TEC paid JD. The monies then passed along the supply chain on the same day through the accounts of Regal, Zenith and Computec, Megatek, UAB, Mortop and Amex into the account of URTB which paid Synectiv on 10 May 2006. Synectiv made a payment into the Barclays account of its supplier, Top Telecoms, on 10 May 2006.

06/06 VAT Accounting Period

15 101. During its 06/04 VAT accounting period Synectiv entered into four wholesale deals, three in mobile phones and one in MP3 players on which it recovered VAT. However, HMRC denied its right to recover input tax in respect of the following three transactions.

Deal J2

20 102. On 7 June 2006 Synectiv sold 3,000 Nokia N91s to a French company Evolution making a profit of £79,665. This was Synectiv's first transaction with Evolution having acquired the phones from Owl which had been supplied by High Speed Business Limited ("HSB"). Its supplier was Performance Specifications Limited ("Performance") which had acquired the phones from Novafone (UK) Limited ("Novafone"). Its supplier was Udeil Solutions Limited ("Udeil"). All of
25 these transactions took place on 7 June 2006.

30 103. The French Authorities reported to HMRC that Evolution, Synectiv's customer, operated from a temporary business address rather than its own premises. Although it claimed to acquire goods and sell them to other EU traders it was unable to produce any evidence of these sales nor did it provide any supporting evidence that the goods either entered or left French territory. It also failed to report its intra-community acquisitions from Synectiv. It was deregistered on 3 September 2007 due to an absence of economic activity.

35 104. Mr Chandoo first became aware of Evolution when he met its director Alfred Warner with Sebastien Fortin, who became his contact in the company, at the CeBit exhibition in Hanover in March 2006. Mr Chandoo explained that he had not arranged to meet the representatives from Evolution but that he had attended the exhibition to meet new suppliers and customers. Having had, what Mr Chandoo described as "a

satisfactory verbal reference” from Interken, Synectiv commenced trading with Evolution.

105. However, as is the case with other deals entered into by Synectiv, Mr Chandoo, did not seek trade references, obtain credit reports or ask for accounts. Although Mr
5 Chandoo accepted that the deals in question were “big deals”, he took no more than an oral reference from Interken. He explained:

“... the way we traded is we were not giving credit out, so we were comfortable that our main issue was: was he financially strong? Could he pay for stock? Was he reliable?”

10 When asked “how did you find out he could pay for stock?” Mr Chandoo replied,

Essentially, on the customer side what we used to do is we used to check with the freight forwarder how people ship stock to this company, because the worst thing is – we don't want to ship stock, like you said, into France and then find out: "Hang on a second. This guy has never bought stock before. He's never paid for stock." We used to
15 take a verbal reference from Interken to say, "Look, have you shipped stock previously to this customer? Are you aware of any issues that occurred?" So it was important for us, on the customer side, to take those verbal references because, like you mentioned, we had to send the stock on to the continent.”
20

106. On 9 June 2006 Owl paid HSB which then paid Performance. Performance, rather than pay its supplier, Novafone, paid Macdelta on the instruction of Udeil. Macdelta then paid £801,000 into the FCIB account of Maktrim based in Poland.
25 Maktrim then transferred funds to the Spanish company Dantec with all transactions occurring in an hour. On 12 June Dantec paid £1m to Evolution and within 15 minutes Evolution had paid Synectiv. Synectiv paid its supplier, Owl on 13 June 2006.

107. Udeil was incorporated on 19 September 2005 and registered for VAT from 26
30 September that year. Between 25 May and 8 June 2006 it acquired large quantities of mobile phones from traders in other EU member states, principally from Macdelta in Cyprus. It failed to comply with a direction from HMRC to submit a VAT return for the period 1 May to 8 June 2006 and was deregistered. Assessments for unpaid VAT in excess of £7.6m were issued. There has been no appeal against the assessments and
35 HMRC have not had any contact with Udeil since September 2006.

Deal J3

108. The following transactions occurred on 8 June 2006.

109. URTB bought 4,000 Nokia N80s from Synectiv which made a profit of £99,400. The deal chain has been traced from Synectiv through to an Estonian
40 company Premisten OU (“Premisten”) via TEC, Mana Enterprises Limited (“Mana”), Microchoice Limited (“Microchoice”), Sundial International Stock Traders Limited (“Sundial”), FoneFingz Limited and Knightswood Limited (“Knightswood”).

Although the invoice from FoneFingz was dated 9 June 2006, the purchase order from its customer Sundial is dated 8 June 2006, the same date as the invoices of all other participants in these transactions.

5 110. Knightswood was incorporated on 17 March 2006 and registered for VAT from 24 March. VAT assessments for in excess of £8.4m remain outstanding and have not been appealed or challenged. It is accepted that the tax loss is as a result of fraud.

10 111. UAB made a payment in excess of £1.3m to Mortop on 9 June 2006 which related to 4,000 Nokia N80s. The money was then transferred via Amex to URTB on the same day. On 12 June URTB paid Synectiv which paid its supplier TEC the next day, 13 June 2006. The monies passed along the supply chain on 14 June 2006 through the FCIB accounts of TEC, Mana, Microchoice, and Sundial. However, rather than pay its supplier, Sundial made a payment to a French company Intertech SARL which transferred the funds to UAB.

15 112. Premistan which supplied Knightswood had issued written instructions to “all parties concerned” that the monies, including VAT, should be forwarded to Intertech minus a commission payable to an account in the name of Interdev Information Systems. These instructions were relayed by Fonefingz to Sundial with a small commission payable to itself.

Deal J5

20 113. On 13 June 2006 GSM purchased 3,164 Nokia 8800s from Synectiv which made a profit on the transaction of £208,337.58. This was made up of 3,000 Nokia 8800s that Synectiv had acquired from Broadcast on 13 June 2006 with the addition of 164 phones by Synectiv from its retail stock.

25 114. Broadcast had acquired 3,000 Nokia 8800s phones from Xcel. Its supplier was HSB which, in turn, had been supplied by AW Associates Limited (“AW”). AW was supplied by Atlantic Catering Equipment Limited (“Atlantic”). Although the supply chain has only been traced back to Atlantic, according to its deal log, between 8 and 13 June 2006 it was supplied by Universal Appliances Limited (“Universal”) and from 14 to 30 June 2006 its supplier was JD Telecom Limited (“JD Telecom”).

30 115. On 12 July 2006 Amex paid £1.6m to Brandsite in relation to 3,164 Nokia 8800s. The money was transferred on the same day to GSM which paid Synectiv within 14 minutes of the money having left Amex’s account. Synectiv paid Broadcast on 13 and 14 July 2006 and the money moved along the supply chain via the accounts of Broadcast, Xcel, HSB and AW which, on the written instructions of Atlantic, made
35 a payment to Amex.

116. Universal, which was incorporated on 23 March 2006 and registered for VAT from 22 May that year, has outstanding VAT assessments issued against it and/or an entity purporting to be it. Universal’s trading address was the residence of the director in a block of flats and there was no answer when visited by HMRC in June 2006.
40 Although £nil VAT returns were submitted for the period 06/06 Universal or an entity

purporting to be Universal had made supplies of mobile phones and some i-pods generating supplies in excess of £1m between 8 and 13 June 2006 which had not been declared. In January 2007 the director of Universal denied making these supplies and claimed that the company had been hijacked.

5 117. JD Telecom, the other trader supplying Atlantic in June 2006, failed to comply with a direction, by HMRC on 3 July 2006, to submit a VAT return for June 2006 and was deregistered. However, on 7 July 2006 a VAT return was submitted seeking a repayment of over £2m despite having supplied goods to both Atlantic and Novafone
10 generating an output tax liability of almost £4m and assessments were subsequently raised. On 29 March 2007 the accountant acting for JD Telecom wrote to HMRC denying the company had made these supplies. The address shown on the invoices for the June supplies was visited in June 2007 and it was discovered that no business called JD Telecom had ever existed at the premises. In the circumstances HMRC concluded that the VAT identity of JD Telecom had been hijacked.

15 **Discussion**

118. In *Blue Sphere Global v HMRC* [2008] UKVAT V20901 the Tribunal identified the issues to be determined in an MTIC appeal such as the present. These were approved by the Court of Appeal in *Mobilx*, at [69] and are as follows:

- (1) Was there a tax loss?
- 20 (2) If so, did this loss result from a fraudulent evasion?
- (3) If there was a fraudulent evasion, were the appellant's transactions which were the subject of this appeal connected with that evasion? and
- 25 (4) If such a connection was established, did the appellant know or should it have known that its transactions were connected with a fraudulent evasion of VAT?

119. We consider each of these issues in turn.

Tax Loss

120. It is accepted that there is a tax loss in each of the deals under appeal.

Fraudulent Evasion

30 121. It is also accepted, in our view quite correctly, by Synectiv that the loss of tax was due to fraudulent evasion. Given the involvement of many of the same participants together with the circularity of funds in the deals described above, each of which took place in a single day, it would seem highly improbable that these were commercial transactions between unconnected parties. Indeed the evidence leads us to
35 conclude that there was a contrived scheme for the fraudulent evasion of VAT with each of the deals having been pre-arranged.

Connection

122. Other deals A11 and J5, it is accepted that the transactions entered into by Synectiv were connected to the fraudulent evasion of VAT.

5 123. With regard to deal A11, Mr Farrell submits that there is no evidence that Colston issued a VAT invoice or received any consideration for any supply and that if a transfer of goods is “done otherwise than for a consideration” it cannot constitute a supply as defined by s 5(4) VATA. He points to the fact that no payment instructions were issued by Colston and that the banking evidence does not show that any consideration was received, also the documentation relating to the deal was produced
10 by Park not Colston and that the supplier declaration produced by Park and was not signed by or on behalf of Colston.

124. A similar argument is advanced in respect of Deal J5. Again Mr Farrell contends that there is no evidence that Universal issued a VAT invoice or received any consideration for the goods. He also submits that the evidence of HMRC officers
15 Gordon Smith and Paul Cole that, on the basis of Atlantic’s deal logs, it is “probable” that Universal made a taxable supply declaration should be rejected.

125. However, the evidence of Paul Cole was accepted in its entirety and no questions about this aspect of the deal were put to Gordon Smith in cross examination.

20 126. In the circumstances we agree with Mr Kerr who submitted that the s 5(4) VATA argument is misconceived. The issue in this appeal is not whether there has been a supply of goods, as defined by s 5(4) VATA, between Colston and Park but whether Synectiv’s transaction was connected to the fraudulent evasion of VAT. In view of our conclusion in paragraph 121, above, that there was a contrived scheme for
25 the fraudulent evasion of VAT with each of the deals having been pre-arranged it must follow that deals A11 and J5 are part of this orchestrated scheme and are therefore connected to the fraudulent evasion of VAT.

Knew or Should Have Known

30 127. We now turn to the issue of whether Synectiv, through Asif Chandoo, knew or should have known that the transactions it was entering in to into were connected to the fraudulent evasion of VAT.

128. In doing so it is clear from *Mobile Export 365 v HMRC* [2007] EWHC 1737 (Ch), at [20(4)], that we are entitled to rely on inferences drawn from the primary facts. It is also clear, from the approach taken by Christopher Clarke J in *Red12 v HMRC* [2010] STC 589 which was adopted by Moses LJ in *Mobilx* that we should not
35 unduly focus on whether a trader has acted with due diligence but consider the totality of the evidence.

129. Moses LJ said, at [83]:

“... I can do no better than repeat the words of Christopher Clarke J in *Red12 v HMRC* [2009] EWHC 2563:-

5 [109] “Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.

15 [110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.

30 [111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

35 130. Before we consider whether Mr Chandoo and Synectiv knew or should have known of the connection with fraudulent evasion of VAT, we first examine the extent of Mr Chandoo’s knowledge of MITC fraud in the wholesale mobile phone trade, the sector in which Synectiv was operating, during the periods in which it entered into the deals with which this appeal is concerned.

40 131. It is clear that Mr Chandoo was aware of the prevalence of MTIC fraud at the time of the deals. He was Synectiv’s company secretary at the time that his brother, Arif, was arrested and prosecuted in connection with MTIC fraud following Operation Venison. In addition Synectiv received several letters from HMRC warning of the extent of MTIC fraud in its trade sector. We now turn to whether he knew or should have known that Synectiv’s transactions were connected to the fraudulent evasion of VAT.

132. Mr Kerr contends that having regard to all the circumstances of the case, and the following factors in particular, the only possible conclusion that can be reached, is that Synectiv knew or should have known of the connection to fraud:

- (1) Its trading environment too good to be true;
- 5 (2) It was able to match precisely the available supply to a demand in another Member State;
- (3) All sales took place in one day;
- (4) Synectiv added no value to goods;
- (5) Suppliers and customers repeatedly failed to identify a cheaper source of
10 supply or higher demand;
- (6) Synectiv did not have to finance deals as it did not pay a supplier until paid by its customer;
- (7) It was able to ship goods out of UK using the same freight forwarder as its supplier before making payment;
- 15 (8) The technical specification of the phones bought and sold indicated that goods had been imported and were not intended nor suitable for UK market;
- (9) All suppliers and customers operated sterling accounts with FCIB;
- (10) The necessary due diligence to protect its commercial interests was not taken; and
- 20 (11) The profit of all the participants added together equalled the VAT reclaimed
- (12) Without the monies receivable from repayment claims Synectiv was not able to fund the transactions.

133. Mr Farrell submitted that Synectiv had been used by sophisticated fraudsters
25 and was unknowingly inserted into a number of chains to crystallise the fraud to the company. However from the standpoint of Synectiv the deals appeared to be good and profitable business transactions and no different from previous trades it had undertaken.

134. As Mr Farrell recognised, in order to decide whether he knew or should have
30 known that Synectiv's transaction were connected to fraud it is necessary to carefully assess the credibility or otherwise of Mr Chandoo's evidence.

135. We appreciate that Mr Chandoo gave full and frank evidence over the three
35 days in which he was cross examined by Mr Kerr. While he was plainly knowledgeable about the wholesale mobile phone industry, our impression was that Mr Chandoo was a somewhat naïve businessman whose ambition was, above all else, to close deals and make a profit. He did not appear to be concerned about the improbable coincidence of chance meetings with suppliers and customers. Despite being fully aware of the prevalence of MTIC fraud in the industry, he appears to have been too ready to "feel comfortable" with potential trading partners without the sort of

further investigation into their credibility and ability to pay that could be expected of a prudent legitimate businessman.

136. For example, Mr Chandoo met Hussain Awad, the director of Top Telecoms which was Synectiv's supplier in deals A10 and A15, at the Willesden Mosque where he, Mr Chandoo, "was not a regular" and albeit having obtained company's incorporation and VAT certificates and verified its VAT number with Redhill, he commenced trading with Top Telecoms without asking for any proof of identification or seeking trade references.

137. Also, apart from oral references from Interken, he appears to have relied only on the fact that other participants in the transaction chains, such as GSM, TEC and Broadcast, used Interken or had a supplier or customer in common with Synectiv. A good example is Owl, where he met Bobby Sharma unloading a vehicle outside the freight forwarder.

138. In the case of URTB,, Mr Chandoo relied on his brother to translate and explain the commercial documents which were in French and he confirmed that discussion with Arif Chandoo contributed to the decision as to whether to trade. Mr Chandoo also appears to have relied upon Arif's knowledge of Bobby Sharma to begin trading with Owl. He took little precaution beyond his brother's knowledge.

139. However, we did not have the benefit of hearing from Arif Chandoo the sole director of Synectiv who, following his experience with Operation Venison, would have been only too aware of the prevalence of MTIC fraud within the mobile phone wholesale trade sector.

140. It is clear that the failure to call a witness does not automatically lead to an adverse inference being drawn. However, after an extensive review of the authorities, Brooke LJ, after in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, said, at 340:

"From this line of authority I derive the following principles in the context of the present case:

(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly

satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.”

141. We consider that Arif Chandoo might well have been expected to have been able to give material evidence on the central issue in the present case, namely whether
5 Synectiv knew or should have known that its transactions with which this appeal is concerned were connected with the fraudulent evasion of VAT.

142. The explanation given by Mr Chandoo for his brother’s absence, was:

10 “We didn't see any value [in him giving evidence]. Since Operation Venison, he took no further part in the trading element. His main role now is looking at new business opportunities, developments. So the way we saw it is everything from 2001, post-Venison, in terms of trading, I would be best to shed light on and we don't believe that he could shed any light on any of the transactions because he was not involved in them.”

15 143. However, in our view, this explanation is simply not credible and does nothing to enhance Mr Chandoo’s own evidence in relation to the transactions from which it is apparent that Arif had a part to play in the trading activities of Synectiv.

144. In the circumstances, and having regard to all the circumstances of the case, although we are not able to find that Mr Chandoo, and therefore Synectiv, knew that
20 the transaction were connected to fraud we find that he should have known that this was the only reasonable explanation for those transactions.

Conclusion

145. For the above reasons we dismiss the appeal

Right to apply for Permission to Appeal

25 146. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
30 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

35 **JOHN BROOKS**
TRIBUNAL JUDGE

RELEASE DATE: 22 November 2013