



**TC03387**

**Appeal number: LON/2007/00564**

*VAT – Transactions connected to MTIC fraud resulting in loss of tax –  
Whether Appellant knew or should have known – Yes – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MFT COMMUNICATIONS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN BROOKS  
MR NIGEL COLLARD**

**Sitting in public at 45 Bedford Square, London on 4 – 8 November 2013**

**Liban Ahmed and Adam Routledge of Controlled Tax Management Limited for  
the Appellant**

**Andrew Westwood, counsel, instructed by Howes Percival LLP, for the  
Respondents**

## DECISION

5 1. MFT Limited (“MFT”) appeals against a decision of HM Revenue and Customs (“HMRC”), contained in a letter dated 26 January 2007, to deny its claim for the deduction of input tax in the sums of £827,968.75 and £1,188,890.50 in relation to four transactions in its VAT accounting period ending on 30 April 2006 (04/06) and seven in its 31 May 2006 (05/06) accounting period, on the grounds that these transactions were connected to Missing Trader Intra-Community (“MTIC”) fraud  
10 which resulted in a loss of tax and that MFT knew or, alternatively, should have known that its transactions were connection to that MTIC fraud.

15 2. Although MFT accepts that all of these transactions were connected to an orchestrated MTIC fraud which resulted in a loss of tax, it contends that it was an “innocent dupe” taken in by its supplier and, as such, is a victim of the fraud and, like the appellant in *JDI Trading Ltd v HMRC* [2012] UKFTT 642 (TC), to which it is submitted that this case is “very similar”, MFT should be allowed to recover its input tax.

20 3. Given the frequency in which it has been described, we do not consider it necessary to provide yet another description or explanation of MTIC fraud in this decision but, if one were required, would refer to that adopted by Roth J at [1] – [3] of *POWA (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC).

4. MFT was represented by Liban Ahmed who was assisted by Adam Routledge, both of Controlled Tax Management. Andrew Westwood of counsel appeared for HMRC.

25 5. 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.

### Evidence

30 6. We were provided with witness statements made by the following Officers of HMRC:

- (1) Russell Coulson in respect of MFT;
- (2) Sarah Allen regarding The Accessory People (“TAP”) Group of Companies and in particular The Accessory People Global Limited (“TAP Global”);
- 35 (3) Timothy Reardon in respect of Computec Solutions Limited (“Computec”);
- (4) Martin Evans in respect of 3D Animations Limited (“3D Animations”);
- (5) Peter Davies regarding Anfell Traders Limited (“Anfell”);

- (6) Roger Mercott in relation to Star Group International Limited (“Star Group”);
- (7) Kevin Wright; in respect of the First Curacao International Bank (“FCIB”);
- 5 (8) John Andrews who analysed data from FCIB records;
- (9) Philip Hawkins, a criminal investigator with HMRC; in relation to ‘Operation Euripus’ trials which resulted in 15 convictions including that of Nasir Abdul Khan the chairman, president and controlling shareholder of the TAP Group of Companies; and
- 10 (10) Rod Stone, whose witness statement consists of generic evidence relating to MTIC fraud;
7. Mr Coulson and Ms Allen gave evidence before us. Mr Coulson was cross examined by Mr Ahmed and Ms Allen by Mr Routledge.
8. We found Ms Allen to be a helpful and straightforward witness.
- 15 9. However, the same cannot be said of Mr Coulson who appeared to be more interested in advancing HMRC’s case than assisting the Tribunal, often giving evasive rather than direct answers to questions put to him, eg in his witness statement Mr Coulson had “categorically” denied that, at a meeting with Mr Sharif on 4 July 2006, he stated that he was aware of the TAP Group’s identity or that he confirmed that it
- 20 was a “large, well established business”. However, when it was put to him in cross examination that he agreed with the appellant’s understanding of the size and respectability of the TAP Group, rather than deny this was the case, his reply was “there’s no evidence of such comment.”
10. As they were not challenged, the statements of HMRC’s other witnesses were
- 25 admitted in evidence.
11. Ejaz Sharif, one of the two directors and shareholders of MFT, made two witness statements. He gave oral evidence on its behalf and was cross examined by Mr Westwood.
12. We did not find Mr Sharif to be a particularly convincing witness; some of his
- 30 answers during cross examination were evasive, some contradicted by documentary evidence, contemporaneous to the event in question; and some showed a lack of understanding of the documentation provided by MFT.
13. We give the following as examples:
- 35
- A direct question about the importance of inspection reports to MFT was only answered by Mr Sharif after it had been put to him several times, and then only after intervention by the Tribunal;

- Mr Sharif confirmed that TAP Global would not chase MFT for payment until it had first received payment from its customer, whereas a letter, dated 19 May 2006, from TAP Global to MFT stated:

5 As you will appreciate, we have been patient in awaiting payment on transaction dated 24<sup>th</sup> April [2006]. We have already extended credit for several weeks. Unfortunately we are leaving ourselves quite exposed, and cannot continue to wait several weeks for payment.

10 Please can you ensure that we receive full payment promptly. We may be unable to supply you with any further stock until this matter and any other transaction within our Group of Companies is resolved.

Please be advised that if this matter is not resolved, the matter it will be passed to our Debt Recovery Division, the matter will be taken out of our divisions hands and any actions deemed necessary will be taken to recover the monies.

- 15 • In addition, having explained that he was solely responsible for MFT's transactions, Mr Sharif was unable to explain what was meant by the letters "CIF" on documents produced by MFT. All he could say was that it meant "something in freight" although at the time of the deals he said that he had "obviously known what everything meant."

20 14. Abdul Khan, the other director and shareholder of MFT, took no part in the proceedings.

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

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

## 25 **Facts**

### *Star Group*

17. Star Group was incorporated on 13 February 2003 and Abdul Khan was appointed director on the same day. It applied to be registered for VAT on 28 February 2003 describing its business activity on the application form (Form VAT 1) as "import and export" without specifying the type of goods which it intended to trade. Its turnover was estimated to be in excess of £100,000 and it was stated that the company did not expect to receive regular VAT repayments.

18. In response to a request by HMRC for clarification of its business activities and exactly what would be imported and exported, Mr Khan explained, on a form sent to him by HMRC on 7 March 2003 for this purpose, that this would involve "all commodities, service items, confectionary, medical supplies, construction materials, telecommunications, toys and working as a commission agency."

19. Having registered Star Group on the TradeUK.com and Alibaba.com websites the company was contacted in June 2003 by Euro GSM UK Limited offering stock. It contacted Atec Associates as a potential customer and subsequently six deals took

place. In July 2003 Star Group purchased goods (predominantly mobile telephones) from Medicom Products Limited, a hijacked company, and entered into 15 wholesale transactions which resulted in a tax loss of £924,902.

20. On 3 February 2005 Mr Sharif was appointed as a director of Star Group becoming an equal shareholder in the company with Mr Khan. Mr Sharif explained that he had known Mr Khan for 25 years and described him as a “very good friend of mine” in whose judgement he trusted. As Mr Khan did not have the time to continue wholesale and, as Mr Sharif had an “ambition to start trading” but “needed an office” where he could sit “and try to get a proper feel for things and hopefully strike some deals”, it was Mr Sharif who assumed responsibility for the day to day running of the business.

21. Mr Sharif described the relationship with Mr Khan as “very convenient for the both of us” and said that it was with Star Group that their “business relationship” started.

22. On 22 April 2005 Star Group applied to open an FCIB account. Mr Sharif’s name was given on the application form as the primary contact in the company and signatory on the account. It was around this time that Mr Sharif sought to find out more about wholesale trading and to do so he visited various wholesale websites but “found the best place to get good leads” was the website of the International Phone Traders or IPT.

23. Sometime in June 2005, when perusing this website, he came across an advertisement placed by TAP stating it was looking for “export partners”.

24. Mr Sharif explained that he was aware of TAP and Nasir Khan its president, as he was well known within the Asian community and perceived to be an entrepreneur of the calibre and status of Sir Richard Branson.

25. In 2001 Nasir Khan had received a “Young Entrepreneur” award, which was reported in the *Asian Xpress* under the headline *Phonetastic Mobile whizkid scoops top prize*. He had also been named in the *Sunday Times* “rich list” in 2003 and subsequent years and had been listed as number 9 in the *Esquire* Magazine list of most influential males in British business 2004. His celebrity status was enhanced by his publicised charitable donations and marriage to the actress Laila Rouass in 2005.

26. In order to take advantage of the opportunity to work with Nasir Khan’s company Mr Sharif telephoned TAP and a meeting was arranged with a Chris Frazer at “Accessory House”, TAP’s headquarters in Chessington, Surrey, which Mr Sharif attended with his brother.

27. Mr Sharif described his visit to TAP’s premises for the meeting as follows:

“As I was driving into the car park on the left-hand side [the] first thing I saw was all these cars basically top executive cars like Porsches, Aston Martins, basically it's a lot – Mercedes, a lot of very, very expensive cars which really – what hit hard was they all had number

plates like TAP 1, TAP 2, TAP 3, TAP 4, so I could assume there's some high – executive people who actually had these cars. I was like, you know, thinking – that was a "wow" in itself basically.

5 So anyway – so we drove to the car – it was round the back. Went into the gate, where we parked, it's near enough the gateside, and I could also see more car parking space for their, if I can remember, the other people that worked for them. Both sides' car parks, basically, on a gravel ground.

10 So when I went in there I had to press on a buzzer and a security gentleman came in and I remember him taking my passport for ID and then taking us up some stairs. And then there was another code you have to put in basically to get in. Anyway he told us to wait in the seated area so he could get us our badges. There was like a sofa on the right-hand side, there was a table and something else on the right, I  
15 can't really remember – I remember one thing: when I sat on the sofa and looked opposite I could just see accolades everywhere of letters from people like Iain Duncan Smith, Chris Tarrant. There was something regarding a donation towards Crime Stoppers. A lot of this was to do with donations, something to do with the Mayor of Kingston,  
20 a lot of things requiring donations. So I'm thinking to myself: wow, this gentlemen – I know of Nasir but everybody knows of Nasir Khan, even like celebrity status, you know.”

He continued:

25 “After Chris Frazer came in and took us out for through another door which goes out of this room, and all I could see on the right was like big, long offices, like, say, 34 people walking around in the office on the right-hand side of it. It went on for quite a long time. It's quite a long office. Chris took us into an office on the left which was an amazing office. I have never seen one like it. It was a really big office  
30 and – it was like an – it was an executive room. I think it was the room of Mr Khan. It could have been the room of Mr Khan. It was one of them special VIP kind of offices which is probably twice the size of this room [used by the Tribunal]. And that's basically – that was like, you know, quite surprising to me.

35 I was actually quite nervous. I was quite nervous being there, and excited, because I'm actually now in a place which – you know what I mean, Mr Khan, you know, I can brag about this when I get – you know what I mean, I can tell people, you know, I been there, you know.

40 What I did like about it is that as you go out – you go back out the office, they've got a beautiful area where – for their workers where they got, like, sofas and like a pool table. Basically it's a nice area for the workers, you know, very beautiful room. So I knew he looks after the workers basically, you know, he's got a nice area for them.”

45 28. Office Allen agreed that TAP's premises gave the appearance of a “fairly professional set up” and that she was aware of the reputation of Nasir Khan who she described as having “a fairly high profile.”

29. During the course of the meeting Chris Frazer explained to Mr Sharif that the TAP group were looking to “partner” companies on the basis that the company concerned would act as broker in the export of mobile telephones to overseas customers specified by TAP. He said that there would not be any risk of MTIC fraud as TAP would be importing the goods itself or sourcing it directly from manufacturers. TAP expected its brokers to purchase the goods on credit and transfer it “ship on hold” pending payment from the customer.

30. Documentation packs which would include customer details, the maximum at which goods could be sold, freight forwarder details and instructions relating to the payment would be provided to the company by TAP, which would also insure the stock and pay freight forwarding charges. Mr Frazer also explained that all payments were to be made through the FCIB.

31. Mr Sharif said that he had “a very fruitful discussion” with Mr Frazer and they “discussed the problems and dangers associated with these industries, notably MTIC fraud” and it was explained that “TAP were going to be the importers then we would be absolutely safe from this type of fraud because of the due diligence undertaken by TAP”. However, despite any understanding that Mr Sharif may have had to the contrary, TAP (and TAP Global) did not actually import the goods.

32. When asked by Mr Sharif why a company such as TAP required “export partners” Mr Frazer said that it was a way for it to finance increased volume of trade by freeing up cash flow. From Mr Sharif’s point of view it was a “once in a lifetime opportunity” to be involved in such transactions with TAP. As he said when it was put to him that the deals were too good to be true:

“It wasn't too good to be true. It was actually one of the best moments of my life. I've just walked into TAP Global, with the CEO is Mr Nasir Khan at the time, how could it be too good to be true? I didn't walk into a one man office and someone offered me. Yes, that's probably too good to be true. This is TAP Global, known everywhere. It's not too good to be true. It's not a statement you can use in a scenario like this, with a company like this. Like I said, I didn't go to a corner shop and make a few million pounds. I'm sorry, it makes sense, because this is TAP Global. It's a big company. This man is a celebrity. He married an actress. He's everywhere, so I'm sorry, you know, I can't say no more of who he is, because I think everybody knows him near enough and that's – what more can I say?”

33. On 25 July 2005 Mr Abdul Khan visited HMRC’s offices in Maidenhead where he met Officers Taz Johal and Roger Mercott. Mr Khan had requested the meeting as Star Group had commenced trading with TAP and he wanted to discuss the transactions. Having explained how deals were put together Mr Khan requested that Star Group be permitted to change from quarterly to monthly VAT returns as it was a repayment trader. After raising concerns about the trade with TAP, the officers explained that a request for monthly returns should be put in writing and that it would be necessary for the company to establish a trading pattern before such a request was granted. Mr Sharif confirmed that he had discussed this meeting with Mr Khan and that the deals with TAP had been discussed

34. On 25 July 2005 Star Group wrote to HMRC requesting that it should be permitted to make monthly VAT returns. However, this was request was refused in a letter, dated 15 August 2005, from HMRC to Star Group.

35. On 1 September 2005 Officers Roger Mercott and John Andrews visited the business premises of Star Group and met with Mr Sharif. Following a discussion on the business and the transactions with TAP, Mr Sharif enquired as to the legal requirements regarding due diligence. In reply Mr Mercott said that he would send the relevant public notices, including Public Notice 726, to Mr Sharif, which he did on his return to the office enclosed with a letter dated 1 September 2005.

36. Although Public Notice 726 is concerned with “Joint and Several Liability” it is made clear (at section 1.3) that it should be read by all VAT registered businesses that trade in goods or services that are subject to MTIC fraud, which includes mobile phones (section 1.4). Section 4.4 of the Notice asks “How can I avoid being caught up in MTIC fraud?” It is answered in section 4.5 which advises that “reasonable steps” are taken to “establish the legitimacy of your supply chain and avoid being caught up in a supply chain where VAT would go unpaid.” It continues:

We [HMRC] do not expect you to go beyond what is reasonable. You are not necessarily expected to know your supplier’s supplier or the full range of selling prices throughout the supply chain. However, we would expect you to make a judgement on the integrity of your supply chain.

Although examples of checks are contained at section 8 of the Notice, section 4.6 makes it abundantly clear that these are “guidelines” only, as “a definitive checklist would merely enable fraudsters to ensure that they can satisfy such a list.”

37. Mr Sharif confirmed that he had read and understood the Notice and that in 2005, before Star Group and MFT undertook any trading, he was “well aware” of HMRC’s concerns in relation to MTIC fraud in the wholesale mobile phone trade sector.

#### *MFT*

38. In December 2005 Mr Abdul Khan acquired MFT from Farooq Taj Mohammed. The reason for this was, as Mr Sharif explained, that MFT submitted monthly VAT returns which would enable repayments to be received more quickly than in the case of Star Group which, as we have already noted, had had its application to change from quarterly to monthly returns refused by HMRC. Although no payment was made to Mr Mohammed for the company Mr Sharif said that a liability of approximately £7,000 remained with MFT following its transfer.

39. MFT had been incorporated on 8 January 2002. Its director from 8 January 2002, Uzma Farooq Rehman, resigned on 25 May 2003 and was replaced on that day by Mr Mohammed from whom MFT was purchased by Mr Khan who with Mr Sharif were appointed as directors on 12 December 2005 and 1 January 2006 respectively. On 1 January 2006 Mr Mohammed resigned his directorship.

40. An application to register for VAT had been submitted to HMRC by Mr Mohammed as a sole trader, trading as FT Communication, on 5 April 2001 with the business activity described on the application as the “export of mobile phones”. The transfer of the VAT registration from a sole proprietor to a limited company, MFT, was completed on 26 August 2003.

41. As with Star Group Mr Sharif is an equal shareholder with Mr Khan in MFT and also, as with Star Group, it is Mr Sharif who is responsible for the day to day running of the business, relying on Mr Khan for financial support.

42. On 28 February 2006 HMRC Officers Russell Coulson and Ian Simmons made an unannounced visit to the business premises of MFT, which it shared with Star Group. However, as Mr Sharif was not present arrangements were made for another visit and this took place on 7 March 2006 when the officers met with Mr Sharif. Mr Sharif explained that MFT would purchase goods from TAP Global which would provide MFT with a European customer and dictate the profit margin for the sale. In his report of the visit Mr Coulson noted that he explained joint and several liability to Mr Sharif and that:

Due diligence checks carried out by MFT appear insufficient. No customers have been met, no appropriate checks have been carried out on TAP. Mr Sharif has met sale people but not Directors of TAP. Explained possible [joint and several] implications that could be applied if the company does not carry out due diligence. Issued [Public Notice] 726 & 703. Explained that the example of checks in Public Notice 726 is not an exhaustive list and should not be used as a tick list to protect the company.

43. On 10 March 2006 Officers Coulson and Simmons visited Mr Abdul Khan’s home place on 10 March 2006 to discuss his involvement with MFT.

### *Trading*

44. The first VAT return submitted by Star Group was in relation to its 07/03 VAT accounting period and declared a payment to HMRC of £4,905. The return for 11/03 included a repayment claim for £10,323. Subsequent returns until 09/05 did not declare any trade sales. However, in July 2005 Star Group entered into two wholesale “broker export” deals in which it was supplied with mobile phones by TAP which it sold to Neo Abaco BmbH and Olympic Europe BV in the Netherlands. Its VAT return for the period 09/05 included a repayment claim for £200,755.

45. Star Group also entered into two wholesale transactions in mobile phones in which it was supplied by TAP on 14 November 2005 and entered into two further similar wholesale transactions involving mobile phones on 7 December 2005 where its supplier was again TAP.

46. Between May 2001 and December 2005, ie the period before Mr Sharif and Mr Khan became directors and shareholders, MFT submitted a total of 54 VAT returns

involving repayments totalling £286,149 in respect of the wholesale trade in mobile phones. No returns were submitted for the 03/03 and 10/05 VAT accounting periods.

47. Having not undertaken any trade since its acquisition by Mr Khan and Mr Sharif on 14 February 2006 MFT entered into two transactions involving the purchase and sale of compact flash memory cards and air conditioning units resulting in repayment claim of £233,931.25.

48. On 24 April 2006 MFT entered into the following deals in mobile phones with which this appeal is concerned:

- (1) The purchase and sale of 2,500 Nokia 8800s;
- 10 (2) The purchase and sale of 3,000 Nokia 9300ls;
- (3) The purchase and sale of 8,000 Nokia N70s; and
- (4) The purchase and sale of 3,000 Nokia 9300s...

In all these deals MFT's customer was World Communications, a company based in Spain and which is an associated company of the French World Communications SARL. Also in each of these deals MFT had been supplied by TAP Global which, in turn, had been supplied by Multi Direct Limited ("Multi Direct"). Multi Direct had purchased the goods from Lets Talk Limited ("Lets Talk") and in deals (1), (2) and (3) Lets Talk had acquired the mobile phones from Computec and in deal (4) it had acquired the goods from Anfell College Limited ("Anfell"). It was not disputed that Computec and Anfell were fraudulent defaulting traders.

49. In all of these four deals, despite the Customer being based in Spain, the goods were transported to an address in the Netherlands of Magic Transport Limited, which was a house with no storage facilities in a residential part of the city, albeit on a "ship on hold" basis until payment was received by MFT.

50. On 26 May 2006 MFT entered into the following deals which are also the subject matter of this appeal:

- (1) The purchase and sale of 7,500 Nokia 8800s;
- (2) The purchase and sale of 2,740 Nokia N70s;
- (3) The purchase and sale of 8,000 Nokia 6680s;
- 30 (4) The purchase and sale of 1,000 Samsung 1000s;
- (5) The purchase and sale of 1,000 Nokia N9300s;
- (6) The purchase and sale of 1,000 Nokia 9300is; and
- (7) The purchase and sale of 500 Nokia N9500s.

As with the April deals MFT's customer was World Communications and its supplier TAP Global. In each of these deals TAP Global acquired the goods from Talk 2 Us Limited. It was supplied by Chatterbox Communications which purchased the goods from 3D. It is not disputed that 3D is a defaulting trader.

51. In the first of these deals, as in the April deals, the goods were transported to an address in the Netherlands of Magic Transport Limited.

52. Payments for these deals were processed through the FCIB accounts of the participants. Following analysis of the FCIB accounts, in all cases where it has been possible to do so, a circular movement of funds has been traced between the participants in the deals.

53. On the day that each deal took place TAP Global wrote to MFT in following terms:

Dear Ejaz,

10 **Re Brokered Export Deal dated 24<sup>th</sup> April 2006**

I write further to our telephone conversation of today to confirm that the goods listed below have been imported, that the CMR documentation is impending and that we have declared Vat on the same.

15 **1. 2500 Nokia 8800 phones, proforma invoice No 11170 TAPG**

I can also confirm that you will act as our broker with regards to the export transaction to **World Communications IMP-EXP SL**.

20 Finally, your remuneration for acting as broker shall be the difference between the amount of our proforma invoice and the price the goods are sold to **World Communications IMP-EXP SL** but up to a maximum price of **£436.00** per unit.

I trust that the above clarifies the agreement between us, but please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely

25 Faraz Mizra

TAP Global Trader

For and on behalf of The Accessory People Group of Companies

30 We have taken the above letter, which was dated 24 April 2006, in respect of the first of the 24 April 2006 deals as an example. However, other than the date, subject matter (ie type of mobile phone) and sale price, letters in identical terms were sent in relation to all MFT deals as they had been for the Star Group deals, save that in the case of the Star Group deals the letter was from TAP and not TAP Global. In all cases the goods were sold at the maximum price as stated in the letter.

54. Mr Sharif explained the position with regard to due diligence as follows:

35 "Anything relating to due diligence [if] TAP has said they have done that, there's nothing to worry about. Basically, we are the importers, this is how the deal broker works, we need an investment to basically release our cash flow. This is what it's all based on, this is what it's about. So they're saying, you know, they've done all the checks. They are a humongous company, they're going to do checks. They have  
40 compliance teams, legal teams, they got everything there, so for me to

say: no, no, excuse me, I'm going to go and do the checks, they would say – you know what I mean: who do you think you are? Do you trust me? It's not something you would do on a company that size. It's not rational. I'm not going to challenge a company that big, it doesn't make any sense. I'm even happy to be there. Working with TAP, working with Nasir Khan, it's a big thing in itself. I'm not going to question. That's like saying: I don't believe you. No, we don't believe you. What am I even doing there? I know TAP's a big company. The owner is a massive person around the industry. It's something you wouldn't – even in a rational you would not do. You don't, you don't do that. I'm not going to Richard Branson and say: I don't believe what you are saying, can I go and double-check? It's something you just don't do. In business logic, whichever way you could think of it, you do not do.”

55. Similarly Mr Sharif said he took TAP “at their word” that the goods were insured and for that reason MFT did not take out any insurance. He said that, “he couldn't see a company that size sending that amount of phones and not insuring them.”

56. Although MFT had instructed 4G UK Limited to carry out inspection reports on 100% of the goods and conduct a 10% IMEI check the reports produced indicated that IMEI numbers had not been scanned in all deals. When asked about this Mr Sharif said that he only looked at the top lines of the report to check that it referred to the type of inspection requested, but not at the results, before sending the report to TAP.

*TAP Global*

57. TAP Global was incorporated on 13 March 2000 and registered for VAT with effect from 1 June 2004. However, it submitted £nil VAT returns until July 2005. Before February 2006 it had entered into only one transaction which was in October 2005 and involved the purchase of fireworks. However, from February 2006 there was a significant increase in its trade which include deals with, amongst others, World Communications, the customer of MFT in its deals.

58. On 20 December 2011 Nasir Khan, who had been a director of TAP Global, was convicted of money laundering offences in relation to a large scale MTIC fraud investigated by HMRC as Operation Euripus. He was imprisoned for nine years.

59. In sentencing him HHJ Loraine-Smith said:

“Quite why somebody who had been as successful as you were would decide to become involved in fraud I very much doubt this court will ever know. I suspect the enormous profits which were available in the fraud were too great for you to resist, the figures speak for themselves: a VAT loss of at least £7.5 million on count 1; a VAT loss of at least £3.5 million on count 2; and over £6 million of your own profits laundered through the accounts referred to in count 3.

Obviously, you had the central organising role in what happened at Accessory House and in the use of your bank accounts. You have one previous conviction for insurance fraud but otherwise tried to paint

yourself as we have seen from the press cuttings as a generous provider to charities and also as an upstanding role model for others when in truth you were nothing of the kind.”

5 60. TAP Global was dissolved on 17 May 2011. On 6 September 2013 Nasir Khan was ordered to repay criminal profits of £14 million within nine months or serve an additional 10 years in prison.

## Law

61. The right to deduct input tax is derived from Articles 167 and 168 of Council Directive 2006/112/EC (previously Article 17 of the Sixth Directive 1977/388/EEC).  
10 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.

62. 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  
15 (“*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  
20 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  
25 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  
30 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  
35 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  
40 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.

5 [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”.

...

10 [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.”

15 63. 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:

20 “[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*.”

25 [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.”

30 64. In *Blue Sphere Global v HMRC* [2008] UKVAT V20901 the Tribunal identified the following issues (which were approved by the Court of Appeal in *Mobilx*, at [69]) to be determined in an MTIC appeal:

- 35
- (1) Was there a tax loss?
  - (2) If so, did this loss result from a fraudulent evasion?
  - (3) If there was a fraudulent evasion, were the appellant’s transactions which were the subject of this appeal connected with that evasion? and
  - (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?
- 40

65. It is clear from *Mobile Export 365 v HMRC* [2007] EWHC 1737 (Ch), at [20(4)], that the Tribunal is entitled to rely on inferences drawn from the primary facts.

5 66. It is also clear, from the following approach taken by Christopher Clarke J in *Red 12 v HMRC* [2010] STC 589, which was cited with approval by Moses LJ in *Mobilx*, at [83], that the Tribunal should not unduly focus on whether a trader has acted with due diligence but consider the totality of the evidence:

10 [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.

20 [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.

35 [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.”

40 67. It is not disputed that 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]:

45 “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.”

68. 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]:

5                                   “... 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.”

### **Discussion**

69. We accept, as in the case of *JDI Trading Ltd v HMRC* (“*JDI*”), that it is possible  
10 for a trader to be taken in by its supplier and/or customer and unwittingly become connected to the fraudulent evasion of VAT.

70. In such circumstances the trader will be a victim of the fraud and be allowed to recover its input tax.

71. However, as Mr Westwood submitted, this case is very different from that in  
15 *JDI*.

72. In that case, the directors, who included the co-founder of Carphone Warehouse, had had many years experience in, and knowledge of, the mobile phone industry before it entered into the deals under appeal.

73. In the present case Mr Sharif’s only experience of wholesale trading in mobile  
20 phones was obtained as a result of the TAP and TAP Global deals through Star Group and MFT respectively. Although, to use Mr Sharif’s words, Mr Abdul Khan had “done some trading” with Star Group this is insignificant when compared to that of the directors in *JDI*.

74. Also the amount at stake in *JDI*, £688,420.96, substantially less than the  
25 £2,016,559.25 with which this appeal is concerned, is modest when compared, not only with the sums involved in many other MTIC cases, but with trading that companies, under the control of the same individuals, had undertaken. Clearly obvious questions arose in *JDI*, which do not apply in the present case, as to why those involved would risk their established reputations by knowingly becoming  
30 involved in fraudulent transactions.

75. A further distinguishing feature between *JDI* and the present case was the appointment of PricewaterhouseCoopers (“PWC”) to advise on general policy and compliance matters and to approve *JDI*’s customers and suppliers after having carried out due diligence checks. As PWC was subject to the money laundering regulations  
35 and would have been under a statutory obligation to report any suspicions of fraud irrespective of its relationship with its client, it was, as the Tribunal noted at [216] “hardly a satisfactory situation for a company intending to participate in fraudulent transactions.”

76. Also, when presented with an inspection report that provided evidence of fraud, JDI, after seeking advice from PWC, wrote to HMRC to report what it described as a “suspicious incident”, which, as the Tribunal said, at [217] was not “a typical reaction of a fraudster.”

5 77. In contrast, in the present case MFT did not undertake any significant due diligence but relied on what it was told by TAP Global. As Mr Sharif said in regard to due diligence if, “TAP has said they have done that, there's nothing to worry about.”

78. However, just because the facts of this case are clearly distinguishable from those in *JDI* it does not necessarily follow that MFT was not an innocent dupe and it  
10 is therefore necessary to consider whether or not that is the case.

79. As it has been accepted that the deals in which MFT participated are connected to an orchestrated MTIC fraud which was resulted in a loss of tax, the issue to be determined is whether MFT, through its director Mr Sharif, knew or should have known at the time that it participated in the deals that these were connected to this  
15 orchestrated MTIC fraud.

80. There is no doubt, in our judgment, that at the time of the transactions Mr Sharif, and therefore MFT, was well aware of the prevalence of MTIC fraud within the wholesale mobile phone trade sector. This is clear from correspondence and meetings with HMRC and its officers not only in respect of MFT but also Star Group.  
20 In addition Mr Sharif discussed the problems and dangers associated with the industry, “notably MTIC fraud” with Mr Frazer during their meeting at TAP’s premises.

81. Turning to the transactions with which this case is concerned, a notable feature is the letter from TAP Global to MFT, in the terms which we have set out in  
25 paragraph 53, above, which preceded each and every one of the deals. The arrangements for each “Brokered Export Deal”, as it is described in the letter, includes the make, model and number of the mobile phone supplied by TAP Global to MFT, details of MFT’s customer and the price at which MFT is to sell the goods.

82. In our view such an arrangement is wholly uncommercial and, other than fraud,  
30 there would appear to be no reason for the insertion of MFT into the deal chain, especially as TAP Global had previously traded directly with World Communications.

83. However, although it is now accepted that there was a connection to fraud Mr Ahmed submitted that at the time of the transactions Mr Sharif neither knew or should have known that this was the case, as MFT had been lulled into a false sense of  
35 security by the TAP group of companies and reputation of Nasir Khan that the deals were legitimate.

84. As can be seen from the extracts of his evidence we have quoted at paragraphs 27 and 32, above, Mr Sharif was clearly impressed by TAP/TAP Global and Nasir Khan.

85. We accept that to Mr Sharif TAP/TAP Global appeared, to use his words, to be “a humongous company” operated by a “massive person around the industry” and, as is apparent from the sentencing remarks of HHJ Lorraine-Smith, this was the impression that Nasir Khan wanted others to believe, although as the judge noted he was “nothing of the kind.”

86. However, despite the reputation of Nasir Khan and his business at the time, we consider that, given Mr Sharif’s awareness of MTIC fraud within the trade sector, the wholly uncommercial nature of the transactions with which this appeal is concerned should have alerted him, and therefore MFT, to the connection with fraud.

87. Explanations provided for the transactions and the involvement of MFT, other than the connection to fraud are, in our judgment, simply not credible.

88. It was suggested that because goods were, incorrectly, understood to have been imported by TAP Global it would be able to improve its cash flow through UK sales, presumably by the addition of the VAT element to the sales after having not incurred input tax on their acquisition. Although it was clear that TAP Global did not import the goods involved in the deals with which we are concerned, Mr Ahmed submitted that support for the understanding or belief that the contrary was true and TAP and/or TAP Global had imported the goods could be derived from the signed “suppliers declarations” returned to Star Group and MFT.

89. These declarations which were in a standard format confirmed that the deal in question was “under the guidelines” set out by HMRC and that the “existence of the stock and that the stock ... is of the legitimate quality”. They also included the phrase:

We can also confirm that our supplier is also VAT registered and we have also confirmed their details in accordance with the guidelines laid out by HMRC.

In the declarations returned by TAP and TAP Global to Star Group and MFT respectively this phrase had been deleted. This, Mr Ahmed submitted, suggested that VAT had not been paid on their acquisition which could only mean that the goods were imported by TAP and/or TAP Global.

90. However, we do not consider that these supplier declarations could have given Mr Sharif and MFT any comfort or indeed suggested that that either TAP or TAP Global had imported the goods.

91. The significance of these documents to MFT is apparent from the answer given by Mr Sharif when asked about them. He said:

“It is just a supplier declaration. It's not something which we really need for the deal, it is just to make it look more professional. If it came back signed, it did; if not, it didn't really matter. It was just something which – the way it was set up on the system, when you send a PO [purchase order], it will go with it. It was just something basically we have done to make it look more professional or look formality-based, but sometimes we never got the declarations back.”

92. It was also suggested that TAP/TAP Global sought “export partners” to finance the VAT element of the transactions. However, had TAP Global imported and exported the goods itself neither a liability to VAT or the need to finance it would have arisen. As he confirmed during cross examination, Mr Sharif was aware that this was the case at the time the transactions took place.

93. We therefore find that the only reasonable explanation for the transactions under appeal is their connection with fraud.

94. Having regard to all of the circumstances of the case, especially the wholly uncommercial character of the deals and the awareness of the prevalence of MTIC fraud at the time they were undertaken, we find, notwithstanding his evidence in relation to due diligence (see paragraph 54, above) and explanation of why MFT did not insure the goods (see paragraph 55, above), and the total reliance placed on TAP Global in this regard suggesting otherwise, that even if Mr Sharif did not know of the connection to fraud he and therefore MFT, should have known of that connection.

95. As such, we find that HMRC were correct to deny MFT its recovery of input tax

### **Costs**

96. Rule 29 of the VAT Tribunal Rules 2986 applies to this appeal in accordance with the direction of Judge Wallace which was released on 13 September 2010. The effect of this direction is to give the Tribunal a general discretion as to costs.

97. In view of our conclusion that HMRC were correct to deny MFT its input tax claim it is appropriate to direct that MFT pay HMRC its costs of and incidental to and consequent upon the appeal, which for the avoidance of any doubt shall include its share of the costs in respect of preparation of the bundles (in accordance with the direction of Judge Aleksander released on 3 May 2012) and in relation to the provision of the transcripts as we indicated on the first day of the hearing.

98. We also direct that in the absence of agreement the costs be assessed.

### **Conclusion**

99. For the above reasons the appeal is dismissed with costs payable by MFT to HMRC.

### **Right to Apply for Permission to Appeal**

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

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**JOHN BROOKS  
TRIBUNAL JUDGE**

**RELEASE DATE: 6 March 2014**