[2016] UKFTT 0474 (TC)

TC05226

Appeal number:TC/2011/04444

VALUE ADDED TAX – input tax – denials of right to deduct on grounds that the Appellant knew or should have known that the transactions were part of fraud – alleged MTIC – whether shown that the Appellant's transactions connected with fraudulent evasion of VAT – yes – whether Appellant knew or should have known of fraud – yes – valid refusals of right to deduct – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CHANGTEL SOLUTIONS UK LIMITED **Appellants**

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT
MRS SHAMEEM AKHTAR

Sitting in public at Birmingham on 17, 18, 19, 20, 21, 25 and 26 November and 3 December 2014.

Mr Robert Holland of Dass Solicitors for the Appellant

Mr James Puzey, Counsel instructed by HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by Changtel Solutions UK Limited ("Changtel") (formerly known as Enta Technologies Limited ("Enta")) against the decisions of HMRC to deny input tax in the total sum of £20,895,956 incurred by the Appellant in its VAT periods 07/06, 08/06 and 06/07 to 12/10 inclusive ("the relevant periods"). We will refer to the Appellant as "Enta" throughout this appeal on the basis that that was its trading name at the relevant time.

2. HMRC's primary case, as set out in its Statement of Case, is that the relevant transactions carried out by the Appellant in the relevant periods were connected to the fraudulent evasion of VAT and that the Appellant, through its director Mr Jason Tsai, knew of that connection. Alternatively HMRC contend that the Appellant should have known that these transactions were connected to MTIC fraud.

Missing Trader Intra-Community Fraud: Legislation and Case law

3. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 and the VAT Regulations 1995 (SI 1995/2518). If a trader has incurred input tax which is properly allowable, he is entitled to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. Evidence is required in support of a claim (Article 18 of the Sixth Directive and regulation 29 (2) of the VAT Regulations 1995).

4. A description of Missing Trader Intra-Community Fraud, hereafter referred to as "MTIC fraud", can be found in the judgment of Roth J in *POWA (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC):

"[1] This is yet a further case of so-called missing trader or "MTIC" fraud on the system of VAT. The decision of the First-tier Tribunal ("FTT") conveniently describes the nature of a typical MTIC fraud as follows:

> *"5 … goods (almost always small but valuable items such as mobile phones and computer chips) are acquired by a registered trader in the United Kingdom from a trader in another member State, and sold to a second UK-registered trader. The goods then usually change hands several times within the UK before they are sold to an overseas trader which, if it is located in a member State of the European Union, is registered for VAT in that member State. Commonly the transactions all occur within a few days of the entry of the goods into the UK, sometimes even on the same day, so that goods enter the UK in the morning, pass through the hands of several UK traders during the day, and are exported again in the afternoon.*

6. The first UK vendor, the acquirer from overseas, charges VAT on the consideration paid by his purchaser, but fails to account to the respondent Commissioners for that tax, and disappears. Such documentation as he may have had—if any—relating to his acquisition is never produced to the Commissioners. For the scheme to work he must be a VAT-registered trader who provides the purchaser with a genuine VAT invoice, on the strength of which the purchaser claims an input tax credit. The purchaser's own sale, and those of the other UK traders save the last in the sequence, usually generate a small profit and, consequently, a small net VAT liability, for which those traders account. The last trader, selling overseas, claims credit for the input tax he has incurred, but has no output tax liability since the sale is zero-rated. Usually this trader makes a significant profit, though that is not invariably the case; occasionally one of the antecedent traders can be shown to have made the greatest profit of all those in the chain. All of these sales and purchases, including the sale to the overseas buyer, are almost always properly documented.

[2] In the jargon that has developed to describe the various participants in such chains, the initial importer of the goods who fails to account for the output tax he has charged to his purchaser and disappears, is known as the "defaulter" or "missing trader." The trader at the end of the UK chain who sells the goods to a purchaser overseas is known as a "broker". The traders between the defaulter and broker are referred to as "buffers". In the present case, it is alleged that PJL was a broker.

[3] There are various variations and developments of this typical scheme of MTIC fraud. One of these, of which three of the transactions in the present case are said to be an example, comprises what is called "contra-trading". I again gratefully adopt the description given by the FTT:

"9 A contra-trader, a broker in one chain of transactions—again adopting the commonly used jargon, a "dirty" chain—in which a default has occurred, buys goods from a supplier in another member State, and sells them to a UK customer; after one or more further sales and purchases they are sold to a customer in another member State. The contra-trader and, usually, all the other traders in this chain account correctly for their VAT liabilities; taken by itself it is a "clean" chain. The acquirer in the clean chain has incurred a liability for output tax which (because the values are engineered to achieve this result) matches the input tax credit due to him (or ostensibly due to him) as the broker in the dirty chain. He does not need to make a large repayment claim, attracting the Commissioners' attention, but instead makes a modest payment, or a minimal repayment claim. The same result may be achieved by undertaking a number of transactions

generating an aggregate input tax credit matching the broker's output tax liability for the relevant accounting period. It is then the broker in the clean chain who has an input tax claim which, unless they can establish a link between the clean and dirty chains, the Commissioners must meet since the goods in the clean chain have not themselves been used for fraudulent purposes.""

5. *Kittel v Belgium, Belgium v Recolta Recycling* SPRL (C-439/04 and C-440/04) [2006] ECR 1-6161 *("Kittel")* provided the legal basis for the denial of the right to deduct in certain circumstances:

"55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively … It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends...

56. In the same way, 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 to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'.

60. It follows from the foregoing that the answer to the questions must be 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.

61. By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he

was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."

6. The *Kittel* test was further clarified by Moses LJ in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*") at [24]:

"The scope of VAT is identified in Art. 2 of the Sixth Directive. It applies, in addition to importation, to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. A taxable person is defined in Art. 4.1 as a person who carries out any of the economic activities specified in Art. 4.2. Art. 5 defines the supply of goods and Art. 6 the supply of services. The scope of VAT, the transactions to which it applies and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:-

> *"the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned." (Kittel para 42, citing BLP Group* [1995] ECR1/983 para 24.)

And at [30]:

"…the Court made clear that the reason why fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria which determine the scope of VAT and the right to deduct have been met."

7. As to the issue of connection, in *Blue Sphere Global Ltd and The Commissioners for HM Revenue and Customs* [2009] EWHC 1150 (Ch) the Chancellor stated (at paragraphs 42 – 45):

"…The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transaction in which there is one common party whether or not the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in Optigen and Kittel because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.

Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with any fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C (Infinity) in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E (BSG) in the clean chain. Such a transfer is apt…to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B."

8. On the issue of knowledge, Moses LJ in *Mobilx* provided the following guidance:

"4. Two essential questions arise: firstly, what the ECJ meant by "should have known" and secondly, as to the extent of the knowledge which it must be established that the taxpayer had or ought to have had: is it sufficient that the taxpayer knew or should have known that it was more likely than not that his purchase was connected to fraud or must it be established that he knew or should have known that the transactions in which he was involved were connected to fraud?

52. If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises…

53. Perhaps of greater weight is the challenge based, in Mobilx and BSG, on HMRC's denial of the right to deduct on the grounds that the trader knew or should have known that it was more likely than not that transactions were connected to fraud. The question arises in those appeals as to whether that is sufficient or whether, as the Chancellor concluded in BSG, the right to deduct input tax may only be denied where the trader knows or should have known that the transaction was connected to fraud (see judgment, § 52). In short, does a trader lose his entitlement to deduct if he knew or should have known of a risk that his transaction was connected to fraudulent evasion of VAT? HMRC contends that the right to deduct may be denied if the trader merely knew or should have known that it was more likely than not that by his purchase he was participating in such a transaction. It contends that if it was necessary to show more than appreciation of a risk then the Court's decision in Kittel would not represent a development of the law and would fail to achieve the objective, ecognized in the Sixth Directive, to which the Court referred at § 54…

56. It must be remembered that the approach of the court in Kittel was to enlarge the category of participants. A trader who should have known that he was running the risk that by his purchase he might be taking part in a transaction connected with fraudulent evasion of VAT, cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in Kittel, nor is it the language it used. In those

circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase he was taking part in such a transaction, as the Chancellor concluded in his judgment in BSG:-

> *"The relevant knowledge is that BSG ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough." (§ 52)…*

58. As I have endeavoured to emphasise, the essence of the approach of the court in Kittel was to provide a means of depriving those who participate in a transaction connected with fraudulent evasion of VAT by extending the category of participants and, thus, of those whose transactions do not meet the objective criteria which determine the scope of the right to deduct. The court preserved the principle of legal certainty; it did not trump it.

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.

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.

83. In *Red12 v HMRC* [2009] EWHC 2563 at [109] – [111] Christopher Clarke J said:

"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.

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.

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.""

84. We had regard to Briggs J in *Megtian Limited (in administration) v HMRC* [2010] EWHC 18 (Ch) at [34], [37] and [38]:

"I do not read Lewison J's analysis of the issue as to what must be shown that the broker knew or ought to have known in a contra-trading case as amounting to a rigid prescription that, as a matter of law, such an analysis must be performed in every contra-trading case, such that it will be defective unless it identifies one or other of the alternative frauds as being that which the broker knew or ought to have known…

In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up into self-contained boxes even though, on the facts of particular cases, including Livewire, that may be an appropriate basis for analysis."

85. The burden of proof in this type of case rests with HMRC; per Moses LJ in *Mobilx* (paragraph 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."

86. Our approach to the appeals was to recognise that, while we must consider the merits of the individual transactions, we should not view the transactions in isolation as to do so would be an artificial exercise. We were conscious to ensure that in considering the knowledge of the Appellant, through Miss Lin and Mr Tsai, we only took account of information known during the relevant period and we ignored any opinions expressed by the witnesses for HMRC.

Issues

87. The main issue in this appeal was whether the Appellant knew or should have known that its transactions were connected to fraud. However Mr Holland also challenged the tracing and alleged tax losses in respect of some of the transactions and we will address those matters before turning to the principal issue of knowledge.

Undisputed Background Facts

88. The Appellant was incorporated on 27 July 1990. Enta is wholly owned by Enta UK Limited. Mr Jason Tsai is the managing director of Enta and held the position of Company Secretary between 27 July 1991 and 15 July 2002.

89. Ding Yuan Tsai held the position of Company Secretary between 15 July 2002 and 1 November 2006. John Yaw Jong Tsai was appointed Company Secretary on 1 November 2006.

90. Mr Jason Tsai also held the following appointments:

- Managing Director of Enta UK Limited;
- Director of Entanet International Limited;
- Company Secretary of Entamedia Limited;
- Company Secretary of A Standard Limited.

91. Mr Albert Yeo was the group accountant and Miss Sally Lin was the buyer for the Appellant.

92. The following companies are based at the same address as Enta:

- Entacall Telecommunications Limited;
- Bluechip Services Incorporated Limited; and
- DCM MIS Solutions Limited.

Transactions connected to fraudulent tax losses

93. This appeal covers a number of VAT periods and we shall deal with each in turn.

07/06

94. HMRC Officer Leslie Pitt was responsible for the extended verification of returns in periods 07/06 and 08/06. In period 07/06 seven deals carried out by the Appellant were linked to fraudulent tax losses.

95. The relevant deals were as follows:

	Deal 1	Deal 2	Deal 3	Deal 4	Deal 5	Deal	Deal 8
Date	26/07/06	28/07/06	31/07/06	24/07/06	17/07/06	10/07/06	23/06/06
Goods	3,300 Giga CPUs	11,025 Intel CPUs	1,000 P4 CPUs	2,00 SL7ZB CPUs	9,450 SL7Z9 CPUs	9,450 SL7Z9 CPUs	9,450 SL7Z9 CPUs
Supplier	Supreme Distribution	Supreme	Syskal Distribution	NVR Logistics	Supreme	Supreme	Supreme
Purchaser	Taurus SA	Munch Marketing	Wink	Netherlands All World Trading	Munch	Munch	Munch
Tax loss trader	4A	Jeck Link Services	Kaymore Export Ltd	Cirex Corp Ltd	Visionsoft UK Ltd	Visionsoft UK Ltd	Heathrow Business Solutions

96. Mr Pitt highlighted the following factors as evidence that the deal chains were contrived. He noted the lengths of the deal chains; in 07/06 the highest number of traders is 10 and in 08/06 the highest number is 9. Mr Pitt agreed that there is no evidence to demonstrate that the Appellant knew of the number of traders in the chains. However he queried, in support of contrivance, why so many traders featured without a manufacturer or end customer in the chain.

97. Mr Pitt highlighted that the sellers matched the exact quantity of goods required by the customers and that the deals were carried out on a back to back basis with none of the traders taking physical possession of the goods. Mr Pitt also noted that in a number of deals the traders in the chains were consistent and that the Appellant, as broker, made a much larger mark-up than the buffers.

98. Prior to the hearing the Appellant accepted the tracing of the chains and fraudulent tax losses in the majority of chains. The issues were further narrowed during the hearing at which stage Mr Holland set out the issues in respect of the deal chains challenged.

99. It was accepted on behalf of the Appellant that 4A Developments was a fraudulent defaulting trader and in those circumstances we will only set out a limited summary of 4A's trading.

100. Officer Graham Taylor gave evidence regarding 4A which was incorporated on 22 July 2005 and registered for VAT with effect from the same date. Mr Robert Morton was the sole director from the date of incorporation. The business activities declared on the VAT 1 were *"Building development (alterations and extensions of domestic buildings); E-bay sales, wholesale and retail of used motor vehicles, and other wholesale."*

101. HMRC concluded that 4A was knowingly acting as a contra trader in a scheme contrived to defraud the Revenue. In reaching this conclusion officer Taylor took into account, inter alia, the unrealistic increase in turnover from 22 July 2005 to 18 October 2006 during which turnover increased from £600,000 per month in August and September 2005 to £84,000,000 per month in April, May and June 2006 and £45,000,000 per month from July to September 2006. 4A had only one full time employee; Mr Morton who was also a director of Spearmint which funded 4A's transactions and was suspected by HMRC of involvement in MTIC fraud. The enquiries into 4A's transactions involving CPUs showed that it offset output tax due on acquisition deals against input tax claimed on despatch deals which commenced with tax losses from defaulting traders namely DTM Provisions Ltd and Woodworks.

102. HMRC Officer Emma Raglan gave evidence relating to defaulting trader DTM Provisions Ltd ("DTM") which was incorporated on 27 October 2005, registered for VAT with effect from 1 March 2006 and de-registered on 28 June 2006. At the time of its VAT registration application DTM declared its trading activities as *"supply of catering supplies"* however HMRC did not encounter any evidence to indicate that the company ever traded in that sector and the only evidence obtained involved DTM wholesaling mobile phones and electronic goods.

103. In the five months between the EDR and the compulsory de-registration the company's VAT declaration should have been £23,604,443 based on information received from other traders which gave DTM a turnover for 12 months trading in the region of £56,560,663.20. DTM failed to render returns to HMRC and no annual accounts were filed with Companies House.

104. From June 2006 onwards HMRC were unable to contact a company official in order to discuss DTM's trading activities. Assessments totally £23,634,490.50 were subsequently raised on the basis that the company had gone missing and defaulted on its VAT liability; the assessments remain unpaid and were not appealed.

105. HMRC officer Pabari gave evidence regarding Woodworks (Sheffield) Limited ("Woodworks") which was incorporated on 23 May 2003 trading as a flooring distribution business. It was registered for VAT with effect from 1 February 2004 with a trade class of *"floor and wall coverings"*.

106. In August and September 2005 the company notified HMRC of a new director, a change of trading address and a change of trade classification to *"general trading"*. In response to a request for clarification on its trade the company declared the main business activity as *"wholesale in electrical items, multimedia."*

107. Woodworks VAT returns showed a significant increase in turnover from £337,040 during the 15 month 10/05 period to £50,698,250 in quarter 01/06, £96,789,463 in 04/06 to £100,888,071 in 07/06. A visit to the company in November 2005 identified that it was involved in the wholesale of mobile phones. Records were uplifted which showed that transactions were traced back to tax losses. When no contact could be made with the company by HMRC in October 2006 and there were concerns regarding its trading activities, the company was de-registered on 30 October 2006.

108. A demand to produce information was not complied with in February 2007 and on 15 February 2007 the landlord at the PPOB stated that the office had been abandoned. HMRC examined records for deals in 01/06 and 07/06 and found that Woodworks had acted as an acquirer, buffer and broker trader. In the vast majority of deals where Woodworks purchased from a UK trader the deals were traced back to a defaulting trader. Woodworks itself defaulted on a total VAT liability of £9,004,904.

109. In cross-examination officer Pabari agreed that a trader can be liable to have his VRN removed if no taxable supplies are made and there is no intention to make taxable supplies, although he clarified that whether there are such supplies or whether such an intention exists has to be established first; a trader cannot be de-registered without proper evidence. He agreed that the likelihood of a trader being de-registered increases if no returns are submitted and that Woodworks did not submit returns for 10/04, 01/05, 04/05 and 07/05. Officer Pabari was unaware whether or not central assessments had been raised or steps taken by HMRC to establish whether there was an intention to make taxable supplies.

110. Officer Taylor also provided evidence that 4A itself was a defaulting trader; in period 09/06 the acquisition tax of £1,263,163.82 due from 4A was not entirely offset by the input tax of £1,012,091.45 originating from the defaulting traders leaving a difference of £251,072.37 due from 4A to HMRC which was not paid.

111. In cross-examination officer Taylor stated that, as far as he was aware, there had been no pre-registration visit to 4A and despite HMRC's electronic folder recording that the trader required scrutiny there were no visit reports to indicate that visits were made between November 2005 and July 2006.

112. It was contended that although in period 07/06 the chain had been accurately traced to Jeck Link Services Ltd ("Jeck Link") fraud had not been established.

113. HMRC officer Marva Harry gave evidence in respect of the trader Jeck Link. Rebecca Ikwueto trading as "Fastlink" was initially registered for VAT with effect from 31 July 2005. On 27 June 2005 Jeck-Link was incorporated as a limited company. It was dissolved on 22 September 2009. HMRC visited the premises on 3 August 2005; it was a retail shop with a ground floor internet café with an office and store room in the basement. HMRC officer Patterson observed at the visit that Ms Ikwueto's record keeping was poor – there were no expense invoices, purchase invoices from one supplier, no bank statements at the premises and no summary daybook. It was also noted that the application for registration should have been made

in the name of Jeck Link and that the company had been trading over the VAT threshold prior to the requested date for VAT registration. Officer Patterson recommended that the registration date be changed from 31 July 2005 to 1 March 2004 and that there be immediate de-registration. The trader was informed to re-apply in the name of the new limited company.

114. A completed request for transfer of a registration number signed and dated 3 January 2006 was subsequently received by HMRC requesting the transfer of the VRN of Rebecca Ikwueto trading as Fastlink to Jeck-Link Services. Two requests were made by HMRC that a VAT 1 be completed to register Jeck-Link in its own right. No response was received to the letters.

115. On 14 July 2006 HMRC were notified by Abbaci Associates Accountants that Jeck Link was being sold as a going concern. The named director, Mr Major Singh was also a previous director of Cybersol UK Ltd which had its VRN cancelled from 11 September 2006 as a result of failing output tax on sales. Cybersol was assessed for tax losses exceeding £4,000,00 and has since been dissolved.

116. On 8 September 2006 HMRC was notified by Abbaci Associates Accountants that Jeck Link had changed business activities to "agent in sale of variety of goods." On 27 October 2006 HMRC received a letter from Rebecca Ikwueto stating that Fastlink ceased to trade on 31 July 2006.

117. On 16 April 2007 HMRC officer Patterson attended 377 Barking Road and found a sign for Fastlink outside. The premises were locked and the HMRC officer could not determine whether the shop was active. The director's address was 381a Barking Road which was an address above a computer shop. The officer attended the address and asked for Jeck Link and was told that they were out.

118. HMRC were told that Jeck Link never traded however documents obtained showed that the company had traded and had failed to declare the output tax on sales to its customers. The effective date of de-registration of the company was changed to 21 September 2006 to incorporate the periods that had been assessed. The assessments totalled £222,310.56 and included the transaction featured in the Appellant's supply chain. In cross-examination officer Harry could not confirm whether any visits to the trader were carried out between August 2005 and August 2006 although there were no reports exhibited for visits during that period and all visit reports had been exhibited. There was also no evidence to show that the trader had been assessed for VAT due between March 2004 and July 2005 nor did it appear that a penalty had been issued. The assessments remain unpaid and Jeck Link is a missing trader.

119. Officer Barker provided evidence regarding defaulting trader Kaymore which was incorporated on 9 November 2000. The VAT 1 submitted by Kaymore and signed by director Gary Woodroof declared the main business activity as "*export of engines, spare parts.*"

120. A visit to the company's premises on 16 August 2006 showed it to be a warehouse where used car parts could be seen. The used car parts business was operated by Mr Woodroof. The trade in mobile phones and electronic products also found to have taken place was operated by a former employee of Kaymore called Colin Ally.

121. It transpired that Mr Woodroff had no knowledge of the details of the trade carried out in mobile phones and electronics using his VAT number; HMRC concluded he had been easily persuaded by Mr Ally that this was an opportunity for his business which was struggling. Mr Ally could not be contacted. Kaymore carried out trade exceeding £22,000,000 in the 4 week period from 17 July 2006 to 11 August 2006 with no capital input into the business. Kaymore failed to comply with a Regulation 25 Notice and was de-registered on the grounds that the company had abused its right to be VAT registered. An assessment was raised in the sum of £2,659,347 which was not appealed and remains unpaid. An additional assessment was raised in the sum of £1,277,672 following receipt of additional records by HMRC. Kaymore was put into compulsory liquidation on 29 November 2006.

122. In cross-examination officer Barker confirmed that Kaymore did not declare any sales between the quarters ending May 2005 and May 2006. She recalled that the trader did submit returns but they were nil returns. The officer was not aware of any steps taken by HMRC to find out if there was an intention to make taxable supplies. She confirmed that there had been no genuine hijack as Mr Ali had used the company with the director's consent.

123. Officer Kendrick gave evidence regarding TTPPTB Cirex. Cirex was incorporated on 1 September 2003. The VAT 1 described the business activities as "promotional activities" which the director Mr Zahoor later clarified as "sales of slow moving stock i.e. bags, envelopes and tissues." Cirex was registered for VAT with effect from 1 December 2003. Nil returns were submitted up to and including the period ended 12/05. On 16 November 2005 HMRC contacted Mr Zahoor regarding its trading activities Mr Zahoor stated that the company had been dormant to date but was intending to wholesale drinks in the near future.

124. In August 2006 HMRC visited Cirex having obtained information showing it as being involved in transaction chains. A further visit took place on 2 November 2006 however no one was present and there was no response to a letter left. Consequently Cirex was de-registered with effect from 22 December 2006. Mr Zahoor notified HMRC of a change of address on 15 February 2006. At a visit in March 2007 Mr Zahoor said that the company had not traded since July 2006. An extended verification into another trader, Powercom Trading Limited had disclosed a sales invoice purportedly from Cirex however the format differed from that on invoices provided by Mr Zahoor. Three other invoices were obtained by HMRC which purported to be from Cirex but were in a different format to those obtained from Mr Zahoor. Consequently HMRC concluded that Cirex's VRN had been hijacked and assessments were raised against TTPPTB Cirex in the sum of £105,021.56.

125. In cross-examination officer Kendrick agreed that a trader's VRN is likely to be removed if taxable supplies are not made or that trader cannot show a serious intention to make taxable supplies. He confirmed that Cirex did not make taxable supplies for at least two years. Officer Kendrick agreed that with hindsight Cirex could have been de-registered earlier. He agreed that Cirex had submitted its return for 03/04 almost 1 year late and stated that a central assessment would have been raised in the absence of a return but he was unaware whether a central assessment had been paid by the trader. Mr Kendrick confirmed he had concluded that Cirex's VRN had been hijacked.

126. HMRC officer Timothy Reardon gave evidence regarding Vision Soft UK Ltd ("VSUK") which was incorporated on 8 October 2004. The VAT 1 declared the business activities as *"Software Development, Consultants and Supply"* which was later clarified by the director Mr Venumuddala who stated that VSUK did not supply hardware goods and that the expected date of the first supply was 15 March 2005. VSUK was registered for VAT with effect from 15 March 2005.

127. Following registration VSUK submitted five quarterly nil returns which indicated that it had not traded. However HMRC obtained sales invoices which identified VSUK as obtaining goods from EU companies which were supplied to UK companies; the turnover generated exceeded £60,000,000 in June and July 2006. As a result HMRC visited the given business address which was found to be a serviced mail box address. The company was de-registered with effect from 13 July 2006. The tax loss assessed exceeds £12,000,000 and VSUK could not be contacted. It was compulsorily wound up on 16 January 2008.

128. In cross-examination Mr Reardon clarified that traders would not come to HMRC's attention if VAT returns were submitted even if no taxable supplies were made and the returns were nil returns. He agreed that VSUK submitted its 08/05, 11/05 and 02/06 returns late but stated this would not have raised suspicion within HMRC as it focussed on traders who failed to submit returns; only after a period of 6 months or so would HMRC make enquiries. Officer Reardon clarified that although output tax on one of the transactions had not been assessed this had been due to an oversight and irrespective of whether it was assessed or not, the tax remained due.

129. HMRC officer Romaine Lewis gave evidence regarding defaulting trader Heathrow Business Solutions Ltd ("HBS") which was incorporated on 12 August 2004. It declared the business activities at Companies House as labour recruitment, software consultancy and supply.

130. HBS was registered for VAT with effect from 14 October 2004. The VAT 1 declared the business activities as *"IT Software Solutions and Recruitment. Recruitment in IT industry."*

131. From the date of incorporation to March 2006 HBS only submitted nil returns. The return for period 06/06 was not submitted. The period from 1 April 2006 to 30 June 2006 has an assessment on file for £237,256 arising from the sale of mobile phones which remains outstanding.

132. A visit to the company's premises took place on 30 June 2006. There was no one from HBS available and no sign that the company had traded from the premises which were rented offices in an office block. The owner was contacted who told HMRC that HBS had never operated from the address which had been given as the PPOB.

133. On 1 July 2006 HBS was de-registered for VAT because there was no evidence of any trading or intention to trade. Evidence obtained by HMRC from freight forwarders indicated that HBS had traded in mobile phones on 28 and 30 June 2006. No output tax was declared on the sales. Assessments for VAT on record amount to £32,641,709 which remains outstanding. HBS was dissolved on 13 May 2008.

134. In cross-examination officer Lewis confirmed that HBS had not made taxable supplies between October 2004 and March 2006 and that nil returns were submitted for those periods. As far as the officer was aware there had been no visits to the trader save for that in June 2006 and there was no evidence that HMRC had given prior thought to de-registering the trader.

<u>08/06</u>

135. In period 08/06 12 deals carried out by the Appellant were linked to fraudulent tax losses.

136. The relevant deals were as follows:

	Deal 1	Deal 3	Deal 5	Deal 7	Deal 8	Deal 9	Deal 10
Date	02/08/06	08/08/06	14/08/06	03/08/06	30/08/06	01/08/06	221/08/06
Goods	1,000 SL7Z9 CPUs	2,835 SL7Z9 CPUs	1,575 SL7Z9 CPUs	6,300 SL7Z9 CPUs	1,575 SL7Z9 CPUs	1,000 Black Ipods	3,300 Giga CPUs
Supplier	MNR Global Ltd	Nulife IT.COM	Silverstar Components Ltd	NVR Logistics	Silverstar Components Ltd	MNR Global Ltd	Supreme
Purchaser	Wink	ICC	ICC	Netherlands All World Trading	Alcosto Spa, Italy	ICC	Taurus
Tax loss trader	Only Quality Ltd	Jet Set Go Ltd	Kaymore Export Ltd	Zenith Sports UK Ltd	Jet Set Go Ltd	Devella Ltd	4A Developments

	Deal 11	Deal 12	Deal 13	Deal 14	Deal 15
Date	04/08/06	07/08/06	08/08/06	02/08/06	09/08/06
Goods	960 Black	3,000 Black	1,500 Black	6,000 Giga	1,125

	Ipods	Ipods	Ipods	CPUs	Ipods
Supplier	Express Computers UK Ltd	XEL Multicomponent Ltd	Nulife IT.COM Ltd	Supreme	Express Computers UK Ltd
Purchaser	ICC	ICC	ICC	Taurus	Tradius BV, Amsterdam & Tradius Handels GMBH
Tax loss trader	Kaymore Export Ltd	Grange Solutions UK Ltd	EMS Marketing Ltd	4A Developments	Kaymore Export Ltd

137. HMRC officer Wald gave evidence regarding defaulting trader Only Quality which was incorporated on 18 January 2005. The VAT 1 was signed by Mr Neil Cohen as director on 10 February 2006 however Companies House did not list Mr Cohen as a director. The business activity was described as *"General Trading E. Baysy (sic) Business Consultancy."*

138. Enquiries by HMRC revealed that Only Quality Ltd was sold to Mr Cohen by a company of which he is director, Paramount Company Formations Ltd. Only Quality was taken over as a going concern on 7 April 2006 by Warsame Gure who submitted a new VAT 1 showing the business activity as *"General Trading/Wholesale/Retail Business Consultancy."* A new director, Mr Muhayadin was appointed on 2 May 2006.

139. Further enquiries showed that between April and June 2008 Only Quality made sales worth over £959,000,000 yet requested customers to make only small payments to Only Quality with the remainder to third parties. The output tax charged to its customers was not paid by Only Quality which went missing.

140. HMRC officer Parsons gave evidence regarding Wade Tech Ltd ("WTL"), aldo known as Grange Solutions Ltd. Fateh Kashief Ahmed was registered as a sole proprietor from 8 April 2004. The main business activity was declared as "off licence grocers". On 1 February 2006 Mr Ahmed submitted an application to transfer the VRN from a sole proprietor to the limited company Wade Tech Ltd, of which Mr Ahmed was the sole director. On 6 June 2006 WTL advised HMRC that the company had changed its name to Grange Solutions UK Ltd.

141. At a visit to the PPOB on 17 October 2006 Mr Ahmed stated he had not undertaken any mobile phone deals despite HMRC's Redhill department recording that WTL had sought clearance for three companies trading in those goods. In cross-examination officer Parsons confirmed that there were no visits carried out to the trader by HMRC's MTIC team between February and September 2006. As there was no evidence to show that WTL had carried out such transactions, HMRC discussed

the possibility that the VRN had been hijacked and it was agreed that a new VRN would be issued. In March 2007 a pseudo VRN was allocated to TTPPTB Grange Solutions Ltd against which assessments in excess of £81,000,000 were raised for undeclared transactions. The tax remains unpaid.

142. HMRC Officer Barry Patterson gave evidence regarding defaulting trader Zenith, trading as iConnect Technologies ("Zenith") which was registered for VAT from 1 August 2005 to 13 December 2006. Zenith was incorporated on 14 December 2004. The main business activity declared on the VAT 1 received by HMRC on 12 August 2005 was *"wholesaler of sports accessories, mobile phone accessories, memory and more."*

143. At a visit to the PPOB on 27 March 2006 the main business activity was described as *"Sportswear, football, cricket and martial arts equipment."* Mr Hussain, the manager, was present at the meeting and answered most of HMRC's questions. The director Sahrish Marya Basharat was also present. The HMRC officers were told that the trader was intending to enter the wholesale mobile phone market.

144. A further visit took place on 29 June 2006. Miss Basharat was present and stated that she was the director although Companies House records show that she had resigned on 1 June 2006. Miss Basharat stated that the main business activity was now the wholesale supply of mobile phones and CPUs. HMRC considered the due diligence checks to be poor and no inspection reports were held. The daybook showed sales of £122,000,000 and net inputs of £125,000,000. The records were uplifted and on 21 July 2006 HMRC wrote to the trader advising that a VAT liability of £1,717,527.75 was owed and that a Notice of Assessment had been issued for the liability. The trader was also advised that a loss of revenue exceeding £19,000,000 had been found in all transactions listed on a deal log which was completed based on the trader's records.

145. An unannounced visit to the PPOB took place on 13 December 2006 and it was found that the trader was no longer trading from the address. Mail was also returned to HMRC marked "gone away".

146. It was subsequently found that Zenith, in addition to its buffer transactions, had also acquired goods from the EC in period 08/06 and failed to account for output tax. Zenith failed to respond to attempts by HMRC at contact and visits were made to the home addresses of company officials without success. Zenith is now in liquidation. It failed to submit returns for 05/06, 08/06 and 09/06. The liability outstanding has not been appealed or paid.

147. In cross-examination officer Patterson explained in respect of the tracing of the chains that the deals in which the Appellant had acted as a broker trader were included in the assessments issued to Zenith which totalled over £17,000,000. Mr Patterson clarified that no records were obtained from Zenith for period 08/06 and that the tracing exercise was compiled using information gathered by other HMRC officers. Officer Patterson confirmed that the goods in the relevant chains were the same as were the quantities traded and date of the transaction.

148. HMRC officer Bamidele gave evidence regarding defaulting trader Jet Set Go Ltd ("Jet Set Go") which was incorporated on 26 October 2005 and registered for VAT with effect from 28 November 2005 until 12 December 2006. The business activity declared was "*travel agent*". A visit to the premises by HMRC on 4 December 2006 found the premises empty and the shutters down; the dentist next door told the officers that the premises had been empty for approximately 6 months.

149. Contact was made with a Mr Khan who told HMRC that the company had ceased operations on 31 August 2006 and he had taken over as director on 8 September 2006. He stated that Jet Set Go had traded for approximately 3 months from around August/September 2006 although HMRC noted that the business records indicated that flights and holidays had been sold between January and March 2006. Mr Khan was asked about invoices raised by Jet Set Go in relation to the sales of mobile phones, iPods and CPUs; Mr Khan denied any knowledge of the sales.

150. In December 2006 an assessment was raised against the company in the sum of £2,453,149. Further assessments were later raised in the sum of £165,300 and £210,567.85. The assessments remain unpaid and were not appealed. Mr Khan failed to produce bank statements for the company as requested and was unable to provide complete business records. There was no further contact with Mr Khan after 13 February 2007.

151. HMRC officer James Smallbone gave evidence relating to Devella Ltd ("Devella"). HMRC received a VAT 1 application for its registration dated 2 May 2006. The stated business activities were intended to be "*in the field of retailing in garments and accessories*" with an annual expected turnover of £50,000.

152. HMRC also received a letter from Devella dated 6 May 2006 stating that part of the answer to one of the questions on the VAT1 had been accidentally missed off and that the business would be buying and selling goods from garments to marble and that the director would be continuing his role in the wholesale business. A second letter dated 19 May 2006 stressed the urgency in obtaining a VAT number as the company could not open a bank account or carry out wholesale trading without one. Mr Smallbone noted that there is no legal requirement for a company to be VAT registered unless the turnover is above the VAT threshold and that the estimated annual income given by Devella on the VAT1 fell below the threshold.

153. Officer Smallbone carried out an unannounced visit to the company's VAT registered address on 3August 2006. The receptionist received no answer when Devella's number at the serviced offices was called and stated that the contact, Mr Tony Fuller, was not regularly at the office. A letter was left notifying Devella that if contact was not made within 5 days the company would be de-registered. Mr Fuller called later that day and a meeting was arranged for 9 August 2006.

154. At the meeting on 9 August 2006 Mr Fuller stated that he did not have any of the company's paperwork with him as it was with his accountant as his VAT return was soon due. Officer Smallbone noted that the return was not due until 30 September 2006. Mr Fuller could not recall the name of the accountants, eventually stating they

were called Tile and Co based in Colchester. Mr Fuller stated that he intended to trade in designer clothes however he went on to say that he would be prepared to trade in anything and felt there was a market for anything if it was marketed correctly. He stated he had previously been a painter and decorator, which Officer Smallbone noted was inconsistent with the information on the VAT 1 in which Mr Fuller had stated "*I intend to keep and continue my role in the wholesale business.*"

155. Mr Fuller reluctantly agreed to show HMRC the actual business premises which contained a desk, a computer and an empty filing cabinet. Mr Fuller stated that the business had carried out three or four transactions for approximately 1000 Ipods each and 5 or 6 transactions of Gucci shoes although he had no evidence that the deals had taken place. Mr Fuller stated he was unaware of MTIC fraud.

156. Records which Mr Fuller agreed to fax to HMRC on 11 August 2006 were not received nor was a response received to HMRC's letter chasing the documents. On 17 August 2006 Devella was notified in writing that it had been de-registered for failing to provide evidence of trading or an intention to trade. No further contact was received.

157. Documents obtained from Phonecity and Secure Freight Management Services Ltd supported Mr Fuller's account that transactions involving Ipods had been carried out and further indicated that Devella had purchased the goods from an EU trader and sold them to Phonecity. A VAT assessment in the sum of £19,346.25 was issued to Devella, that being the amount shown on Phonecity's purchase order. To date the amount remains unpaid and the company was dissolved.

158. In cross-examination officer Smallbone confirmed that the company was dissolved prior to the assessment being issued. He stated he could find no trace of the accountants purportedly acting for Mr Fuller. Officer Smallbone stated that he was not aware of the notice of assessments sent to the registered office of Devella being returned as "addressee gone away". He agreed that the company had been dissolved prior to notification of an assessment was sent and he had not put an allegation of fraud to Mr Fuller during the meeting on 9 August 2006. He clarified that HMRC could find no record of a company or accountants in Colchester in the name Tyle & Co which had been given by the trader.

159. HMRC officer Hartell gave evidence regarding defaulting trader E Management Solutions Ltd ("EMS") which was incorporated on 29 January 2002. On 11 March 2002 HMRC received a VAT 1 signed by Mr Malley as director which gave the main business activity as e-procurement of management services, executive recruitment and business finance options. The business was registered with effect from 22 April 2002. In March 2006 there was a change of director to Mr Navinder Bhutta.

160. In the 15 months after registration no sales were made and in late 2005 Mr Malley put the company up for sale. The business was purportedly purchased by Mr Bhutta for £5,000 on a verbal agreement with no legal documentation to support the purchase. Mr Bhutta told HMRC that the trading activities were "personnel management and marketing". He stated he had been an employee at EMS which

contradicted Mr Malley's statement to HMRC that there were no employees. Mr Bhutta told HMRC that the supplier in its transactions in electrical goods recommended the customer and that no due diligence checks were carried out. HMRC was evasive in providing business records to HMRC despite civil penalty warnings being issued and he failed to declare exports to HMRC later stating he had "forgotten". Mr Bhutta also forgot about the FCIB account used by the company and gave HMRC contradictory information about the dates of transactions carried out.

161. Mr Bhutta fabricated a Regulation 25 Return issued by HMRC and failed to comply with Notices to Produce records. The turnover of EMS which was less than £8,000 under the previous director rose to in excess of £10,500,000 in the three months from 20 June 2006 to 15 September 2006. The de-registration and assessments raised against EMS have never been appealed and the company failed to declare VAT in relation to the deals between June and September 2006. The tax for EMS' final period (June to September 2006) was £1,916,796.64 which remains unpaid.

162. EMS became insolvent and was wound up on 16 January 2008. On 21 October 2009 Mr Bhutta was disqualified from acting as a director for a period of 12 years for causing EMS to undertake a method of trading which involved it in and put HMRC at risk of being subject to MTIC fraud.

163. In cross-examination officer Hartell agreed that one of the reasons for de-registration is to prevent fraudulent abuse of an active VAT number. Shed clarified that although EMS could have been de-registered earlier it was a new business and HMRC can allow a VRN to remain live to "*give a new business a chance"* (transcript 18 November 2014 page 123) and that businesses are entitled to be VAT registered even if they are trading under the threshold. Officer Hartell confirmed that there had been no reason to doubt EMS' credibility as Mr Mali had submitted all information and returns to HMRC in a timely manner.

<u>06/07 and 09/07</u>

164. HMRC officer Soleman provided evidence in respect of the Appellant's deals in periods 06/07 to 12/09.

165. In periods 06/07 and 09/07 the Appellant's chains of transactions were all traced as follows:

International Trading SRL (Italy) → TPPTB Inspired Clothing UK Ltd → Intascope Ltd → Scarlito Ltd → Katian Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark) → Sia Baltix International (Latvia)

166. All of the transactions involved USB Flash Drives.

167. As we understand the Appellant's position from its skeleton argument, there was no challenge to the tracing of the 14 deals and that tax losses were assessed against the taxable person purporting to be Inspired Clothing Ltd ("Inspired"). As to the issue of fraud, we considered the evidence of HMRC officer Wignall.

168. Officer Wignall explained that Inspired was incorporated on 12 September 2006. The VAT 1 siigned by Shakir Ibrahim Patel, the director, declared the main business activity as "clothing company" and advised that the company's main customers would be clothing retailers, sofa manufacturers and blind manufacturers. The company was registered fro VAT with effect from 25 November 2006.

169. In period 01/07 the company made a repayment claim of input tax credits in the sum of £493.88. In period 04/07 it claimed £6,538.01. The final VAT return showed a nil return. On 22 March 2007 Mr Patel advised HMRC that he intended to purchase printers for re-sale and on 30 April 2007 Mr Patel enquired about changing the nature of the business. On the same day he wrote to HMRC's variations unit to advise that the company was looking to diversify into other commodities such as metals and household goods. No response was received to HMRC's request that the company make contact to verify some of its transactions which led to the de-registration of the company from 12 June 2007.

170. On 26 July 2007 Mr Patel telephoned HMRC to establish whether Inspired was still registered for VAT. On 22 January 2008 Mr Patel called again to advise that the company was going into liquidation.

171. On 18 March 2010 Mr Patel was interviewed by HMRC. Mr Patel stated he had been unable to locate company records which had been boxed up somewhere during a number of house moves. He advised that the company had only conducted two transactions; one in fabrics and another for the purchase of shoes. Mr Patel stated that he had spoken to an old family friend who had a mobile phone shop and who had introduced him to a man called "Raja" from Blackburn. Mr Patel had provided Raja with copies of passports, driving licence, company registration and other documents to enable Raja to verify his company before he would trade with him. Mr Patel stated that from that point he started to receive phone calls from people asking if they could do business with him; Mr Patel said he thought it was "dodgy" and did not undertake any business with them.

172. At a further interview on 22 March 2010 Mr Patel stated he was still unable to locate his business records. He stated that Inspired had not been involved in any deals after March 2007. Mr Patel explained that people had telephoned him and told him about containers of goods that "*he wouldn't need to see*"; he told them he did not want to do business with them and had asked Raja for his paperwork back but was told it had been destroyed. He said that one of the men who had contacted him was from Intascope Ltd. Mr Patel was asked about invoices held by HMRC which showed that his company had been involved in deals of flash drives but he remained adamant that he had not been involved in fraud. When shown the invoices held by HMRC Mr Patel noted that although his home telephone number was shown the letterhead was different. Mr Patel stated that he may have been gullible but he did not think that his name or that of his company would be used without his authority.

173. In the absence of firm evidence that Inspired or Mr Patel had undertaken the transactions a pseudo registration number was allocated to "the taxable person

purporting to be Inspired Clothing Ltd" for undeclared sales which were assessed in the sum of £2,353,624.89.

174. In cross-examination officer Wignall clarified that a trader's VRN is not necessarily removed if it makes not taxable supplies because they can request to be voluntarily registered; however if over a period of time no taxable supplies were made then HMRC may look at de-registration. She added that the conclusion that Inspired's VRN had been hijacked was reached after Mr Patel was interviewed in March 2010; prior to that there was no indication that there was anything untoward in respect of the VRN.

12/07

175. In period 12/07 HMRC's case was that the Appellant's chains of transactions were traced as follows:

International Trading SRL (Italy) → Semi Circle Ltd → Intascope Ltd → Scarlito Ltd → Katian Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark) → Trade Zone Ltd (Malta)

176. All of the transactions involved USB Flash Drives. Of the nine deals, 7 were traced back to defaulting trader Semi Circle.

177. The two remaining deals could not be traced as the relevant documents could not be obtained from either Semi Circle of a freight forwarder. However HMRC rely on the fact that the same members feature in the same order in 7 of the chains and the parts of the two chains that could not be fully traced reflect the same pattern up to Intascope. HMRC contend that on the balance of probabilities the Tribunal can conclude that the supply chains were the same in all 9 deals.

178. HMRC officer Wheatcroft provided evidence in respect of Semi Circle which was incorporated on 12 May 2006. The two company officials were Mr Zakir Yusufji who was declared as the finance director and financial contact and Mr Iqbal Darbar who was declared as the company secretary, director and executive contact. The registered address of the company was Mr Yusufji's home address. No accounts were filed at company's house and the company dissolved on 10 March 2009.

179. Mr Darbar was also the company secretary of Concours Ltd which was identified by HMRC as a defaulting trader against which HMRC raised assessments for undeclared output tax in the sum of £9,137,515.

180. Mr Darbar was also the company secretary of I D Machines Ltd which was compulsorily de-registered for VAT on 23 August 2010 as a missing trader.

181. Mr Yusufji was employed by Eanam Denim Care Ltd ("Eanam") until 20 July 2007. HMRC MTIC officers investigated Eanam and a visit note dated 6 March 2007 records Mr Yusufji as playing an active part in the interview where he was described as the "deal arranger". Eanam was subsequently denied its repayment claim for VAT periods 02/07 and 05/07 in the sums of £190,584.96 and £26,712.01 respectively.

The basis of HMRC's denial was that Eanam's transactions were part of an overall scheme to defraud the Revenue and that Eanam knew or should have known that that was the case. Eanam did not appeal HMRC's decsision.

182. The main business activity declared on the VAT 1 of Semi Circle received by HMRC on 28 June 2006 was "manufacture of outdoor wear". VAT registration was refused on 29 August 2006 because Semi Circle failed to provide the additional information requested by HMRC to support the application.

183. Supporting documentation was subsequently provided on 11 January 2007 and the company was registered with effect from 14 August 2006. VAT returns for the periods 04/07 and 07/07 were not submitted to HMRC.

184. On 1 November 2007 HMRC's freight forwarder team visited Alpha International Freight Forwarders Limited ("Alpha"). Documents uplifted indicated that Semi Circle had begun trading in flash drives on 29 October 2007 which was the date the release notes were sent from Semi Circle to Alpha. HMRC visited the registered office of Semi Circle which was a residential semi detached house on a housing estate; a child could be seen asleep on the settee in the front room but no one answered the door.

185. Mr Yusufji contacted HMRC on 6 November 2011 as result of the letter left at the premises which requested contact or the company would be de-registered. Mr Yusufji stated he could not attend HMRC's offices with the company's business records as he had flu. He was told that if no records were produced that day the company would be de-registered. Mr Yusufji stated that Semi Circle had not undertaken any deals. No records were provided to HMRC and the company was de-registered with an effective date of 14 August 2006. Later that day a male called Rizwan Patel who claimed to be Mr Darbar's brother produced records at HMRC's Blackburn office. Officer Wheatcroft took the view that the documents were insufficient evidence that the company was making taxable supplies and the de-registration continued.

186. No further action was taken into Semi Circle until the investigations into the Appellant's transaction chains led to it. On 16 March 2010 an appointment was arranged with Mr Yusufji for 19 March 2010. Mr Yusufji was asked to have the company's bank records available but he stated that he did not have any bank details and never had,

187. In interview on 19 March 201 Mr Yusufji stated that he set up Semi Circle and paid £100 for the Companies House registration from private funds. He stated that Mr Darbar appointed the accountant Mr Soloman who Mr Yusufji stated he had never used, met or paid any money to. He said that Semi Circle had never manufacture red any outdoor wear or other clothing. When shown the release notes obtained from Alpha for flash drives purportedly purchased by Semi Circle from International Trading SRL Mr Yusufji confirmed that the release notes were on the company's letterhead although he did not recognise the telephone number. He stated that

although he had worked for Curry's he was not familiar with computers nor had he carried out any transactions involving flash drives.

188. No further contact was made by Mr Yusufji who stated he would contact his bank to obtain statements. No bank statements were provided and the company was assessed for £1,220,178.00. In cross-examination the officer confirmed that the assessments raised against the trader remain unpaid and were not appealed.

03/08

189. In period 03/08 the Appellant's chains of transactions were all traced as follows:

International Trading SRL (Italy) → Intascope Ltd → Scarlito Ltd → Universal Traders UK Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark) →European Compnent Traders S.L (Spain)

190. All of the transactions involved USB Flash Drives. All 7 were traced back to defaulting trader Intascope Ltd which appeared as a buffer trader in chains in periods 06/07, 09/07 and 12/07.

191. HMRC Officer Westgate gave evidence regarding Intascope. He explained that Intascope was incorporated on 19 January 2006. The nature of the company's business was described as *"Agents agricultural & textile raw materials; Freight transport by road; Business& managements consultancy and Other business activities"*. The company officer was named as Asjad Shah.

192. Intascope was registered for VAT with effect from 13 March 2006. The main business activity declared on the VAT 1 was *"Pharmaceutical supplies, soft beverages and business consultancy."*

193. Intascope submitted VAT returns showing very little trade for periods ending 06/06, 09/06, 12/06 and 03/07. From 06/07 trading increased sharply to show sales and purchases of £3,900,000 and £9,500,000 in 09/07.

194. HMRC visited the company on 22 June 2007. Mr Shah advised that he had been researching markets relating to the distribution of pharmaceutical goods and beverages but that trade in these areas had yet to commence. He stated he had no intention of dealing in mobile phones as he was aware of the risks.

195. At a visit by HMRC on 10 October 2007 Mr Shah confirmed that sales of £3,900,000 had been made which related to USB flash drives and not sales of beverages. Mr Shah stated that he had purchased the goods from Inspired Clothing UK Ltd which was owned by a friend. He had sold the goods to Scarlito which he had contacted through a trade website, the name of which he could not recall.

196. Officer Westgate's enquiries after the meeting revealed that the deals between Intascope and Inspired took place after Inspired had been de-registered.

197. Mr Shah's VAT return for period 09/07 showed a similar pattern of trade as the previous period. Subsequent examination of the invoices showed that the company had purchased from the same supplier and sold to the same purchaser.

198. In March 2008 HMRC became aware that Intascope had moved from a buffer trader to an acquirer. Consequently a visit was made to the company; there was no answer at the premises and Mr Shah could not be reached on his business phone line. A letter was left to notify him that the company would be de-registered within 7 days if no contact was made. Mr Shah contacted HMRC on 27 March 2008. A Regulation 25 letter was issued to shorten the VAT period due to fears that the trader may go missing. Mr Shah was notified and stated he was confined to his bed due to illness.

199. The company's paperwork was provided on 31 March 2008 which confirmed that Intascope had sourced their goods from outside the UK from International Trading SRL based in Italy. The documents also showed that Intascope had diversified its trade further and appeared to be buying and selling diamonds in addition to trading in USB flash drives.

200. A Regulation 25 letter was issued for period 03/08 imposing a 24 hour time limit for the VAT return and payment to be rendered. Mr Shah stated he would not be able to meet the deadline as his paperwork was with his accountant. Officer Westgate acknowledged the time limit was short but highlighted that previous VAT declarations were in the region of £2,000 whereas the current return stated VAT due of £1,600,000. Mr Shah failed to comply with the Regulation 25 conditions and the company was accordingly de-registered for VAT. The VAT return was never received and the debt of £1,600,000 remains unpaid. On 16 June 2011 Mr Shah was disqualified under the Company Directors Disqualification Act 1986 for 14 years as a result of his conduct as director of Intascope.

201. In cross-examination officer Westgate confirmed that as far as he was aware from the date of VAT registration HMRC did not take steps to ascertain whether the company continued to have an intention to carry out taxable supplies. He agreed that Intascope purchased from a de-registered trader and was therefore not entitled to almost £4,000,000 VAT credits it had claimed however HMRC had not taken steps to disallow those credits.

<u>06/08 to 06/09 (inclusive)</u>

202. In period 03/08 the Appellant's chains of transactions were all traced as follows:

International Trading SRL (Italy) →

AD Forniture (03/09) →

CHRY C Trading Ltd Cyprus (06/09) →

→ Concours Ltd → MIH Group Ltd → Scarlito Ltd → Universal Traders UK Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark) →European Component Traders S.L (Spain)

203. All 31 of the transactions involved USB Flash Drives. 30 were traced back to defaulting trader Concours Ltd. HMRC contend that on the balance of probabilities the remaining deal on 25 February 2009 would also trace back to a defaulter.

204. Officer Lawrence gave evidence regarding Concours Ltd which was assessed on 14 June 2009 in the sum of £8,871,877. Additional assessments were issued on 20 July 2010 in the sum of £771,728.

205. Concours was incorporated on 24 July 2006 and registered for VAT with effect from 1 September 2006. The VAT 1 declared the main business activities as *"the manufacture of fashion wear."* The current director is Mr Saleem Darbar and previous directors were Mr Iqbal Darbar, Mr Abdul Patel, Mr Imtiaz Darbar and Mr Saleem Patel.

206. In its first VAT period (12/06) Concours undertook 2 deals in which it purchased from a company called IJM Trading UK Ltd; in the first deal it purchased £380,485 (plus VAT) of designer garments on 11 December 2006 and in the second it purchased £292,940 (plus VAT) of designer garments on 5 December 2006. IJM Trading UK Ltd was registered for VAT on 23 February 2006 and de-registered by 7 August 2008 for their involvement in an MTIC trading cell.

207. Concours did not submit any VAT returns after 06/07. On 27 February 2007 HMRC visited the company to verify the return rendered for 12/06 because HMRC suspected MTIC involvement as Concours had purchased high value goods on credit which it had sold to a Belgian company at a loss. The premises consisted of an empty industrial estate with 2 desks and stock of 10 to 15 garments.

208. An interview was arranged with Mr Saleem Patel on 14 March 2007. Mr Patel failed to attend but a former director, Mr Imtiaz Darbar and the Head of Departmental Health and Care, Mr Mubarak Darbar attended. Despite being the signatory Mr Imtiaz Darbar denied having prepared the 12/06 VAT return. He stated that it had been completed by the accountant known as Sajid although he could not recall his surname or address.

209. Documentation including banking information, payments, insurance and proof of despatch was requested. Concours did not fully comply with the request. Mr Darbar told HMRC in respect of insurance that *"we have been told verbally by Europa logistics that the goods would be insured by CMR"* and *"naively assumed the full value of the goods would be insured"*. He stated that proof of despatch could not be provided as the freight company refused to send copies for data protection concerns and that part of the balance of the transactions was still owed to IJM on credit. Mr Darbar said that he had not carried out due diligence checks on the customer Ramshah other than meeting a Mr Shahid.

210. Concours was de-registered on 3 June 2009 as the company was dissolved on 12 March 2009. Mr Darbar failed to attend a meeting with HMRC on 4 May 2010. On 13 May 2010 Mr Shabbir Patel left copies of sales and purchase invoices for 06/08 and

06/09 at HMRC's Blackburn officer. He stated he had no association with Concours and did not have a telephone number for Mr Darbar.

211. On 14 June 2010 an assessment was issued in the sum of £8,871,877 based on the sales invoices produced by Mr Shabbir Patel. Concours was advised about the assessment on 20 July 2010 and errors in the calculation which led to additional assessments in the sums of £10,778 and £760,950. On 16 February 2011 Concours was restored to the VAT register on the petition of HMRC and the Official Receiver was appointed as liquidator. The VAT liability exceeding £9,400,00 resulting from Concours trade was not declared to HMRC and the assessments remain unpaid.

212. In cross-examination officer Lawrence confirmed that no returns were submitted for periods 09/07, 12/07 or 03/08. There were no records held on HMRC's electronic folder indicating that steps had been taken to enquire about the missing returns nor was there any evidence that central assessments had been raised in the absence of the returns.

09/09

213. In period 09/09 the Appellant's chains of transactions were all traced as follows:

CHRY C Trading Ltd (Cyprus) → KH Enterprises Ltd (defaulter) → The Sense Ltd → Universal Traders UK Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark)

214. The Appellant purchased USB Flash Drives from Tradestar in six deals all of which were traced back to the acquiring defaulter KH Enterprises Ltd. Documents obtained from the freight forwarder indicated that the Appellant may have carried out a further two deals. The documents showed that the Appellant requested the freight forwarder to release goods to Munch on two separate occasions on 17 September 2009. However the Appellant denied that it had carried out these additional deals. If the deals had taken place it would have changed the small payment VAT return in period 09/09 to a repayment return. The Appellant claimed input tax on six deals however a full list of sales and purchase invoices which was requested was never produced.

215. On 11 May 2010 and 22 June 2010 Officer Shorrock issued assessments against KH Enterprises Ltd ("KHEL"). In evidence Officer Shorrock explained that KHEL was incorporated on 16 May 2008 and is currently in Liquidation. The business was registered at 19 Cawdor Street in Manchester. The Director throughout was Mr Hamza Khan and the Company Secretary was Mr Safarish Ali. Mr Ali was also Director of First Conveyancing UK Ltd, Gilchrist Conveyancing Ltd and Safari Enterprises Ltd. Mr Khan was also a director of MF Beers and Minerals Ltd and HK Enterprise Ltd; the latter was incorporated on 1 May 2008 and registered at 63 Liverpool Road, Eccles. Mr Khan's home address is in Glasgow and he provides his occupation as "*taxi driver*". Mr Ali was also Company Secretary of HK Enterprise Ltd.

216. KHEL submitted a VAT 1 and was registered for VAT with effect from 16 May 2008. The business activity was declared as *"claims management/recruitment."*

217. Release notes obtained by officer Shorrock from the fright forwarder Global Freight Systems Ltd in relation to another trader he was verifying called Cibola International Ltd identified the UK acquirer of the goods as KHEL. The goods in question were precious metal Palladium. On 25 November 2009 HMRC officers visited KHEL's registered address. The premises was a shuttered shop with a sign above stating *"KH Services – Recruitment Accident Claims Money Transfers and Lettings."* The shop appeared not to have been used for some time an accumulation of post could be seen. The officers left a letter notifying the business that it was to be de-registered for VAT with immediate effect.

218. At the same time Mr Khan was taking steps to de-register the company. On 20 November 2009 he contacted HMRC's enquiry centre and requested a de-registration form which he returned on 26 November 2009 stating that the business was not trading. Mr Khan was contacted on 5 November 2009 regarding two detained loads of alcohol. He responded on 23 November 2009 stating that somebody might have stolen or hijacked his documents. He also denied any knowledge of Mr Ali.

219. In a further letter dated 8 December 2009 Mr Khan stated that Mr Ali ran the shop and did all the work. Mr Khan stated he had no experience in accident claims, money transfers or recruitment and that the business had traded for approximately 3 months. As regards HK Enterprise Ltd Mr Khan stated that Mr Ali tried to rent the Liverpool Road address but the landlord refused to rent it.

220. Officer Shorrock formed the view that another business called Moonstar Services (UK) Ltd ("Moonstar") might be involved in KHEL's transactions. Moonstar was also involved in accident claims, recruitment and money transfers. It had previously stated an intention to trade in metals, textiles, cars and drinks and was registered at the same address as HK Enterprise Ltd. Invoices issued by KHEL for alcohol contained the contact number shown for Moonstar on its website and the postcode on the invoices was that of Moonstar. At a visit to Moonstar on 8 December 2009 the director Mr Akhtar said he did not know KHEL or why its invoices contained the phone number of his company. Mr Akhtar said that he knew that Mr Khan was a taxi driver who worked for his friend's company in Glasgow but did not know that Mr Khan was the director of KHEL or HK Enterprise. Mr Akhtar said that all of his dealings had been with Mr Ali.

221. A statement provided by Mr Khan to the Insolvency Service concerning MF Beers and Minerals Ltd was obtained by HMRC and showed that Mr Khan had used Mr Akhtar as a translator. In the statement Mr Khan disclosed the details of his other directorships which therefore would have been known to Mr Akhtar who translated the document contrary to what he told HMRC.

222. On 8 March 2010Mr Shorrock received information from the Cypriot Tax Authorities which stated that the purported supplier to KHEL, CHRY C Ltd, had never traded with or heard of KHEL.

223. On 11 May 2010 an assessment was raised against KHEL. Mr Khan did not pay nor did he appeal the assessment. A winding up order was made on 19 January 2011 and as at 27 January 2011 the company's debt to HMRC stood at £7,299,342.83. Mr Khan failed to respond to HMRC's attempts to contact him.

224. In cross-examination Mr Shorrock clarified that a review of VAT registration would not normally take place until 12 months after a trader indicated an intention to make taxable supplies. He added that this would depend on the circumstances as a new start-up company may have a period submitting no returns where the business is building up and that a trader was unlikely to be the subject of action by HMRC until there had been five late VAT returns. Mr Shorrock explained that central assessments are issued automatically by computer and he could not think of an example where a return was not submitted but no central assessment issued save perhaps where the VAT 1 indicated that the trader was likely to receive repayments. Mr Shorrock confirmed that at the time he took over KHEL's case there had been no previous VAT visits to the company.

12/09

225. In period 12/09 the Appellant's 8 chains of transactions were all traced as follows:

Euro Trading (Italy) → TPPTB Span Media Ltd (hijack) → UN Consultant Services Ltd (defaulter) → Bluestar Trading Inc Ltd→ Universal Traders UK Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd (Denmark)

226. Officer John Hawkins issued assessments totalling £1,720,898 against TPPTB Span Media Ltd which were linked to the Appellant's deals. Span Media was incorporated on 15 November 2004 with a registered address of Unit 01-04, 409 King Street, Fenton, Stoke-on Trent. The trading activities reported to Companies House were "*Other Wholesale*". Span Media went into Liquidation on 13 July 2010.

227. The three directors of Span Media at the relevant time were:

- Graham J Smith who was appointed on 1 March 2009 and whose address was not recorded on the Electoral Roll as at 4 July 2011;
- Arthur S Kwaitowski who was appointed on 9 February 2008 and was the sole shareholder. There was no record of Mr Kwaitowski being registered at 117 Gregory Boulevard, Nottingham as at 4 July 2011; and
- Ms Olivia Brown who was appointed on 15 February 2009 and whose address was not registered on the Electoral Roll as at 4 July 2011.

228. The company secretary listed is Info Technologies Ltd which was appointed from 7 December 2007 to 8 December 2007.

229. Release notes indicated that Span Media were acquiring USB flash drives from an Italian trader Euro Trading in December 2009. A visit to Span Media took place on

7 May 2010. The owner of the buildings on the industrial estate told the officers that Span Media had approached him in the previous November/December and asked to lease a unit for 5 years. A contract had been agreed, Span Media occupied the unit for a month and then left without payment. Mail showed that Span Media had used false identification to purchase vehicles and had defaulted on HP agreements.

230. Release notes obtained showed Span Media's company registration number but the VRN of a company called I & S Distribution Ltd whose trade was shown on the VAT 1 as plumbing and building installation. I & S Distribution went into liquidation on 13 May 2009. A director of I & S Distribution, Sandeep Singh Sahota was also a director of Span Media from 7 December 2007 to 8 December 2008.

231. Enquiries with the Insolvency Service showed that Mr Wajid Hussain had complained that his identity had been stolen as he was receiving calls and correspondence as company secretary of I & S Distribution yet he had never heard of the company. The Insolvency Service was satisfied that Mr Hussain was telling the truth and they had written to the company officials of I & S Distribution but had no response.

232. Officer Hawkins concluded that the value of transactions and use of an invalid VAT number indicated that the default was fraudulent. The assessment was raised against TPPTB Span Media on the basis that goods had been acquired and sold in the UK and the VAT had not been accounted for.

233. UN Consultant Services Ltd ("UNCS") was registered for VAT from 3 July 2009 which was cancelled with effect from 8 October 2010. HMRC officer Jennifer Davies established that UNCS's VRN was hijacked and issued an assessment against TPPTB UN Consultant Services Ltd for £1,723,347.75.

234. UNCS was incorporated on 2 April 2009. Its sole director and shareholder was Mr Usman Nazir. The VAT 1 received by HMRC on 1 July 2009 declared the company's business activities as "*Business Consultation and Project Management.*"

235. UNCS was registered with effect from 3 July 2009. The first VAT return received on 2 September 2009 declared that no trade had taken place since registration. A letter dated 24 August 2009 signed by Mr Nazir notified a change in business activities to trade in the sales of household goods, hardware, daily use products and general goods in the UK. This prompted a visit by HMRC which took place on 29 September 2009. Mr Nazir's sister was spoken to. English was not her first language and communication was difficult however officers established that Mr Nazir attended the house once or twice a week and she would pass on contact letters.

236. In a telephone call received from Mr Nazir on 6 October 2009 it became apparent that the company's business activities had changed again and the company was now a freelance supplier of gas and electricity to households. The call was followed up by a letter from Mr Nazir who stated that the company was waiting for contracts to be finalised with companies like E-ON which would take a considerable

amount of time. Mr Nazir stated that once contracts were in place UNCS would start trading.

237. HMRC concluded that there was insufficient to demonstrate that UNCS were making or intending to make taxable supplies. Mr Nazir was informed and did not respond. Consequently UNCS was de-registered with effect from 8 October 2009.

238. Subsequently information obtained by HMRC indicated that UNCS had carried out 8 transactions with a company called Blue Star Trading Ltd ("Blue Star") on 2 December 2009. The transactions all involved Flashcards to the total value of £1,723,347.75. HMRC wrote to Mr Nazir on 8 April 2010 requesting all business records for the period 3 July 2009 to 8 April 2010.

239. Officers visited Mr Nazir on 2 April 2010. Mr Nazir told the officers that he was now acting as a consultant to help develop and expand other businesses. He stated that he had only carried out one deal in flash cards in September 2009 when the company was registered for VAT. Mr Nazir produced the invoice and explained that the goods had not entered the UK but were delivered direct from China to Belgium. Mr Nazir stated that he was due to receive a 1% commission however the deal fell through.

240. Further attempts to contact Mr Nazir in order to show him the paperwork from Blue Star Trading Inc Ltd were unsuccessful. As a result officer Davis carried out an unannounced visit on 23 September 2010 to the PPOB and Mr Nazir's home address. Officer Davis was told that Mr Nazir no longer lived at the property and had not done so since December 2009. At the PPOB a lady informed HMRC that she rented a room at the property where Mr Nazir and his wife lived but that he was not in. A contact letter was left which prompted Mr Nazir to telephone HMRC the next day. He told HMRC that he was leaving the country the following day for 3 weeks but would attend HMRC's offices later that day. At the meeting Mr Nazir denied any knowledge of the transactions and stated that it was not his signature on the Declaration of Supplies. HMRC noted that the signature differed from that on Mr Nazir's driving licence and the VAT 1 he had signed.

241. UNCS had been de-registered for 2 months when the transactions took place. The output tax due on the onward sales to Blue Star Trading Inc Ltd was not paid to HMRC. Consequently HMRC assessed for the invoices accounting for sales by UNCS to Blue Star Trading Inc Ltd in December 2009 against the TPPTB UN Consultant Services, The assessment totalled £1,723,347.75.

<u>03/10</u>

242. The Appellant's 7 transactions in 03/10 were traced by Officer Hancox as follows:

Very Special Things LDA (Portugal) → TBS Enterprise Services Ltd → UK CF Solutions Ltd → TPPTB Blackburn Electrical Supplies Ltd (defaulter)→ Universal Traders UK Ltd → Tradestar International Ltd → Appellant → Munch Marketing Ltd ApS

243. Officer Hancox noted that all of the deals in 03/10 had the same deal chain and there was only one CMR covering the transport of the goods for all 7 deals and only one vehicle movement. Despite this the Appellant issued separate invoices for each deal. Officer Hancox questioned why it was necessary for separate documentation to be issued such as inspection reports when it was effectively one deal with all of the goods being delivered to the same customer using the same lorry.

244. HMRC officer Loureiro provided undisputed evidence regarding trader Blackburn Electrical Supplies Ltd ("BES"). BES was incorporated on 11 September 2003 and gave its intended business activity as "*wholesale/retail electrical supplies*". Mr Simon Keane was the director and Ms Catherine Joanne Bradley was company secretary. The company was registered for VAT on or around 23 September 2003. On 5 March 2010 the company was placed into liquidation and de-registered for VAT purposes from 15 April 2010.

245. In late 2010 HMRC obtained information which indicated that five days after it was liquidated BES had sold memory sticks and flash cards to Universal Traders Ltd. An individual called Indiaz Rawat was identified as having been paid by Universal for the goods. Mr Rawat had also been a director of Concours Ltd. The directors of BES told the liquidator that Mr Rawat had never been employed by them nor did they know him. HMRC could find no evidence that BES had been involved in the purchase and sale of flash cards or memory sticks nor were any documents found to suggest that BES had traded with Universal Traders Ltd or Mr Rawat.

246. On 22 June 2011 a tax assessment of £1,796,970 was issued to the TPPTB Blackburn Electrical Supplies. The assessment remains unpaid and unchallenged.

<u>06/10, 09/10 and 12/10</u>

247. The Appellant's transactions in 06/10, 09/10 and 12/10 (25 deals) were traced by Officer Hancox as follows:

Paris Trading & Consulting SARL (France) → Yusuf Khan T/A The Mobile Team Ltd (contra trader)

→ Micom International (06/10 & 09/10)

→PC Suppliers (UK) Ltd (12/10)

→ iForce Technologies Ltd → Appellant → Munch Marketing Ltd ApS (8 deals)/Profitade (17 deals)

248. Officer Hancox noted that again separate CMRs existed for the deals in 06/10 even though the same transport company and vehicle was used and all deliveries took place on the same day.

249. Initially HMRC were only able to trace the chains to the contra trader The Mobile Team. However additional statements were served which showed that the tax

loss chains of The Mobile Team traced back to Lite Services Ltd via Citi Law both of which defaulted on their obligation to account for output tax.

250. Officer Akinwumni provided unchallenged evidence regarding The Mobile Team. On the VAT 1 Mr Khan the director stated that he took over another business "Face Off Ltd" on 8 June 2009. The company previously traded as a sole proprietor (Youself Khan T/A The Mobile Team). On 23 June 2009 HMRC received the VAT 1 signed by Mr Khan which described the company's business activities as "wholesale of mobile phone accessories". The Mobile Team was incorporated on 18 June 2010 and was dissolved on 31 January 2012.

251. On 31 October 2010 HMRC received another VAT 1 from Mr Khan in which he applied to transfer the registration number from himself as sole proprietor to The Mobile Team Ltd. The business activities were described as "*wholesale of electronics and telecom equipments.*"

252. In 06/10 The Mobile Team owed a net payment to HMRC for £617.53 as a result of its acquisition deals. It organised its affairs in such a way that the outputs for the period were split at 49.9% (£5,973,627) standard rate and 50% (£%,976,000) zero rate and the value of the goods acquired 49.8% (£5,962,404) and subsequently sold via contra transaction chains were off-set by the 49.9% value of goods sold to the EU that originated via tax loss transactions.

253. In 09/10 The Mobile Team conducted 17 deals; 6 were broker deals and 11 were acquisition deals. The outputs were split at 49.9% (£9,013,908) standard rate and 50% (£9,017,400) zero rate and the value of goods acquired 49.9% (£8,995,188) and subsequently sold via contra transaction chains were set off by the 49.8% value of goods sold to the EU that originated via tax loss chains. All 6 broker deals were traced back to defaulting trader TPPTB Easy Furniture Ltd.

254. HMRC officer Christopher Baker gave unchallenged evidence regarding Easy Furniture Ltd which was incorporated on 5 April 2004 and registered for VAT with effect from 1 June 2004. The company described its main business as "e-commerce, Internet Furniture Retailing." In January 2011 HMRC officer Hussain received a request for an urgent visit to be conducted to the company as freight forwarder release notes indicated that Easy Furniture was the acquirer/defaulter in supply chains that led to The Mobile Team Ltd in periods 06/10 and 09/10. While arranging a visit HMRC was told by the company officer Ms Summers that the company did not deal with IT hardware only furniture. This was subsequently reiterated by the director Mr Waldron.

255. Following a visit HMRC concluded that Easy Furniture's VRN had been hijacked. On the basis of evidence obtained HMRC used best judgement to calculate the tax losses in respect of five deals in June 2010 and six in September 2010. A notice of assessment was issued to the TPPTB Easy Furniture Ltd in the sum of £2,617,230 relating to sales made from June to September 2010.

256. The same pattern emerged in period 12/10. In periods 06/10, 09/10 and 12/10 there were 26 acquisition deals comprised of 310,400 units of flash drives with a net purchase value of £21,068,747. These were sold to UK customers for £21,100,588.50 plus £3,694,240.91 VAT. On 21 October 2011 HMRC requested that The Mobile Team be de-registered due to Mr Khan's repeated failure to produce records and information requested.

257. The Mobile Team's broker deals in the relevant period were subsequently traced back to Citi Law which purchased from Lite Services. Officer Saxon provided evidence regarding Citi law which was incorporated on 16 November 2009 and dissolved on 5 July 2011. The sole director was Mr Jonathon Swindells. On or about 26 June 2010 Citi Law applied to be VAT registered. The VAT 1 indicated that the business activity was "solicitors" and that trading would commence on 26 June 2010. Citi Law was registered with effect from the date of application.

258. On 6 September 2010 Citi Law lodged a net repayment claim in the first VAT return due for period 07/10 in the sum of £8,720.25. On 13 September 2010 a person who identified himself as Jonathon, the company director, telephoned HMRC to enquire about the status of the repayment. Similar telephone calls were received on 15 and 17 September 2010. On 20 September Citi Law was notified that payment would not be released until the claim had been verified. In a telephone call on 27 September 2010 the caller gave a new business address and informed HMRC that the main business activity was brokerage services, generating personal injury claims for solicitors and the business had set up a call centre to which the majority of the claim related. Further attempts to contact Citi Law were unsuccessful. In the absence of documentary evidence to support the repayment claim, the input tax was denied and the return was centrally amended to indicate £1,298.50 VAT due to HMRC.

259. In March 2011 Citi Law was identified within a series of goods release notes obtained by HMRC which showed Lite Services Ltd releasing stock to Citi Law which was in turn released to Master UK Ltd. As Citi Law was uncontactable it was removed from the VAT register with effect from 14 March 2011 as a missing trader. At a visit to the company premises HMRC officers were told by the landlord that Citi Law had occasionally attended the premises for two or three weeks but then disappeared in arrears with the rent.

260. Citi Law failed to render returns for periods 10/10, 01/11 and the final return to 14 March 2011. Assessments were issued for period 10/10 in the sum of £3,692 andperiod 01/11 in the sum of £3,689 which have not been paid. The debt on file totals £8,679.50.

261. HMRC obtained 12 sales invoices in Citi Law's name from Master UK Ltd which indicate that Citi Law sold computer components to Master UK Ltd, namely 43,700 hard drives, between 10 December 2012 and 4 March 2011 to a value exceeding £16,000,000. A total of £3,057,517.78 VAT is due to HMRC on those sales which were not declared by Citi Law. No assessment was issued due to HMRC being out of time to do so. Citi Law is a missing trader.

262. It was the case for HMRC that Citi Law deliberately acted as a blocker trader by failing to produce transaction documentation including that relating to its purchases from Lite Services Limited.

263. Officer Gary Saul gave evidence regarding Lite Services ("Lite").The director of Lite was Mr Asif Lal. The application for VAT registration was made in July 2009 and declared the business activity as the "wholesale of wine, beer, spirits and other alcoholic beverages."

264. A limited amount of contact was made with Mr Lal however a visit report dated 1 March 2010 stated:

"Monday 1/03/2010 Mr Lal did not turn up for the meeting, however, he did send someone with the records. From these it would appear that unless he is selling his last 2 purchases to the EU he will owe over £56k in tax to HMRC."

265. In 2010 Mr Lal advised that the business activities were the wholesale of electrical goods, games consoles and mobile phones. In February 2011 HMRC advised Mr Lal that a company called Elect Commerce Ltd had advised HMRC that Lite was its sole supplier of soft drinks, soap and batteries. Mr Lal stated that he had only ever traded in electronic goods and that someone had used his name to open two companies the previous year. At that point Lite's VRN was de-registered on the basis it had been hijacked and a new one issued.

266. As a result of information received from freight forwarders Officer Saul compiled a best judgment assessment for purchases made by Citi Law from Lite in deals where The Mobile Team acted as a fraudulent contra trader. The assessment totalled £2,808,711.50 and was issued to the TPPTB Lite Services Ltd.

Findings on whether the tax loss was fraudulent and whether the Appellant's transactions connected with fraudulent VAT losses?

267. We considered the evidence in respect of the defaulting traders, contra-trader and transaction chains carefully and we should make clear that we did not simply accept the opinions expressed by the officers which we disregarded. Given that there were different issues raised by the Appellant we set out our findings on each below.

<u>Period 07/06</u>

268. In respect of 4A Developments we were satisfied that during the relevant period it knowingly acted as a contra trader as part of a scheme designed to defraud the Revenue. We were satisfied that 4A itself acted as a defaulting trader. We were satisfied that HMRC had accurately traced the chains of transactions in the "clean" and "dirty" chains and that the latter traced back to fraudulent defaulting traders DTM and Woodworks thereby connecting the Appellant's relevant transactions (in this and other periods) to a fraudulent tax loss.

269. As regards the deals involving Jeck Link we were satisfied that HMRC had accurately traced the Appellant's chains of transactions. The issue raised was whether

Jeck Link acted fraudulently. We accepted the evidence that documents obtained contradicted the company's assertion that it never traded and we concluded that the only reasonable conclusion for its failure to declare its sales and the output tax on those sales was that it was acting fraudulently. The fact that the assessments raised remain unpaid and Jeck Link is a missing trader strengthened our conclusion that these were not the acts of a legitimate business and in those circumstances we concluded that HMRC had established a connection to a fraudulent tax loss.

270. The Appellant did not challenge the evidence of connection to fraudulent tax losses in respect of Kaymore, Cirex, VSUK and HBS and, having reviewed the evidence we were satisfied that in each case the chains had been accurately traced to a fraudulent tax loss.

Period 08/06

271. There was no issue taken regarding the evidence relating to Only Quality and Jet Set Go and we were wholly satisfied that HMRC had discharged the burden of proof in respect of these transactions. We have already set out our findings on Kaymore, and 4A above and we will not repeat them. In respect of Zenith we were satisfied that the dates and quantities of goods traded through the chains had been accurately traced by HMRC.

272. The issue in respect of Devella was whether HMRC had established fraud. We were satisfied that the director's lack of experience in wholesale trading taken together with his reluctance to show HMRC the business premises, the fact he could not recall the name of his accountants and that which he eventually gave did not appear to exist and the fact that he failed to provide HMRC with business records all led us to conclude that these were not the acts of a legitimate businessman. Although we noted the point that the company was dissolved prior to the assessment being raised the fact remains that Devella did not properly declare, provide records or account for its liability and that the only reasonable conclusion was that the company was part of a scheme to defraud the Revenue. The fact that an allegation of fraud was not put to the director does not mean that the company was not acting fraudulently at the relevant time but rather it indicates that HMRC was unaware of that fact. On the basis that there has been no contact from the company despite an assessment being raised and the lack of payment of the liability we were satisfied that fraud had been established.

273. As regards Wade Tech we were satisfied that transactions had been carried out in the company's name which were not declared or accounted for to HMRC. We accepted HMRC's evidence that the VRN had been hijacked and we inferred from the act of hijacking that the acts of those involved had been fraudulent.

274. The Appellant initially challenged the tracing in respect of the chain involving EMS although did not appear to us to be pursued following the evidence. Nevertheless, we considered the information before us and we were satisfied that the goods, payments and dates of transactions had been accurately traced by HMRC to defaulting trader EMS.

Periods 06/07 and 09/07

275. There was no issue as to the tracing of these chains leading back to TTPPTB Inspired Clothing. We were satisfied that the chains had been accurately traced. As to the issue of fraud we were wholly satisfied that we could properly infer from the evidence regarding Mr Patel having been approached in suspicious circumstances by Intascope, to which Inspired purportedly sold, added to the taking of Mr Patel's business documents such as the company registration and HMRC's obtaining of invoices purporting to be from Inspired that the company's documents had been used in undeclared sales. We concluded that the use of such documents and hijack of Inspired's VRN was undoubtedly fraudulent and we were therefore satisfied that the Appellant's transactions had been shown to be connected to the fraudulent evasion of VAT by TTPPTB Inspired Clothing Ltd.

Period 12/07

276. We were satisfied that the chains of supply had been accurately traced and connected the Appellant's transactions to the fraudulent evasion of VAT by Semi-Circle. We considered the two transactions which could not be fully traced due to lack of documents however we noted that the same members feature in these chains in same order as the remaining seven in this period and we were satisfied that on the balance of probabilities the chains, if fully traced, would lead back to the same defaulter.

Period 03/08

277. There was no real challenge to the tracing of the chains in this period and we were satisfied that all were accurately traced back to a fraudulent tax loss by Intascope.

Periods 06/08 – 06/09

278. We were satisfied that HMRC had accurately traced the chains of transactions to defaulting trader Concours and that the connection between the Appellant's transactions and a fraudulent tax loss had been established. In the one chain that could not be fully traced which followed the same pattern in terms of members we were satisfied that on the balance of probabilities and looking at the context of the transactions in this period as a whole, the chains if fully traced would lead back to the same defaulter.

Period 09/09

279. We were satisfied that HMRC had accurately traced the chains of transactions to defaulting trader KHEL and that the connection between the Appellant's transactions and a fraudulent tax loss had been established.

Period 12/09

280. We were satisfied that HMRC had accurately traced the chains of transactions to hijacked trader Span Media and defaulting trader UN Consultant Services Ltd and that the connection between the Appellant's transactions and a fraudulent tax loss had been established.

Period 03/10

281. We were satisfied that HMRC had accurately traced the chains of transactions to hijacked trader BES and that the connection between the Appellant's transactions and a fraudulent tax loss had been established.

Period 06/10, 09/10 and 12/10

282. We were satisfied that HMRC had accurately traced the chains of transactions to The Mobile Team which had knowingly acted as a contra trader as part of a scheme to defraud the Revenue. We also accepted the evidence regarding the tracing of The Mobile Team's tax loss chains to defaulters TTPPTB Easy Furniture, Citi Law and Lite Services which established the connection between the Appellant's transactions and fraudulent tax losses.

Appellant's general submissions

283. The Appellant made a number of submissions generally in respect of the issue of connection to fraudulent tax losses. In essence these were two-fold; the "proportionality" argument and the "*Fonecomp*" argument. Dealing with the latter first Mr Holland sensibly noted that we may decide to await the outcome of *Fonecomp* [2015] EWCA Civ 39. That decision has now been released and does not assist the Appellant. The principles set out by the Court of Appeal are well known but the salient points in respect of this appeal can be summarized as follows:

- *Kittel* itself is expressed in terms sufficiently wide to cover contra-trading although it was not itself a case of contra-trading. The CJEU authorities do not affect the position where allegations of contra-trading are involved: *"there is no reason why the chain of supply should not be connected through a branch. It is the existence of the requisite connection between the transactions involved which makes the relationship between the transactions a chain"* (see[24] – [28]);

- *Mobilx* [2010] EWCA Civ 517 remains good law (see [33]);

- The question of connection is to be determined on the facts (see [43]);

- The trader does not need to know how the fraud that occurred took place only that it has occurred or will occur at some point in some transaction to which his transaction is connected (see [51]).

284. We consider that in reaching our decision on connection we have applied the guidance set out by the Court in *Fonecomp*. We will address the issue of knowledge more fully in due course.

285. Mr Holland's second submission was described as "proportionality". These arguments related to the evidence of HMRC officers in respect of EMS, Cirex, 4A, Zenith, VSUK, Jeck Link, Wade Tech, Kaymore, HBS, Woodworks, Inspired, Semi Circle, Intascope, KHEL and Concours. In essence Mr Holland argued that in each case HMRC's failure to investigate or take action against the traders in circumstances where taxable supplies had not been made or suspicion had been aroused had lead to the hijacking of VRNs or the trader entering into fraudulent transactions. By way of example Mr Holland highlighted that in respect of VSUK nil returns were submitted between May 2005 and May 2006 and returns were submitted late however no steps were taken to see if the trader had an intention to enter into taxable supplies. When the trader was eventually visited it was discovered that its trading address was a mailbox address. Similarly Zenith was identified as a high risk trader at a visit in March 2006 yet there was no increased monitoring and the next visit did not take place until June 2006 at which point it was discovered that Zenith was MTIC trading on a massive scale. No enforcement action was taken so Zenith was able to enter into fraudulent transactions in August 2006.

286. We considered these submissions carefully. We noted the evidence given by a number of officers that HMRC could not simply de-register traders or take action against them without good reason. Although there was no evidence of taxable supplies being made by some of the traders, we accepted the evidence that businesses were given the opportunity to build business. Whether the scale of MTIC fraud was known to HMRC at the relevant time and whether it had the resources to carry out rigorous and frequent monitoring is not a matter about which we heard evidence. However we took the view that these matters were not relevant to the issues we had to determine on the facts, namely whether connection to fraudulent tax losses had been established and we rejected Mr Holland's submission that alleged failings by HMRC should be taken into consideration.

Did the Appellant know, or should it have known that the transactions in this appeal were connected to fraud?

287. The evidence we heard related mainly to this principal issue. Given the volume of evidence before us, both oral and documentary, the following is intended as a summary of the points raised however we should make clear that all of the evidence was carefully considered.

288. HMRC relied on a numbers of factors as indicators that the Appellants knew or should have known that their transactions were connected to fraud.

The Appellant's Awareness of MTIC fraud

289. HMRC Officer Leslie Pitt who dealt with periods 07/06 and 08/06 set out the following contacts between HMRC and the Appellant.

290. On 4 November 2004 HMRC visited the Appellant's premises at the Appellant's request. HMRC was informed that the Appellant wanted to start wholesale trading in

CPUs and were anxious to only trade with reputable traders and avoid being involved in chains with defaulting or missing traders.

291. The visit report showed that the following points were discussed with the Appellant:

- The problems facing the EC tax authorities and tax losses to the UK exchequer;
- The issue of non-economic activity;
- Invalid invoices and joint and several liability;
- The importance of checking other traders VAT registration numbers with HMRC's Redhill office;
- The importance of carrying out commercial checks;
- Notice 726 was issued regarding Joint and Several Liability.

292. At a further visit to the Appellant by HMRC on 7 December 2004 Mr Tsai told Officer Horne that he had visited and met all of his suppliers and that Graydon checks had been carried out. At that time no Redhill checks had been carried out and Mr Tsai was advised that to do so was in the Appellant's interest.

293. On checking the documentation for the VAT return for period 12/04 HMRC noted that occasional purchases had been made from Supreme Distribution with all sales made to EU traders. There was no evidence of Redhill checks having been carried out and proof of export was limited. There were further anomalies in the documents such as the sales invoice numbers which did not match up to the Appellant's deal sheets. HMRC officer Bayliss spoke to Miss Sally Lin who was responsible for wholesale trading; Miss Lin stated that checks were carried out by another employee in credit control and that VRNs were verified on initial contact with a trader, not at every deal. The only details provided of checks carried out were Graydon credit ratings. Miss Lin told the HMRC officers that all of the suppliers were known to and had been visited by the Appellant. HMRC's Redhill department later confirmed that no verification had been received by the Appellant although it was noted that had the correct details been provided then the supplier and customer numbers would have been verified.

294. At a visit in October 2005 Miss Lin confirmed that she was aware of the need for constant due diligence and stated that a programme of visiting traders had been undertaken. Further visits to the Appellant also highlighted the need for checks to be made with HMRC's Redhill office and the problems encountered with MTIC fraud. On 4 June 2007 HMRC received a letter from the Appellant stating that it had ceased dealing in CPUs from 1 April 2007.

295. In June and July 2007 HMRC notified the Appellant that some of its deals in 07/06 and 08/06 had been traced back to defaulting traders. The Appellant responded

by letter dated 11 July 2007 in which it stated *"we cannot be held responsible for transactions in the supply chain beyond our immediate suppliers and customers."*

296. Mr Soleman highlighted the main items discussed with the Appellant at a meeting on 21 September 2009 which included:

- Miss Lin told HMRC that the change in the Appellant's trading patterns from payment to repayment was as a result of supplies of CPUs to the USA, UK and Europe;

- Miss Lin also stated that the Appellant's business had slowed because businesses dealing in mobile phones were going missing without paying VAT;

- HMRC advised Miss Lin that the Appellant should be careful who it traded with; in particular Munch was discussed during the meeting and Miss Lin stated that she if not know why it was dealing in CPUs. She was advised not to trade with Munch.

297. Mr Soleman noted that although the Appellant was notified on 10 March 2010 that tax losses had been found in its chains in 06/07, 09/07 and 12/07 it nevertheless continued to trade with Tradestar and Munch on 10 and 11 March 2010, the companies in the relevant tax loss chains.

298. At a meeting on 18 March 2010 Mr Tsai stated that he had heard of MTIC fraud but not read much about it. Mr Tsai also expressed his view that Joint and Several Liability was illegal and he did not agree with it; he believed it would not apply to the Appellant's deals.

299. In cross-examination Mr Tsai was asked about his understanding of MTIC fraud:

"Q. So you knew that there was a risk by going into that market that you could be involved in those sort of chains and you wanted to avoid it you told the officers.

A.Yes

Q. But you knew that was a risk?

A. Every commercial activity is a risk.

Q. No, answer the question please. You knew that by going into the wholesale deals in CPUs there was a risk of becoming involved in chains where there featured misers and defaulting traders?

A. Yes.

Q. You knew that

A. Yes…

Q. And you knew it was not just a risk of buying from somebody who was going to go missing or not pay their VAT because they could be further along in the chain of supply, could they not?

A. Yes

Q. Because we see the reference to chains there. So what did you know about MTIC fraud, missing trader intra community fraud, at that stage?

A. We didn't know much because our activities always, our sales and marketing activities always try to get the best suppliers and best customers. So we think we can do the same to any trade, any business. That was the only reason we enter into this and we are not aware the problems could be that much at the time.

Q. But you knew that there was a problem by going into that market.

A. Yes, as I said, every business activity has a risk involved and we tried to minimise the risk…

Q. Notice 726…did you read it, Mr Tsai?

A. We were given, yes, we have read it but we didn't fully understand at the time.

Q. No doubt you would have asked if you did not understand anything. You had lots of visits from Customs after this, did you not?

A. Yes, we did , yes

Q. And no doubt anything that was not clear to you, you would have raised with them.

A. As I explained, this is very new at the time to us…we may understand in English but we probably didn't know why there is missing traders because we always pay VAT. Our suppliers pay VAT. Our customers pay VAT. Then where is going to be a loss?

Q. You have already referred in the visit report to the risk of becoming involved in chains where there are missing traders and defaulting traders, so you knew it might not be with your supplier but may be your supplier's supplier or their supplier, did you not?

A. Yes, I understood but at the time we were very vague at what can happen…"

(Transcript 27 November 2014 page30 – 34)

Staff

300. Mr Tsai explained that he is the founder and chairman of the Enta group which comprises a company and a number of other businesses. The Enta Group employs approximately 220 people. Mr Tsai stated that by the time of setting up the company in 1990 he had gained over 15 years experience in the IT industry. Having spotted an

opportunity in the UK market for affordable computer components he started by distributing computer casings from his garage in Telford. The company grew and is now one of the UK's leading IT distributors. The company is one of only five authorised UK distributors for Microsoft.

301. It was at the meeting with HMRC on 10 March 2010 that Mr Tsai introduced his niece Miss Sally Lin to Mr Soleman as an employee of the Appellant. He stated she was leaving the company at the end of March 2010 but explained that she had been given the responsibility of the deals which are the subject of this appeal. Mr Tsai described Miss Lin as the purchasing manager and stated that she was not required to confirm with him prior to completing deals with Munch but he would examine the deals after completion. In his written evidence Mr Tsai explained that Miss Lin conducted all negotiations and made her own decisions regarding buying and selling; she then reported to Mr Tsai on a weekly or monthly basis.

302. In cross-examination Mr Soleman was referred to a letter from Simmons Gainsford LLP dated 14 June 2010:

"Q. If you go forward to page 232, this is a letter from Simmons Gainsford LLP dated 14th June 2010.

A. Yes.

Q. If I take you to the last paragraph of that letter at page 232, because this paragraph deals with the meeting and the meeting notes and the annotations to the meeting notes. "I understand that HMRC have met with my client on a number of occasions. However, it is only in respect of the meetings on 10th and 18th March that notes have been exchanged and provided to my client. In arriving at the reasons for denying the input tax claimed and now assessed as detailed above, HMRC have placed considerable reliance upon information provided by Mrs Lin at the meeting on 10th March. The notes of that meeting were commented upon and annotated and corrected by Mr Jason Tsai and returned to HMRC at the meeting on 18th March. Mr Gemmell raises the issue in his letter of 1st April. Whilst it is appreciated that HMRC were authorised to discuss matters with Mr Yeo and Miss Lin, the inclusion in the authorisation letter requested by HMRC of Mr Tsai, unrepresented at this point, that I should agree with their answers cannot reasonably be relied upon. HMRC should be aware that Miss Lin had resigned her position with ETL at the time of the meeting on 10th March. Miss Lin was leaving to be married and emigrated to Sweden. It is the policy of ETL that long-serving employees are not required to work out their notice period typically three months being effectively placed on garden leave for the duration but they are required during that notice period to attend the office if requested. Miss Lin had been specifically requested to attend the meeting, flying in from Sweden to do so. Mr Tsai should have been able to rely upon the responses of Miss Lin who was at that point still employed by ETL but it is clear from the responses to HMRC enquiries that she was distracted by her imminent wedding and anxious to ensure that she connected with a flight back to her new home." Do you see that?

A. Yes, I do."

(Transcript 20 November 2014 page 65)

303. Ms Dragica Price was named as the person taking over from Miss Lin and in 2011 Mr Tsai confirmed that no other sales staff were involved in these deals. In his written evidence Mr Tsai explained that he was assisted administratively by Ms Price but he took over the export business which Miss Lin had previously dealt with. He described Ms Price as a stock controller for warehousing facilities; her responsibility was to control movement of goods into and out of Appellant's warehouse. Mr Hancox noted in evidence that none of the goods in the deals under appeal entered the Appellant's warehouse but were all kept at the freight forwarders' premises.

304. On 18 March 2010 Mr Tsai told officers that the company had approximately 10 product managers who carried out product research and that prior to being approved this would go through the Vice President Mr Jon Atherton. Mr Soleman noted that no evidence was provided to demonstrate that any such research or approval had been conducted in respect of the USB Flash Drives traded.

305. In his written evidence Mr Tsai stated that the products traded were standard in terms of specification and quality. The key issues in trading the products were price and availability. It was not necessary to have product training because the products were not complex.

306. In cross examination Mr Tsai was asked about his exhibit reviewing the business which under the heading "Benefits of Trading with Entatech" stated that the company had "*channel managers with expert knowledge and product specialists who manage particular product ranges and sales teams in order for us to continuously offer specific product knowledge and information to our customers"*:

Q. …With Sally's deals, it was just Sally that was doing those, was it not?

A. Sally is part of a team, yes. She assisted by other people in administration.

Q. What, putting in information onto the computer?

A. Yes

Q. She actually carried out the deals, though, did she not?

A. Yes…

Q. She sourced the products, found the customers, yes?

A. Yes… Sally was a very experienced person.

Q. Did Munch have anybody else looking after its account other than Sally?

A. Sally is, as I said, yes, she can do product, she can do sales, she can source, she can talk. She's an all-in-one person."

(Transcript 27 November 2014 page 28)

Application to exclude Miss Lin's evidence

307. Miss Lin was not available to give evidence; we were told that she was heavily pregnant and living in Taiwan. HMRC applied to exclude the witness statement provided by Miss Lin. Mr Puzey submitted that we should take into consideration the following four factors:

(i) the nature of the evidence;

(ii) the matters with which Miss Lin takes issue, for instance comments recorded in HMRC's visit notes which she denies making;

(iii) The reason for non-attendence;

(iv) The consequences of not admitting the evidence.

308. Mr Puzey submitted that the importance of the evidence to the case overall was not significant to the Appellant but her presence as a witness is very important to HMRC who are otherwise denied the opportunity to cross-examine on relevant matters. The only reason provided for Miss Lin's non-attendance was that she now lives in Sweden; Mr Puzey noted that Miss Lin was due to move abroad as long ago as 2010, her statement is dated 2011 and the appeal hearing was fixed at the start of 2014. Those factors, taken together with the fact that she is the niece of the Appellant the reason for her non-attendance is insufficient. Mr Puzey submitted that the prejudice and unfairness in admitting the evidence far outweighed that to the Appellant should we refuse to admit the statement.

309. Mr Holland relied on Lightman J in *Mobile Export 365* in which he stated at [20]:

"The presumption must be that all relevant evidence should be admitted unless there is a compelling reason to the contrary."

310. Mr Holland submitted that the Tribunal would be able to form its own view of the statement, as with all of the evidence, including the weight to attach to it. Where Miss Lin's evidence is corroborated by Mr Tsai the Tribunal may afford more weight to it than evidence which is unsupported. Where Miss Lin denied making comments which HMRC recorded in visit notes Mr Holland recognised that it may well be the Tribunal's position that, absent live evidence from Miss Lin, the notes are preferred. In assessing the evidence in this way Mr Holland submitted that there would be no prejudice to HMRC.

311. Miss Lin's statement explained that she was employed by the Appellant from 2003 to 2009. She had worked in the computer industry in Taiwan from 1999 buying,

selling and marketing computer products ranging from CPUs, memory chips, laptops and monitors. The Appellant employed Miss Lin as the purchase manager and she was tasked with dealing with suppliers and customers based in the Far East, USA and Europe. Her role involved searching supplier and customer bases, entering into transactions, negotiating and agreeing prices and certain aspects of due diligence.

312. Miss Lin stated that she visited all of the freight forwarders used in the deals under appeal and that she visited suppliers and customers.

313. As to why the Appellant paid different pries for goods of the same make and model on the same day, Miss Lin explained that it was a function of the market that at different times of the day different suppliers may offer the same stock at different prices. As long as the Appellant made money on a transaction Miss Lin would enter into the deal.

314. Miss Lin stated that Mr Tsai looked at credit reports and told her whether or not she could enter into a transaction with a particular company.

315. Miss Lin denied telling HMRC in March 2008 that the transactions were covered by the Appellant's insurance or that goods were insured by the freight forwarders when at their premises. Miss Lin also denied stating that she told HMRC that she had insufficient experience to ask about insurance with freight forwarders.

316. Miss Lin set out the companies she had visited including Munch, Syskal, NVR and Tradius among others**.**

Turnover, payments and banking

317. Mr Pitt set out the change in the Appellant's trading pattern when it began wholesale trading to EC customers. He noted the considerable growth in the turnover figures between 2004 (£49,204,163) and 2005 (£95,374,111) which corresponded with the Appellant commencing EC supplies. He explained that the turnover and EC supplies ratio continued to be a substantial percentage of the overall turnover figures in 2006, accounting for 38.6% and in 2007 40.1%.

318. Mr Soleman queried why the Appellant's format of invoicing in respect of the deals under appeal was wholly different to that in its day to day activities. He also noted that the Appellant paid Tradestar once it was paid by Munch, usually on the same day with outstanding balances being paid using a different account (RBS) on different dates. A spreadsheet compiled fro bank statements of members in the transaction chains showed that the Appellant made under and over payments to Tradestar for which no explanation has been provided. In his witness statement Mr Tsai stated that he accepted there had been an overpayment to Tradestar on one occasion. He explained that Tradestar agreed to deduct the amount of the overpayment from a subsequent invoice.

319. Mr Tsai explained in his written evidence that the Appellant used a different method of referencing on its sales invoices because of the need to provide invoices immediately to customers to secure advance payments. The Sage system used by the

Appellant cannot produce invoices on the same day and the invoices are inputted in to the system later. In cross-examination Mr Tsai was asked about his exhibit entitled "Review of Business" which set out how the company's turnover went up by £15,000,000 in 2010. He explained that the increase was due to the company's marketing strategy and Microsoft retail. He was asked why the deals under appeal had not been referred to in the review:

"A. In the review of business we don't mention names. We mention general strategy and business review, etc.

Q. Okay, let's talk about your wholesale business that Sally carried out then, because that doesn't get a mention here does it?

A. (No reply)

Q. That was a big part of your business in 2010 wasn't it?

A. Yes

Q. Millions of pounds every quarter, a very significant part. Why doesn't it get a mention here?

A. The review of the business is a general aspect…we don't or we never mention particular trades or particular activities…

Q. Tradestar was very important to your business wasn't it?

A. Yes, it is

Q. It was then, yes? It was your biggest supplier wasn't it?

A. Yes, you're right

Q. Bigger even than Microsoft in terms of value? Yes?

A. Yes

Q. You talk about Microsoft here yet you don't talk about your wholesale business.

A. Yes, I explained to you that this director report is only in the strategy and this trading with Trdaestar continued from 2006 and is not our standard activity which we didn't do before, so it's the same as before. So there's nothing special. That's the reason we didn't mention it and also they are an OEM manufacturer and supplier.

Q. Tradestar aren't an OEM. They are a broker…

A. For writing this director report we tried to highlight the strength of the company so we tend to mention world famous companies and the (inaudible) we are doing. So Tradestar is not in this category so we didn't mention purposely…

Q. You do not advertise it either, do you, your wholesale trade with OEM CPUs? It is not advertised anywhere, is it?

A. As I explained previously…this trading, no need to be advertised…because this is a different marketing strategy required…

Q. …What was your marketing strategy for the wholesale side of the business in OEM stock, CPUs and flash drives, the deals that have been denied in this case?...

A. The strategy is to maximise the profit to the company.

Q. Marketing strategy

A. Yes

Q. What is your marketing strategy?

A. Yes, the marketing strategy, the sales strategy, they are all related to the…ultimate goal is to make profit.

A. Yes, how did you do that. How did you market that business, that side of the business?

A. We do not need to market or advertise in public.

A. Why not?

A. Because this would not do any benefit to the trade…"

(Transcript 27 November 2014 page 19 - 22)

320. We were provided with unchallenged evidence from HMRC officer Michael Clarke who was the case officer for Operation Tangelo 1, a criminal investigation into the activities of the Universal Mercantile Building Society ("UMBS") online banking facility. He set out that UMBS existed through three entities:

- UMBS Ekonomisk Forening ("UMBS EF") registered as an Economic Association on 24 February 2006 in Sweden;
- UMBS S.A which owned 100% of the shareholding in UMBS Online Limited registered in Panama on 3 March 2006; and
- UMBS Online Limited ("UMBS OL") which is a New Zealand offshore company incorporated on 27 November 2006.

321. On 25 March 2011 UMBS OL was found guilty at Southwark Crown Court of failing to disclose knowledge or suspicion of money laundering. Two of UMBS' directors, Michael Owen McGrath and Douglas Michael Wyatt were acquitted of the counts they faced. Officer Clarke analysed the lists of transactions which showed

transfers of money by customer account numbers and provided a schedule to Officer Ball for the purpose of his enquiries.

322. HMRC Officer Ball explained that the Appellant did not have an FCIB account however 40 companies out of 61 in the chains of supply analysed for periods 07/06 and 08/06 did have FCIB accounts. Seven out of nine of the Appellant's invoices in 07/06 were broker deals. The Appellant purchased from Supreme, Syskal Distribution Ltd and NVR. 12 out of 16 of the Appellant's August 2006 invoices were broker deals in which the Appellant purchased from Supreme, MNR Global Ltd, Nu-Life, Silverstar Components Ltd, NVR, Express Computers UK Ltd and XEL Multicomponent Ltd.

323. In cross-examination Mr Ball confirmed that in 9 of the 23 deals covering periods 07/06 and 08/06 which were analysed he found circularity of payments. He concluded that the existence of so many traders involved in the money flows demonstrates that each trader knew that the deals were contrived. In many of the transactions the FCIB statements showed third party payment made to a non UK company.

324. HMRC officer John Hawkins provided evidence regarding UMBS. He analysed data from the UMBS specific to the Appellant. His analysis focussed on money movements pertaining to 34 of the Appellant's transactions for periods 1 November 2006 to 1 March 2007. Mr Hawkins provided a detailed and comprehensive analysis of money movements. In summary the analysis showed that in 18 of the deals there was circularity of payment. 32 of the deals were back to back with the Appellant being supplied by Supreme (9 deals), iForce (11 deals) and Tradestar (12 deals). The remaining 2 deals were payments made from the Appellant's UMBS account into UK banks (Lloyds TSB and RBS). It was the case for HMRC that Mr Hawkins' evidence demonstrates that in the deals traced through the UMBS the funds which apparently include the VAT have either been retained by the defaulting trader or passed overseas. In many of the deals in which circularity of payment was found the same traders appeared in the same positions in the deal chain.

325. As regards the use of the ECS bank in Sweden Mr Tsai stated that it had been recommended by Munch. The bank offered online banking which eliminated delays in making electronic payments.

FCIB, money flows and diaries

326. Officer Bradshaw gave evidence regarding notes seized during the course of criminal investigation Operation Apparel which began in 2005. A number of documents consisting of diaries, notebooks and loose leaf papers (collectively referred to as "the diaries") were seized from premises in Oldham and Manchester. These were analysed and found to contain handwritten "transaction chains" involving the wholesale trade of CPUs and other goods associated with MTIC fraud. The diaries were broken down by Officer Downer into 14 bundles covering August 2005 to August 2006. Officer Bradshaw analysed seven diary entries in which the Appellant was not named but in which it featured as a broker. Mr Bradshaw set out in detail his

analysis as to the identities and roles of the traders in the chains and compared this to the deal chains involving the Appellant. In summary he concluded that in all but two deals the details of the traders, the order of traders, dates, goods and buying and selling prices matched those in the Appellant's chains. In the remaining two deals some of the documentation from deals packs were missing and the gaps in the chains were filled by the diary entries and the dates of the transactions did not match those set out in the diaries but the participants and goods did match.

327. Officer Bradshaw also exhibited transcripts of covert audio recordings. We should note that these were not recordings of the Appellant but others identified as part of MTIC transactions chains which formed part of the evidence in Operation Apparel. In cross examination Mr Bradshaw confirmed that the Appellant's name does not appear in the diary entries for the seven deals analysed. He explained that the information he had reviewed came from HMRC officer Downer who had set out the materials seized into a spread sheet. Mr Bradshaw accepted that his conclusion in respect of one deal differed from that of Mr Downer in that Mr Downer identified the Appellant's customer as Wink and Mr Bradshaw identified the customer as Square Trading.

328. HMRC officer Terence Mendes gave evidence regarding his tracing of FCIB money chains. The Appellant did not hold an FCIB account and therefore his analysis does not include evidence of funds being received or paid by it. However he analysed the diary entries reviewed by Mr Bradshaw to demonstrate that the diary entries correspond with the flow of funds through the FCIB.

329. In cross-examination Mr Mendes explained that there were two transactions that are subject to this appeal which involve the Appellant and in which the banking details agree with the invoices raised and reflect the accuracy of the diaries.

Contracts

330. Having noted that Microsoft and Tradestar were the biggest suppliers in value to the Appellant in 06/08 and 09/09, Tradestar having made purchases worth over £86,000,000 in total between 06/07 and 12/09, Mr Soleman highlighted the absence of a detailed written contract between Tradestar and the Appellant. On 10 March 2010 Miss Lin confirmed to HMRC that no official written contracts existed between the Appellant and Tradestar. Mr Soleman noted that after HMRC issued letters denying input tax relating to periods 06/07, 09/07 and 12/07 the Appellant produced an A4 sheet containing 'Terms and Conditions' with Tradestar. In comparison Mr Soleman noted the Appellant's agreements with Microsoft and Ingram Micro (UK) Ltd were far more detailed and comprehensive, for instance covering issues such as customer insolvency, export restrictions, warranties and liability.

331. Mr Soleman also noted that there were no official written contracts with Munch, which simply signed the Appellant's trade application agreeing to the terms and conditions including making payment to the Appellant before the goods were released. Mr Soleman noted that in period 09/09 the Appellant supplied Amazon EU Sarl with approximately £775,000 worth of goods and the Appellant had signed

Amazon's terms and conditions. In the same period the Appellant's supplies to Munch were £8,512,950; Mr Soleman queried why given the apparent strength of Munch's negotiating position it had simply signed the Appellant's trade application.

332. Mr Tsai exhibited the Appellant's standard terms and condition of sale and purchase. He highlighted that a clause was contained which states that the Appellant's terms and conditions have precedence over any of the Seller's printed conditions.

333. Mr Soleman drew the distinction between the Appellant's use of TNT and City-Link to transport the goods relating to its day-to-day activities as compared with its use of freight forwarders such as I.D. UK Ltd and AIFFL for the transactions under appeal. At a visit on 5 July 2007 Mr Yeo is recorded as telling officers that the deals under extended verification were a different business with a different customer base.

334. HMRC relied on a similar distinction drawn in respect of freight forwarders; Miss Lin confirmed that there were no formal written contracts in place with those used in the deals under appeal. Although the Appellant did not produce the agreements with TNT and City-Link which it used in the day to day trading Mr Soleman noted that the terms and conditions of those freight forwarders are comprehensively set out on their respective websites.

Commercial Checks

335. Ms Lin and Mr Yeo told HMRC officers on 18 July 2007 that the Appellant did not release the goods or pay its supplier until payment was received from the customer. Mr Yeo added that "*there was no risk as ETL were getting their money up front.*" Ms Lin explained that it was her decision whether or not the Appellant traded and she would make that decision, even if the checks carried out showed high risk, based on whether she knew the customer and that it was both a commercial and personal decision.

336. Mr Soleman noted that although the Appellant was notified on 10 March 2010 that tax losses had been found in its chains in 06/07, 09/07 and 12/07 it nevertheless continued to trade with Tradestar and Munch on 10 and 11 March 2010, the companies in the relevant tax loss chains.

337. In cross examination Mr Tsai stated that he had serious discussions with Miss Lin about the steps to be taken to check suppliers and customers. He agreed the Appellant had received 10 letters in 14 months notifying that tax losses had been found in the Appellant's chains. Mr Tsai stated:

"When we received the letter…we of course need to check on procedures if we are exercising the right procedures to avoid this kind of problem.

Q. But you need to do more than check, Mr Tsai, don't you? You need to get out of that business. Wasn't that something you thought about?

A. At that time, yes. She has the full power to do the right for the company, so ---

Q. Yes, but isn't the right thing for the company to get out of this business?

A. At that time you can see from the letter they didn't point out that Sally has dome anything wrong or she has been involved explicitly, so she was not aware she is actually in this kind of problem…

Q. Well, you know that there is a risk of other traders in the chain going missing, not paying the VAT. You knew that right at the start, didn't you?

A. Not in that aspect. We didn't know who – because the VAT, we didn't think in the commercial world anybody who will receive VAT would pay it back to the officer.

Q. Well, let's look at your attitude to Customs when they told you about these in 2007..This is a letter of 11 July 2007… 'We would like to reiterate that we have taken all reasonable steps to verify the integrity of our supply chain…We cannot be held responsible for transactions in the supply chain beyond our immediate suppliers and customers…'

A. As I said earlier, this kind of thing, we only realised in 2010. At the time nobody was envisaging this kind of problem"

(Transcript 27 November 2014 page 115 - 119)

338. Mr Tsai went on to state, in respect of the deals which were carried out with Tradestar and Munch the day after being advised that deals with the same customer and supplier had been traced to tax losses, that:

"The deal has been fixed prior to the visit. So you have got to do it…I didn't see the reason to pull out at the time.

Q. There were tax losses. Surely that was a good reason.

A. Tax losses mentioned by them. There is no proof, no evidence…we need some more explicit evidence at the time…

Q. You did not ask for evidence when they were sending you tax loss letters in 2007 and 2008, did you?

A. We had the feeling that the letter was merely symbolic at the time.

Q. Symbolic? What do you mean symbolic?

A. It means that there's no details, no explanations.

Q. Why did you not ask for some if you wanted detail?

A. I didn't think we can ask. What can we expect? We are not aware. What can we ask?"

(Transcript 27 November 2014 page 150)

339. He stated that CPU box numbers were kept as *"Sally Lin was very cautious…she doesn't want to trade any boxes has been traded. So she kept every record of the box"* (Transcript 27 November 2014 page 38). Mr Tsai said that he heard from Miss Lin that she kept a note of the box numbers in her notebook but that there was no computer system to make it 100%. He was asked how the checks were made to guard against circularity:

"I heard from Sally that she would go through her notebook to see if any number's been repeated manually…

Q. And where is that in the exhibits? You have not produced it as an exhibit, have you?

A. Never been asked to do that."

(Transcript 27 November 2014 page 40)

340. Mr Tsai was asked in cross-examination about deal 5 in 07/06 in which the box numbers of the goods were set out on the Appellant's invoice to and purchase order from Munch dated 11 July 2006 yet the dates on the documents in the chain prior to the Appellant's sale were dated 17 July 2006:

"Q. So, the question is: how did Enta know the box numbers on the 11th of July that we see detailed…If you did not have an inspection report until the 17th of July and Supreme did not release the goods and detail the numbers of the boxes until the 17th of July, how could your company know of them on the 11th of July?

A.It is very obvious from this. Before you're given the purchase order, you have to have the box numbers. So there must be a correspondence between the supplier and Sally Lin, the buyer.

Q. Do you mean there is some document relating to this transaction which has not been produced to the Customs?

A. Could be, either by phone or by fax…

Q. Why did you release the goods before they had been inspected?

A. I would say this is part of the process, to inform the customers and to release goods to them, that all the other documents will follow. That's my understanding."

(Transcript 27 November 2014 page 53 – 55)

341. As regards release of goods prior to payment, in cross examination Mr Pitt stated:

"Q. In the transactions that you looked at, the vast majority of those transactions, Enta did not release goods to customers until the customers had paid for those goods, did it?

A. I think I did some analysis on them as regards to release dates and payments and that within the body of my statement, and I think there are some discrepancies. That was what they led me to believe, but the analysis showed something different."

(Transcript 18 November 2014 page 62)

342. Five occasions on which goods were released prior to payment being received by the Appellant were put to Mr Tsai in cross-examination. He was unable to explain why Miss Lin had done this, but speculated:

"I can only imagine that they may have good commercial relationship and a trust, that kind of thing and making her violating my instructions…but that's a small part of her transactions."

(Transcript 27 November 2014 page 94)

343. Mr Pitt noted that the Appellant applied different criteria to its other trading activities whereby it took out credit insurance in general unless dealing with a known company or establish that the company has substantial funds to cover the debt. A further difference was evident in that the transactions under appeal the Appellant did not apply any minimal time that the customer must have traded prior to dealing with them. However in the remainder of its trading the Appellant had, for instance, refused to offer credit to Bluecore Solutions Limited (a retailer/provider of goods) until it had been trading for one year.

344. A due diligence pack on Supreme was provided by the Appellant which contained the company's VAT registration certificate, certificate of incorporation, letter of introduction from Supreme, bank details and a Graydon credit check.

345. Mr Pitt noted that the Graydon credit rating report obtained for Supreme put the trader above the normal risk category and was dated 21 September 2006, two months after the July deals took place. An Experian report on Supreme dated 9 October 2007 gave a Delphi score of 6 out of 100 *"maximum risk"*. He explained that Supreme had a trade classification as "other non-specialised retailing" and that this was a fact that should have caused the Appellant concern:

"I believe it should. They're dealing in computer or IT products. Bearing in mind the market they are in and the trading environment they have gone into, the pre-warnings, the issues that have been addressed within HMRC…I feel that straightaway they should have looked at that and wondered…what does that mean."

(Transcript 18 November 2014 page 101)

346. Miss Lin stated she had visited the trader but was unable to provide a date of the visit nor any photos. She recollected the name of the contact as "Katy" although the details were recorded on her laptop as "K. D. Singh." Supreme was not described as a wholesale dealer and had a trade classification of "other non-specialised retailing". Mr Putt noted that this did not appear to have caused the Appellant any concern or were any fuller enquiries made to establish full details about the trader.

347. Mr Pitt explained that the Appellant had provided HMRC with its due diligence documents on 4 December 2006 and 25 October 2007. However there were a substantial amount of additional documents exhibited with Mr Tsai's witness statement which had not previously been provided to HMRC. In respect of Supreme Mr Pitt highlighted a Graydon report dated 21 September 2006. The report received by Mr Pitt differed to that exhibited by Mr Tsai in that the latter contained written instructions from Mr Tsai signed and dated 21 September 2006 to Miss Lin as follows:

"Sally

1. *To buy from them only commodity items CPU memory with manufacturers warranty.*

2. *2. Do not pay them until goods received inspected and released to customer"*

348. Mr Tsai exhibited highlighted extracts from his diary in 2005 and 2006 showing the dates he met representatives from various trading partners however no details of the meetings were provided, for instance what was discussed or the purpose of the meeting, the notes, by way of example, simply stated *"visit supreme distribution : K D Singh North Wembley."*

349. Mr Pitt queried why the report containing written instructions had not been provided to HMRC. He added in oral evidence that diary excerpts exhibited with Mr Tsai's witness statement had not been provided to him:

"A. I mean, the one question I would ask, if I was given this at the time of my extended verification, because it would have been a live document then, the emphasis was during the visits pre the extended verification, 2004, 2005, due diligence, keeping records, whatever else you can. And I also was going through meetings with Sally Lin and Mr Yeo asking for dates of visits to sort of get some idea if they had contacted, been visiting, the photographs, whatever, and I would have expected this document, if it is pre-extended verification, I would have expected to be given a copy of this diary so I could use it as support, so I could have had all the information available to me on which to make my decision.

Q. And if you had had this information at the time of making your decision, do you think it would have made any difference?

A. It would, yes, because I would have gone and spoken to Mr Tsai and gone through the details of what his visits were about, what he did, who he spoke to, contents of it. But at no time did Sally Lin or Mr Yeo mention that ... or even Mr Tsai who was at the premises on occasions, that came forward: I have got a diary with all these entries. Q. Because it would have been important to establish the ---

A. It was an important document to the extended verification."

350. The due diligence provided in respect of Munch contained a document from the Danish Commerce and Company Agency which detailed the Objects of the company as follows:

"The objects of the company are primarily to carry out consultancy work in the fields of marketing, financial products and property renovation. Secondarily, the company undertakes consultancy work in other business areas including property management. Furthermore, the Company provides light contractor work including ventilation."

351. The letter of introduction does not specifically state that Munch dealt in the wholesale of IT goods. At a meeting with HMRC on 12 February 2008 Miss Lin stated that she had visited Munch in 2007. She produced a photograph of a male in what appeared to HMRC officers to be a public house or restaurant. Miss Lin stated she would provide other photographs but failed to do so.

352. The Graydon report on Munch dated 26 June 2006 gave it a very high risk class which covers businesses with *"very poor operating results"* and which are not creditworthy. Despite this, Mr Pitt noted that the Appellant engaged in four deals with Munch to the values of £778,365, £642,600, £642,600 and £736,155.

353. Graydon reports on the Appellant's suppliers NVR Logistics, Datec Electronic Holdings and Taurus also highlighted risks yet the Appellant continued to trade with the companies.

354. The documents provided to Mr Soleman relating to periods 06/07, 09/07 and 12/07 included documents on non-headed A4 paper entitled 'Company Details' which was not dated but contained a handwritten comment that they were the updated details. The documents included the address of the business and stated the nature of it was *"Trading various health care products supplement, and electrical equipment etc."* There was also a reference list which included the Appellant, Global Corporation Trading and Katian Ltd. On 10 March 2010 Miss Lin confirmed to HMRC that she had not contacted any of the companies for references. Miss Lin also stated that she had not queried the letter of introduction dated 30 May 2006 which stated that Munch was involved in analysing and marketing different companies and products. There was also a document dated 12 April 2007 which appeared to be in Danish and had not been translated; Miss Lin thought it may be a registration document but appeared unsure.

355. On 14 June 2010 Simmons Gainsford wrote on behalf of the Appellant enclosing further due diligence documents for review. Mr Soleman considered the documents and noted that there was a letter dated 13 June 2006 reproduced in which it stated that Munch traded in health care products; this letter contained handwritten noted signed and dated by Mr Tsai on 25 June 2006 which instructed Miss Lin *'Only to trade on cash in advance basis, no credit whatsoever'*. Mr Soleman noted that this document which had been provided to officer Pitt on 21 September 2006 had not contained the handwritten note. Mr Pitt also highlighted that fact that the date of 25 June 2006 predates both of the dates on which the Appellant provided its due diligence files to HMRC. Furthermore the Company details sheet provided to Mr Pitt contained

differences to that exhibited by Mr Tsai with regard to telephone numbers and bank details. The document exhibited by Mr Tsai also contained handwritten notes dated 26 June 2006 which predated the dates upon which the Appellant provided its due diligence files to Mr Pitt. One of the handwritten notes was contained on the bank details where it read "*European Credit & savings Ef*". Mr Pitt queried how this had been written on the purported date of 26 June 2006 when the date of registration for European Credit & Savings Ef was not until one month later on 27 July 2006.

356. Further handwritten notes were found on other documents such as a Graydon report on which Mr Tsai had written the date 26 June 2006 and *'To trade only on cash in advance basis, Sally Lin to visit them, No goods can be sent without payment into our bank account, once we release goods to them or their representative (forwarder etc) they are responsible for the safety of the goods.'* Again Mr Soleman noted that the same document had been provided to Mr Pitt on 21 September 2006 but had contained the handwritten comments. Mr Soleman noted that no evidence was provided to support Miss Lin's assertion that she had visited Munch, for instance showing reimbursement for the flight. A hotel booking in Copenhagen was produced however Mr Soleman noted this was booked for Ji Chuen Jason and does not show the date of the booking or length of stay. A boarding pass was also provided showing Ji Chuen Tsai travelling from Manchester to Copenhagen on 18 June 2010 and on to Tallinn on 19 June 2010.Mr Soleman remarked that if Mr Tsai visited Munch he did not provide any reports of his findings. In cross-examination Mr Soleman stated:

"…in my visit on 10th March 2010 one of the things I asked for is any expenses relating to petty cash that may have gone through Enta Technology's books, so any evidence to show or suggest that definitely went to Munch Marketing, but I haven't received any flight tickets or hotel tickets or even a visit report to show what had been established was a visit had taken place."

(Transcript 20 November 2014 page 56)

357. Mr Soleman concluded that the denial of input tax letter issued on 14 April 2010 which related to periods 06/07, 09/07 and 12/07 stated that the Appellant did not adequately insure the deals and that the Appellant had added the comments to satisfy HMRC.

358. In cross examination Mr Tsai was asked about a visit by HMRC in 2006 at which Mr Yeo and Miss Lin were present. Miss Lin was recorded as stating that Munch had been introduced by friends in Taiwan. The visit report noted *'Despite checks and indications that you should not deal, SL carried out four deals. SL said she relied on the integrity of a friend…asked what the use of doing these reports was if SL was not going to take any notice of them'*. Mr Tsai stated that Graydon reports which provides a reference if the Appellant wants to give credit. If the report indicates a poor credit rating *"that means that all the money needs to be received before giving the products"* (Transcript 27 November 2014 page 120).

359. Mr Soleman considered the due diligence documents provided in respect of Tradestar which included a 'New Supplier Assessment Form' containing the details of

Tradestar and the fact it had only two employees. The form stated that the Appellant required Tradestar to bar code all products with the relevant product part numbers/serial numbers; Miss Lin stated that such reports were kept but none were produced to HMRC. The company's introduction letter made no mention of it supplying USB Flash Drives nor were the trade references named contacted. Tradestar's profit and loss showed a substantial increase in income from £1,325,075 in period 08/05 to £125,260,633 between September 2005 and August 2006. Mr Soleman noted that this had not been queried by the Appellant despite Tradestar having only 2 employees. Tradestar's terms and conditions of sale was unsigned by the Appellant and amounted to a single A4 sheet. Mr Soleman noted that although Tradestar allowed the Appellant 90 days credit, the Appellant paid immediately after it received payment from Munch irrespective of when this was.

360. Mr Soleman also reviewed a Graydon report dated 12 December 2006 which placed the company at above normal risk. Handwritten noted on the report read *"Sally its ok to buy from them only goods which have small defect rate e.g. memory sticks, dram etc."* The notes were dated 14 December 2006. Mr Soleman noted that the report refers to the annual accounts filed by Tradestar at Companies House and he highlighted the lack of evidence to show that the information contained therein had been analysed.

361. Mr Tsai stated in his written evidence that when he was informed that tax losses had been found in transaction chains in which the Appellant had purchased from Tradestar, he had a number of meetings with them to discuss the issue. He stated that Tradestar had explained that HMRC had not visited them for a few years and had not made them aware of the problem. Tradestar told Mr Tsai that all of their suppliers were reputable trading companies however he took the decision to cease trading with the company and emailed them on 1 June 2010 to notify them that trade would cease.

362. In cross-examination Mr Tsai was asked about the handwritten notes on the due diligence documents exhibited by him. He explained that there were a number of copies of the various documents and that HMRC may have received those in their possession from someone other than Miss Lin. As to why Mr Pitt was only ever given documents without handwritten notes on Mr Tsai stated: *"I think it's for the same reason, many copies flying round, you know, in the office"* (Transcript 27 November 2014 page 183). He could not explain why there were two sets of company details for Munch which were similar but not identical and how the one exhibited by Mr Tsai which gave the company's bank details as ECS was purportedly dated one month before the ECS bank was even registered.

363. Mr Hancox responded to Mr Tsai's assertion that he had visited Tradestar's office in Oxford on three occasions by noting that the company's address was in Berkshire until at least 2011. He therefore queried who Mr Tsai had visited.

364. Mr Hancox also received information from Seagate Technology International regarding Maxtor Hard Drives which were traded in 12/10 which stated that the largest value sold by the manufacturer was £171,250

365. Mr Tsai explained that Maxtor and Seagate hard drives were mainly produced in the Far East and they were the biggest manufacturer in the world with an annual turnover of ten billion pounds. He did not accept the evidence of Mr Hancox based on information from Seagate Technology International regarding Maxtor Hard Drives that the largest value sold by the manufacturer in 2010 was £171,250.

366. Mr Pitt commented on the due diligence documents exhibited with Mr Tsai's witness statement. He noted that in respect of Silverstar Components Ltd the documents provided by the Appellant on 25 October 2007 comprised 5 pages yet the documents exhibited by Mr Tsai with his witness statement amounted to 42 pages. He explained that the Appellant had provided due diligence documents on 4 December 2006 and 25 October 2007 yet there were documents contained in the additional due diligence annexed to Mr Tsai's statement which were dated 25 January 2006 (a Graydon report) and 1 August 2006 (a trade application form) and he queried why these had not been provided earlier.

367. Mr Pitt and Mr Soleman reviewed the due diligence provided in respect of the remainder of the Appellant's suppliers, customers and freight forwarders. The documents largely included those such as VAT registration certificates, certificates of incorporation and letters of introduction. Mr Pitt noted that documents provided in respect of Wink and ICC contained some in German and Austrian which did not appear to have been translated. Mr Soleman concluded that the checks carried out would not provide adequate assurances that the deals were not linked to fraudulent tax losses.

368. Mr Pitt also noted that there were differences in the documents provided to him and those exhibited with Mr Tsai's witness statement. By way of example the trade application for Nu Life IT.Com exhibited by Mr Tsai contained handwritten notes that had not been on the same document provided to Mr Pitt. Mr Pitt highlighted that the notes were purported to have been made by Mr Tsai on 5 January 2006 which predated the date on which the same document without the notes was provided to Mr Pitt on 4 December 2006. In respect of MNR Global Ltd the Appellant had provided Mr Pitt with a five page due diligence pack however Mr Tsai subsequently exhibited 25 pages of due diligence. Again, the documents exhibited by Mr Tsai contained handwritten notes which were not seen on the same document provided to Mr Pitt. He noted that additional documents with which he had not been provided contained trading instructions and a trade application form and Mr Pitt queried why such important documents had been absent from those given to HMRC. Similar anomalies and queries were highlighted by Mr Pitt in respect of documents exhibited by Mr Tsai for Syskal Distribution Ltd, NVR Logistics Ltd, All Trading Worldwide BV, Multi Components Ltd, ICC, Alcosto SRL, Wink, Tradius GmbH (Germany) and Tradius BV (Netherlands) and Express Computers UK Ltd.

369. Mr Tsai explained that Graydon reports were not obtained to look at credit ratings but rather, in the case of Tradestar, to check if the company was still trading as a reputable company. He explained that he met Mr James Burgess of Tradestar at the CTS computer fair on 3 September 2006. He tended to visit the company every two or three months and Mr Tsai stated in his written evidence that he visited Mr Burgess'

Oxford office twice in 2008 and once in 2009. He stated that it appeared from his visits that Tradestar had a number of staff – perhaps more than 20. Mr Tsai reiterated that the Appellant did not give credit to any of its customers; payment had to be made upfront, usually before goods had been delivered, and before the Appellant paid its supplier. He explained that this meant there was minimal risk to the Appellant if a customer did not pay for stock.

370. In respect of iForce Mr Tsai stated that he had dealt with the director, Sanjay Patel since 1992 and continues to buy stock from him.

371. As to HMRC's reliance on the fact that I.D. (UK) Ltd was said to be a retailer of textiles at Companies House, Mr Tsai stated that in his experience Companies House checks provide information which the company being checked provided when it first registered. If the company does not update Companies House then the information provided will be out of date.

372. Mr Hancox did not agree with Mr Tsai's assertion that reasonable checks had been carried out on I.D.(UK) Ltd; in support he highlighted the time limitations shown in a letter from the Appellant to I.D. (UK) Ltd which stated:

"If it's possible, I would like to open a new account. I have stock coming tomorrow to your warehouse."

373. On the issue of due diligence Mr Tsai exhibited a number of documents. He explained that the notes contained on the documents were his instructions to Miss Lin. He stated that over the years documents had been lost and HMRC had removed the original documents; later reports produced were "a top up" or updated versions.

Insurance

374. On 5 February 2008 Mr Yeo produced Marine Cargo Insurance policy documents covering 1 October 2006 to 30 September 2007. No documents have been produced for period prior to this although when asked, Mr Yeo stated that the policy contents remain the same. Mr Pitt noted that the maximum cover for international or domestic cargo was £150,000 per conveyance and that the value of the goods in a number of the Appellant's transactions far exceeded the insured amount.

375. In cross-examination Mr Soleman stated:

"A. Yes, I do, yes. What I would say about the insurance is: to me, having looked at the transport, who arranges the transport, for example, the Enta Technologies who contacts a transport company to move the goods. I couldn't understand why the customer would be insuring goods for movement of goods that Enta had arranged. What I would have liked to have seen is, rather than just this email, more evidence to show Munch Marketing does have some sort of agreement to evidence the fact that it is actually insuring the movement of the goods. The (inaudible) says Munch Marketing doesn't insure the goods."

(Transcript 20 November 2014 page 69)

376. Miss Lin was asked about insurance on 18 October 2007; she stated that most of the goods were shipped to a UK location and that if cover could not be obtained the customer would be asked to obtain insurance. HMRC highlighted at a meeting on 27 March 2008 the fact that the deal values far exceeded the insurance cover; Miss Lin stated that she thought the deals were covered and that she had been reassured by Mr Tsai that they were. Miss Lin went on to state that when the goods were at the freight forwarders the Appellant assumed that the freight forwarder had insurance to cover the goods. On 12 February 2008 Miss Lin told HMRC officers that she had not checked the insurance position with the freight forwarders as she *"had no experience"* and did not know she had to ask *"so many questions"*. Miss Lin stated that her uncle, Mr Tsai had put her in charge of the deals and that he oversaw the transactions.

377. Mr Tsai responded to HMRC's note of the meeting on 10 March 2010 which recorded Miss Lin as stating that Munch had never returned goods for damage or loss. He stated that the Appellant demands that the supplier and customer cover all insurance to give the Appellant zero risk and that Tradestar had in the past given the Appellant credit to compensate for faulty goods. We were provided with a credit note which was annotated with the words "goods faulty Enta had to credit the customers but it only happened once". The credit note was in the sum of £459.00 and related to an invoice for Ipods dated 7 November 2006. There was also a credit note from Multicomponent to the Appellant dated 3 November 2006 in the sum of £523.11 which related to faulty Ipods.

378. Mr Tsai stated that the Appellant always carried out what it regarded to be adequate commercial due diligence. In a typical trading month or quarter, product sourcing and exploring selling opportunities was an on-going process. The deals were not achieved in one day, one week or even one month. Mr Tsai was constantly in communication with the Appellant's trading partners regarding product availability and prices. Negotiations leading up to the transactions took place over many weeks. In cross-examination Mr Tsai reiterated that Miss Lin's job involved sourcing goods and speaking to customers and suppliers: *"so to complete a deal she may spend many, many weeks to get the product quantity right, specification right"* (transcript 27 November 2014 page 144). He said he had been told by Miss Lin that negotiations mainly took place over the telephone. Mr Tsai exhibited emails showing stock offers, for instance dated 23 June 2011 from iForce which offered USB pen drives and Maxtor drives.

Inspections and deal anomalies

379. Mr Pitt set out in detail his review of the inspection reports for each transaction. We will not simply repeat the contents of his witness statement, but in essence he highlighted a number of anomalies and discrepancies. One such feature was the confusion that arose in respect of deal 1 in 07/06 in which Mr Pitt noted that there was a period of 6 days between handover and receipt during which it was unclear where the goods were. Furthermore Mr Pitt noted that the Appellant was paid for the goods on 21 July 2006 which was five days before the purported deal date and 6 days before the inspection took place. When asked about the time gap between release and transport Miss Lin could not provide an explanation, stating that as far as she was

concerned once the goods were released that was the end of the Appellant's involvement.

380. In deal 3 in 07/06 Mr Pitt noted that there were two inspection reports, one dated 21 July 2006 (10 days before the deal took place) and the other dated 26 July 2006 (five days before the deal). The first report related to the examination of 300 of the 1000 units. Mr Pitt noted that the report detailed, inter alia, damage to the boxes and the condition of the goods as *"fair"*. The second report which related to the remaining 700 units contained similar details. Mr Pitt queried why this did not provoke concern on the Appellant's part. There were also issues regarding dates of inspection, payment and the transaction; Mr Pitt highlighted that the defaulting trader in this deal, Kaymore, acquired the goods on 26 July 2006 which he took as the earliest date for any inspection. The transaction takes place between 26 July 2006 and 31 July 2006. Mr Pitt noted that an identical inspection report to that purported to have taken place on 21 July 2006 appeared in the deal pack of Leisure Communications Ltd which appeared in the chain before the Appellant. Mr Pitt queried why the Appellant did not obtain a more up to date report given the time period between the report and its acquisition of the goods, particularly given that the Appellant was unaware where the goods were in the interim or how the goods had been handled. When asked about whether the Appellant instructed open or closed box inspections Miss Lin stated that where the supplier had already checked the goods she trusted and believed him.

381. In deal 4 in 07/06 Mr Pitt highlighted that the only trader in the chain to obtain an inspection report from freight forwarder Central Solutions Ltd was the Appellant's supplier NVR Logistics which contradicted the comments of Mr Yeo and Mr Lin in a meeting with HMRC on 18 October 2007 in which they stated that the Appellant had goods inspected.

382. In deal 5 in 07/06 the deal and inspection appeared to have been carried out on 17 July 2006 however Mr Pitt highlighted that the Appellant had already released the goods to Munch on 14 July 2006 and had been paid on 12 July 2006.

383. Other anomalies included the Appellant's invoice specifying that the goods must be brand new yet the inspection reports indicated that they were not (for instance deals 6 and 9 in 07/06) and an inspection report with the name of the Appellant's supplier on it which had been scored over in pen (deal 9 in 08/06).

384. Mr Soleman also highlighted the different treatment of the Appellant's day to day activities and the deals under appeal in respect of warehousing and records kept; he noted that stock, such as Microsoft goods, entering the Appellant's warehouse was recorded however Miss Lin clarified a meetings on 10 and 18 March 2010 that goods sold to Munch did not go through the warehouse. Mr Soleman noted that there was no evidence that any of the goods in the deals under appeal were recorded in the Appellant's stock records system or transported through its warehouse.

385. Mr Tsai stated that the Appellant adopted similar trading practices irrespective of the stock traded. In support of this he exhibited a number of Graydon credit reports on customers, one of which for instance was said to be dormant and high risk, yet the

Appellant traded with it. Mr Tsai stated in evidence that if the goods in this appeal had been placed into the Appellant's warehouse it would have involved security risks and increased costs. The commercial decision was therefore taken to use freight forwarders.

386. On the issue of inspection reports Mr Tsai stated that the reports were relevant as supporting documents but, having accepted that there were occasions on which goods had been released prior to the inspection report being received, stated: *"we received the money, that's the most important"* (Transcript 27 November 2014 page 63). Where goods had been released before payment Mr Tsai was unsure about the details and stated that he had not checked the documents before however it could be due to human error.

387. As regards inspection reports Mr Soleman noted that those produced from I.D. UK Ltd and AIFFL, the freight forwarders, provided very basic details of the condition of the boxes, which was said to be "good". There was no evidence produced to show the level of inspection requested or that records of damage led to any further enquiries or follow up action by the Appellant. Furthermore he noted from documents obtained from I.D. UK Ltd that both the Appellant and Scarlito were charged for repackaging the goods even though the inspections took place on the same day and at the same premises.

388. Mr Hancox highlighted a number of anomalies in the deal documentation for which there was no explanation provided by the Appellant. By way of example in deal 1 in period 06/10 the sales invoice to the Appellant from iForce (24 June 2010) predated the Appellant's purchase order (25 June 2010). The inspection report was dated some days later (30 June 2010). Mr Hancox queried how iForce obtained the Appellant's customer number before it received the corresponding purchase order. He also concluded that the inspection cannot have been carried out as indicated in the report because retail packaging for Flash Drives was almost always sealed blister packs which cannot be resealed once opened. The only way to access the accompanying documentation was to open and therefore damage and reduce the value of the packaging and goods yet the inspection report purports to comment on the condition and specification of the goods.

389. In addition to numerous inconsistencies in the dates and order in which the actions took place Mr Hancox also noted that it was important that the traders knew the type of goods traded as there was a difference between retail and wholesale flash drives however there was no such clarification in the Appellant's documents. The Appellant had also paid for goods (deal 4 in 12/10) prior to receiving the relevant inspection report.

Nature of trading

390. Mr Pitt highlighted a number of features of the Appellant's trade that he relied on in support of the fact that the Appellant knew or should have known that its transactions were connected to fraud. One such feature was the comparison between the Appellant's buffer and broker transactions. By way of example Mr Pitt

highlighted deal 7 in period 07/06 which is dated 5 July 2006 and involved the Appellant purchasing 9450 units at a purchase price of £65.05. The goods were sold at £68.00 giving a mark up of 4.5%. By comparison in the same period buffer deal 6 is also dated 5 July 2006 and involved the same commodity. 2833 units were purchased at a purchase price of £61.50 and a selling price of £62.00 giving a mark up of only 0.8%. Mr Pitt queried why, given the date of the deals was the same, the goods were not sold as part of the broker deal. He calculated that the item in the buffer deal was £3.55 per unit cheaper which would have yielded an extra £10,057.15 profit on the deal and increased the mark up to 10.5%.

391. Mr Pitt noted the mark ups across the 07/06 and 08/06 periods which in the broker deals varied between 4.2% and 4.5% and 5% and 5.5% respectively. By comparison the Appellant's mark ups in its buffer deals in the same period averaged approximately 0.8% in 07/06 and 0.7% to 1.020% in 08/06.

392. Mr Soleman agreed in evidence that there is no evidence to demonstrate that the Appellant was aware of the profits and mark ups made by other traders in its chains. However when looked at in totality he submitted that it demonstrated contrivance given the consistent patterns. By way of example in all 5 deals in period 06/07 traders 1 – 4 in the chains each made a mark up of 10p, trader 4 (the Appellant's supplier) made 40p and the Appellant made £3.40. He noted that in all deals the profit margin achieved by the buffer traders always remained under 15p, none of the traders ever made a loss and the Appellant always achieved the highest profit margin. Mr Soleman also explained in cross-examination that the Appellant had purchased from both Tradestar and Munch, which it knew were not manufacturers or authorised distributors and therefore the Appellant must have been aware that there was at least one other trader beyond those from which it purchased.

393. Mr Tsai stated in evidence that he was unaware of the mark ups made by other traders in the supply chains. He did not accept that the company made consistent mark-ups and stated that they were varied, as would be expected in a commercial enterprise. He explained that a lot of effort was expended in the process of completing one transaction and owing to the fact that he was often travelling trading partners always contacted him on his mobile phone.

394. Mr Soleman extracted the following information from the Appellant's purchase listings for periods 06/08 and 09/09 which showed the biggest suppliers by value; all of which with the exception of Tradestar were either manufacturers or distributors:

Microsoft Inc	06/08	£4,781,813.58
	09/09	£3.730,231.52
Tradestar	06/08	£7,568,487.50
	09/09	£8,079,250.00
Gigabyte Technology B.V	06/08	£1,022,795.10

	09/09	£1,888,703.28
Corsair (Hong Kong) Ltd	06/08	£731,738.01
	09/09	£1,123,476.80
Belkin	09/09	£1,258,884.82
Shuttle Inc	06/08	£715,315.03
Microtronica	09/09	£725,623.57

395. Mr Soleman also highlighted that his analysis of the sales listings relating to periods 06/08 and 09/09 showed that Munch was the biggest customer by value across periods 06/08 and 09/09.

396. Mr Soleman reviewed evidence submitted by the Appellant purporting to show that it had tested some of the products. He concluded that the four evaluation reports prepared by Simmons Gainsford LLP were irrelevant to his decision either because they did not relate to the periods in which he had denied input tax or because the reports dealt with different products.

397. Mr Soleman's examination of the Appellant's VAT returns fro period 06/07 to period 12/09 showed that the VAT on supplies linked to its day to day activities were, in the majority of the VAT periods, offset by the input tax for deals linked to fraudulent tax losses. Mr Soleman produced the following tables to demonstrate the effect on the VAT returns if the two different business activities were declared separately:

Day to day activities – period 06/07

Total output tax	£2,244,319.80
Input tax	£1,544,746.80
Payment of	£699,573

'MTIC' Supplies – period 06/07

Output tax	£0
Input tax	£699,622
Repayment of	£699,622

Day to day activities – period 06/08

Total output tax	£3,011,386.08
Input tax	£1,658,810.14
Payment of	£1,352,575.94

'MTIC' Supplies – period 06/07

Output tax	£0
Input tax	£1,324,039.05
Repayment of	£1,324,039.05

Day to day activities – period 09/09

Total output tax	£3,292,996.61
Input tax	£2,076,587.40
Payment of	£1,216,409.21

'MTIC' Supplies – period 09/09

Output tax	£0
Input tax	£1,211,887.55
Repayment of	£1,211,887.55

398. As can be seen from the sample of tables above, if the Appellant had not carried out the tax loss deals the VAT on its sales would have been significantly more than the VAT on purchases resulting in a large net payment of VAT to HMRC.

399. In his written evidence Mr Tsai explained that the company buys and sells computer related items for a profit; that is the business model. There was no deliberate attempt to offset outputs and inputs. It was put to Mr Tsai:

"Q…Sally's deals are all occurring in the second half of your VAT quarters and it would appear that that must have been a deliberate decision to carry out those deals at those times so that you would know by then approximately what your output tax liability was going to be and you could arrange the deals so that you could effectively counter the output tax liability with input tax reclaims. Is that what happened Mr Tsai?

A.I don't think so, because you can see from the pattern here, sometimes it carry on the second month, sometimes the third month, sometimes the second and third. So, you don't expect the deal to be dome on the first month normally…because first month you've got to prepare for it. It takes a few weeks to prepare…

Q. Why would you have to start preparing the deal in the same VAT quarter?

A…it's just coincidence because it's the second month/third month…

Q. Why do you not prepare in the third month for deals that are going to take place in the next quarter?

A. It can be done that way, but it just happened…it's just a coincidence because the first month is the preparation month, and there's only three months you can choose…

Q. Why was it always so well matched?

A. I can only answer this, that Sally tried to do her best, that's all

Q. Sally does not know anything about the other side of the business, she only deals with the wholesale purchases from Tradestar and sale to Munch

A. No, she knows the countries, what the other side's doing…so she can estimate it in that kind of way, because it happen in one month

Q. So it was deliberate, that you were intentionally trying to wipe out the output tax liability with input tax reclaim

A. I don't think that's the intention because she tried to maximise profit for the company and also she is doing this for many years so she knows how to deal with it"

(Transcript 27 November 2014 page 158 – 162)

Circularity of goods

400. Mr Soleman analysed the Appellant's deal spreadsheets for periods 10/06 and 11/06 which contained details of the CPUs traded. He then compared each box number from the Appellant's deal sheets to the details on a CPU analysis spreadsheet compiled by HMRC which contained details of CPUs exported by UK brokers. There were 102 occasions on which CPUs were exported by other traders as well as the

Appellant. There were also 5 occasions on which the Appellant had previously exported the same goods.

401. HMRC officer Dean analysed 164 of the boxes of CPUs traded by the Appellant in 07/06 and 08/06. He found that 98 were sold to overseas customers by UK brokers whose transactions were the subject of denial of input tax on the basis that they knew or should have known of the connection to fraud Those 98 were subject tp general circularity. One of those boxes was sold by the Appellant on two separate occasions. He added that there was an absence of data for box numbers of CPUs traded by the Appellant in those periods and therefore it could not be determined whether there had been circularity or not. Mr Dean also analysed the movement of goods in periods which are not under appeal and found three instances in which the Appellant traded the same goods three times. There were also seven occasions on which the Appellant sold the same goods to the same customers in the same month and nine occasions when the same goods were traded one or more months apart.

402. In cross-examination when asked about this Mr Tsai reiterated that Miss Lin manually checked box numbers and that it may be due to human error as it is only a small percentage that the Appellant traded more than once.

Submissions

403. On behalf of HMRC Mr Puzey highlighted the following features of the evidence as relevant to the issue of knowledge or means of knowledge on the part of the Appellant:

- The contrast between the Appellant's retail and wholesale of CPUs/flash drives;
- The Appellant's awareness of fraud in the industry;
- The specific warnings given to the Appellant at visits and in tax notification letters;
- The pattern of trading;
- Lack of commercial features and anomalies in the deals;
- The significant increase in turnover in 2004 when the Appellant began wholesale trading in CPUs;
- The change in wholesale activity to flash drives in 2007 when the reverse charge for mobile phones and CPUs was notified;
- Circularity of boxes;
- Inadequate due diligence;

- Circularity of funds and the Appellant's use of the UMBS, ECS and TCS for its MTIC-related transactions as opposed to the RBS Bank which it used for other trading activity;

- The Evaluation Reports by Mr Eastman exhibited by Mr Tsai which were produced to falsely bolster the Appellant's case. The publically available information as to the release date of Windows 7 is admissible under Rule 15(2)(a) of the FTT Rules 2009 and was a matter for which Mr Tsai had no explanation.

404. On behalf of the Appellant Mr Holland submitted that the information relating to Windows 7 should not be admitted as to do so would render the hearing unfair. A similar point was highlighted by Mr Holland in respect of evidence regarding customs tape being found on boxes; Mr Puzey's submissions which amounted to giving evidence should be disregarded. Both points constitute procedural impropriety and irrespective of the Tribunal saying it will disregard the information, a perception of bias is raised.

405. Mr Holland submitted that whilst he accepted that the HMRC officers gave their evidence honestly, the purpose was to achieve the ultimate goal. The officers failed to look at the Appellant's trade in totality but rather focussed on the MTIC-related side of the business. There were also discrepancies in the evidence of the officers, for instance Mr Ball found circularity in two different ways but was unable to explain which was correct or how the discrepancy came about.

406. The Tribunal should take into consideration the fact that Mr Tsai was cross-examined about deals he was not involved; he was reliant on Miss Lin who did not need Mr Tsai's authority to trade. Mr Holland accepted that the Tribunal's findings as to Miss Lin's knowledge or means of knowledge will be imputed to the Appellant but submitted that it is difficult to determine the issue of knowledge on her part. By way of example Mr Holland highlighted that the record of box numbers kept by Miss Lin could be subject to human error which does not support HMRC's case on actual knowledge. As to the issue of releasing goods before payment Mr Holland submitted that although payment was authorised on a specific date, the instructions were not executed until a later date; Mr Tsai's lack of knowledge on the issue is not indicative of knowledge.

The Decision

Findings of fact on whether the Appellant knew, or should have known, that its transactions were connected to fraud.

407.We considered the law, oral and written evidence and submissions of both parties carefully in reaching our conclusions.

408.In closing submissions Mr Holland raised two matters which, he contended, impacted on the fairness of the hearing. The first issue arose at the end of Mr Tsai's cross-examination in respect of an exhibit (belonging to Mr Tsai) entitled "Evaluation

Report" which purported to give test results from Mr Eastman, an engineer who formerly worked for the Appellant, on the flash drives traded. The report set out that in installation of the products used Windows 7 software. Mr Puzey highlighted in cross-examination with documentation obtained from the Microsoft website the fact that Windows 7 was not generally available until 22 October 2009 and therefore could not have been used on the exhibits which were dated 2006, 2007 and 2008. Mr Holland submitted that the documents in HMRC's possession had been printed off on 24 and 26 November 2014, prior to Mr Tsai giving evidence and it was clear that HMRC intended to rely on the information yet chose to put the Appellant in a position where it was not made aware of the documents and had no opportunity to take instructions. This impacted on the fairness of the hearing and the Tribunal should bear in mind that the allegation was not part of the pleadings.

409.We made no formal ruling on the matter at the time but allowed the question to be put to Mr Tsai, noting that the information was in the public domain and that the Appellant retailed Windows 7. Mr Tsai's response was that he is "not technical" and could not provide an explanation. We did not hear from Mr Eastman, who we were later told was unavailable. It was HMRC's case that the evaluation reports which were exhibited by Mr Tsai could not be accurate and that this cast doubt on Mr Tsai's credibility.

410.We disregarded the evaluation reports exhibited by Mr Tsai. As we did not hear from Mr Eastman we were simply not in a position to determine whether the reference to Windows 7 was anything more than a mistake. As to whether the production of this information during cross-examination renders the proceedings unfair, we did not accept the submission of Mr Holland. We rejected the contention that the issue should have been pleaded; HMRC's allegation of fraud was sufficiently and clearly pleaded in it's Statement of Case such that the Appellant could have been in no doubt as to the case it faced. The documents produced by HMRC sought to discredit evidence upon which the Appellant relied and which was produced after HMRC had served its Statement of Case. We also rejected the suggestion that unfairness or impropriety arose from our awareness of the documents; the FTT is a professional Tribunal able to disregard evidence where appropriate.

411.The second matter arose as a result of Counsel for HMRC putting a question which Mr Holland submitted amounted to evidence that had not been adduced. Counsel for HMRC did not, in closing submissions, rely on the reason why Customs tape may or may not have been wrapped around the damaged goods, but rather Miss Lin's failure to query this. In the absence of any evidence from the HMRC witnesses as to the purpose of Customs tape we disregarded any speculation as to why it was there. We did not accept that this amounted to impropriety or procedural unfairness and we reiterate the comments at [472] above; the FTT is entirely able to distinguish between evidence, opinion and speculation. We did not accept that any perception of bias was raised, nor did Mr Holland particularise how it could be. We reminded ourselves of the guidance set out in *Davidson v Scottish Ministers* [2004] SLT 895 in which Lord Bingham stated:

"The question is whether the fair-minded and informed observer, having considered all the facts, would conclude that there was a real possibility that the tribunal was biased."

412. We adopted the observations of Lord Justice Laws in the case of *Dr Sengupta & Mr Thomas* [2002] EWCA Civ 1104 at [37]:

"Who is the fair-minded and informed observer?

Our fair-minded and informed observer must surely have these matters in mind. That does not turn him into a notional lawyer. It merely reflects his fair-mindedness. However much we may in the name of public confidence be prepared to clothe our observer with a veil of ignorance, surely we should not attribute to him so pessimistic a view of his fellow-mans own fair-mindedness as to make him suppose that the latter cannot or may not change his mind when faced with a rational basis for doing so. That is, I think, what this case involves: not merely the ascription to the notional bystander of a putative opinion about the thought-processes of a judge, but the ascription of a view about how any thinking, reasonable person might conduct himself or herself when, in a professional setting, he or she is asked to depart from an earlier expressed opinion. The view which Miss O'Rourke submits should be ascribed to the bystander does much less than justice, I think, to the ordinary capacities of such a person. In my judgment, therefore, it is not a view which the fair-minded and informed observer would entertain."

413.In applying the principles set out above we were satisfied that there was no risk of real or perceived bias in our approach.

414.Turning to the evidence, we found the evidence of HMRC credible and cogent. We were satisfied that minor inaccuracies and differences in conclusions did not undermine the quality of the evidence as a whole.

415.We found Mr Tsai to be a vague and evasive witness. His evidence was unconvincing and undermined by the absence of Miss Lin who he repeatedly reiterated had been in charge of carrying out the deals under appeal.

416. Regarding the application to exclude Miss Lin's evidence, we decided to admit the evidence. We accepted the reason given for Miss Lin's non-attendance and found it reasonable given that she lives outside the UK and has family commitments. We took the view that the statement was relevant to the issues in the appeal although we made it clear to the parties that the fact that the evidence would go untested and we could not assess the credibility of Miss Lin as a witness the weight given to her statement would be a matter to which we gave careful consideration. In reaching our decision we have attached no weight to the statement for that reason. In setting out a summary of Miss Lin's written evidence we have highlighted the areas which, in our view, were vague and required explanation or testing in cross-examination and in assessing the contradictions and anomalies in the evidence we took the view we could not properly attach any weight to it.

417.We were satisfied that the Appellant was aware of the existence, prevalence and characteristics of MTIC fraud within the trade sector. We found Mr Tsai's evidence as to his understanding of MTIC fraud contradictory; MTIC fraud had been discussed at a meeting with HMRC at which Mr Tsai was present as long ago as 2004 and oral evidence Mr Tsai accepted he was aware that the risk lay in the transaction chains beyond his supplier and customer which we found inconsistent with his subsequent statement that he did not fully understand the fraud or the contents of Notice 726. We bore in mind that Mr Tsai is an experienced businessman in the field of IT and we were satisfied that he was fully aware of the nature of fraud in the industry and it was against this background that we assessed the nature of the companies' trading. We should add that we also inferred that Miss Lin was well-aware of the MTIC fraud which had been discussed with her on numerous occasions by HMRC officers.

418.We concluded that the Appellant's turnover figures were, on any view, significant in the periods under appeal. We noted the dramatic increase in turnover in 2004 when the Appellant began wholesale trading of CPUs. Any reasonable businessman would be aware of the turnover of his company, at the very least in general terms, and we were satisfied that the rapid growth would have been obvious to Miss Lin who conducted the deals and Mr Tsai as the director. Mr Tsai repeatedly reiterated the importance to maximising profits and we formed the view that this was his main objective irrespective of how it was done. We found Mr Tsai's evidence as to the off-setting of output tax on non-MTIC related trade against input tax credit for the MTIC-related deals was wholly unconvincing and at times contradictory; he appeared to suggest that it was no more than coincidence but also at times indicated that it was a deliberate mechanism by which Miss Lin maximised profits. We rejected the assertion that the figures were coincidental given the lengthy period over which the amounts were offset and we concluded that it was deliberate. In our view this supported HMRC's case that the Appellant deliberately arranged its deals under appeal for purposes other than legitimate commercial trading and supported the case on knowledge of connection to fraud.

419.We found Mr Tsai's evidence as to why the Appellant ceased trading in CPUs at or around the time of being notified of the introduction of the reverse charge was vague and unconvincing; his assertion that there may have been problems with the quality of CPUs was not borne out by the evidence and we were satisfied that as the director Mr Tsai would have been fully informed as to such a significant shift in trading from CPUs to Flash Drives. We concluded that this supported HMRC's case and demonstrated that, at the very least, Mr Tsai was willing to turn a blind eye to the obvious in order to make a profit.

420.We found the stark distinction between the retail side of the Appellant and the deals under appeal was unexplained. The differences included invoicing methods, storage facilities, banking arrangements, product research and internet advertising for the retail side but not the types of deals under appeal. Mr Yeo had recognised that there were two sides of the business at a meeting with HMRC on 5 July 2007 as did Mr Tsai in oral evidence. We concluded that the difference was so clear that it must have been deliberate on the Appellant's part. Whilst there may be legitimate reasons for companies separating two sides of its business we concluded that the comparison

could not be ignored and would have raised questions in any reasonable businessman's mind as to how the deals came about without marketing or advertising and the manner in which they were conducted. In considering this feature of the trade we concluded that the only reasonable explanation was that the wholesale transactions were connected to fraud.

421.We noted that the Appellant continued to trade despite receiving numerous letters warning that its transaction chains had been connected to tax losses. We found Mr Tsai's evidence on this matter wholly unsatisfactory; he reiterated the importance of maximising profits and sought to minimise the Appellant's responsibility by asserting that Miss Lin had not specifically been told that there was fraud in the Appellant's the deals. The Appellant continued to trade in the same manner with the same trading partners despite clear warnings from HMRC. When viewed in the context of the Appellant's awareness that fraud was rife in this industry we could only conclude that this was indicative of knowledge or means of knowledge on the Appellant's part as in our view any reasonable businessman seeking to protect himself from connection to fraud would have taken more active steps to change his method of trading.

422.The pattern of trading was, in our view, a matter which indicated that the Appellant either knew or should have known of the connection to fraud. It consistently made significant mark-ups and whilst the Appellant may not have known the purchase and selling prices further down its chains, it was aware of how much it purchased the goods for and the repeatedly large mark-ups it was able to make. We rejected Mr Tsai's evidence that deals took days, weeks or months to prepare; on his own evidence he was not the one carrying out the deals and there was no cogent evidence from Miss Lin with the type of documents dealing with the practicalities one would expect to see in such large value transactions such as offers, counter-offers discussions about delivery, payment, shipping, inspection and release. We concluded that this manner of trading lacked commerciality and we were satisfied that this issue indicated knowledge on the part of the Appellant. We found the emails exhibited by Mr Tsai showing stock offers were irrelevant as they related to periods outside of this appeal.

423.We noted HMRC's reliance on the Appellant's use of the UMBS and ECS. There was no evidence to demonstrate that users of the respective institutions or the public generally were aware of any such problems during the period with which we are concerned and we were not satisfied that this indicated knowledge or means of knowledge on the part of the Appellant.

424.There was no cogent explanation for the anomalies in the deal documentation, for instance where goods had been released prior to payment. There was also no credible reason given as to how the Appellant was aware of box numbers of goods prior to receiving any document bearing those details. The inspection reports raised queries that would, in our view, cause concern to any legitimate trader yet were seemingly not followed up. Mr Tsai's evidence regarding the record of box numbers and checks made to guard against trading the same goods more than once was vague. We noted that Miss Lin made no mention in her statement that a manual check of her notebook record was made and in the absence of any oral evidence from her we were left

without any cogent evidence as to what checks were made, how they were made and how this satisfied the Appellant that its procedures were effective.

425.The evidence as to when and how goods were released was confused and unpersuasive. We found as a fact that the lack of clarity or formal record on this issue was indicative of the fact that such legalities did not matter to the parties as they knew that the transactions were contrived. Mr Tsai's exhibits containing important documents such as terms and conditions were only produced at the time of his witness statement. Their existence wholly contradicted with Miss Lin's assertion that no official contracts existed, for instance with Tradestar, at a meeting with HMRC on 10 March 2010.

426.The due diligence carried out by the Appellant lacked any meaningful substance. We noted that Mr Tsai had exhibited a large number of due diligence documents that had never before been mentioned or provided to HMRC. On close inspection the documents told the Appellant little about the veracity of the companies with which it traded. Although Miss Lin contended that she had met with traders there was no detailed record of such meetings nor any evidence as to how the Appellant had satisfied itself that the transactions were legitimate. Similarly the diary entries exhibited by Mr Tsai provided no more than an assertion that a meetings had been arranged with traders. There was no evidence of any real steps to measure the risk of a potential trading partner in circumstances of high value transactions in an industry where fraud was rife. We concluded that the absence of any such checks and action taken to follow up was indicative of knowledge on the Appellant's part and the fact knew that the transactions posed no real risk.

427.We considered carefully the due diligence documents exhibited by Mr Tsai which contained handwritten notes such as providing instructions to Miss Lin. We queried why these had not been provided earlier and, moreover why the copies provided to HMRC did not contain the handwritten notes. We found Mr Tsai's explanation that the Appellant had many copies of such documents unconvincing; given the specific queries raised by HMRC in respect of due diligence and the fact that a number of those queried were addressed by the handwritten notes it seemed to us implausible that Miss Lin would have failed to mention that Mr Tsai had provided instructions. Without Miss Lin to give evidence on the matter we took the view we could reach no conclusion as to when the documents were annotated and why they were not provided to HMRC earlier and in those circumstances we attached no weight to the handwritten notes.

428.We concluded that the circular movement of funds found in 9 deals of 23 in 07/06 and 08/06 indicated that the transactions formed part of an overall scheme to defraud. However we did not find that this indicated knowledge or means of knowledge on the Appellant's part. Similarly, we were satisfied that the evidence of Officers Bradshaw and Mendes demonstrated circularity of the deals which were pre-orchestrated in the diaries seized as part of Operation Apparel. However we noted that the Appellant was not named in the diary and we concluded that although the evidence demonstrated the highly contrived nature of the deals, it did not demonstrate knowledge or means of knowledge on the Appellant's part.

Conclusion

429. We were satisfied that HMRC had established fraudulent tax losses and that there was an orchestrated scheme for the fraudulent evasion of VAT connected with the transactions which form the subject of this appeal.

430. We concluded that in respect of the periods under appeal the Appellant knew, through Miss Lin, that the transactions were connected with the fraudulent evasion of VAT or that the factors set out above would at the very least support a finding of means of knowledge. We were also satisfied that Mr Tsai knew or should have known that the transactions were connected to fraud; Mr Tsai presented as an intelligent businessman and we concluded that in his role as director and the fact that he oversaw the transactions carried out by Miss Lin that he could not have failed to notice to features and manner of trade which lacked commerciality and his failure to take steps to ensure the legitimacy of the trade which reached substantial volumes and values over a lengthy period of time was indicative of either his knowledge of the fraud or his turning a blind eye to the only reasonable explanation being that the transactions formed part of an overall scheme to defraud the Revenue.

431. The appeal is dismissed.

432. 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.

JENNIFER BLEWITT
TRIBUNAL JUDGE

RELEASE DATE: 5 JULY 2016