TC01577

Value Added Tax - MTIC appeal involving three purchases leading to two sales of speed-camera detectors known as Indic8tors by the Appellant in July 2006 - whether the supplies had been traced to fraudulent VAT losses - whether the Appellant knew or ought to have known of the connection - whether the evidence of the Appellant's director was trustworthy - Appeal dismissed

FIRST-TIER TRIBUNAL **Reference no: LON/2007/1729**

TAX

BLISS TRADING LIMITED

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Tribunal: HOWARD M. NOWLAN (Tribunal Judge)
SONIA GABLE

Sitting in public at Field House, Breams Buildings, Chancery Lane, London on 11 to 15 July 2011

Karim Khalil QC and Anne Johnston, counsel, on behalf of the Appellant
Alison Pople and Jamie Sharma, counsel, on behalf of the Respondents

DECISION

Introduction

1. This was a relatively simple Missing Trader or MTIC case, revolving around the denial of the Appellant's input tax of £241,500 in respect of three transactions (three purchases leading to two supplies), which took place in the VAT period 07/06. The transactions were the Appellant's first and only transactions of the relevant type. The outcome of this Appeal revolved very substantially around whether we felt able to accept the evidence of the Appellant's director at face value. We should make it clear at the outset that we both independently reached the conclusion that we could not.

2. This feature has not of itself led inevitably to the outcome of the case, because there were features of the Appellant's transactions, particularly the second and later supply, that did not bear all the attributes of the more usual supplies to European customers made by the so-called "brokers" in MTIC transactions. We have therefore had to balance several facts and undertake a certain amount of speculation in trying to reach our decision. That decision is however that the Respondents have more than satisfied the burden of proof in demonstrating that the Appellant's transactions were connected to fraudulent VAT losses, and that the Appellant had actual knowledge of this connection.

3. The facts, briefly, were that the Appellant had been formed by Mr. Mark Yarde ("Mr. Yarde") in early 2006. Prior to forming the Appellant when aged 27, Mr. Yarde had had four employments, the first two of which had no bearing on this Appeal. The third had been with a publishing company, namely United News and Media Limited from 1999 to September 2001, in which employment Mr. Yarde was involved in marketing the company's computer magazines. His fourth employment (from September 2001 to January 2006) was with Third Dimension Limited ("Third Dimension"), a company run by Mr.Anthony Elliott-Square, which produced and operated the International Phone Traders ("IPT") website, and which also initiated a structure, referred to as the Federation of Technological Industries ("FTI"), which traders could join, almost as members of a mutual, in order to pool and gain knowledge in relation to their trading. Much of the subscription income apparently went to solicitors who were said to be involved in giving advice to traders as to how to conduct due diligence in order (on one view) to avoid being caught up inadvertently in MTIC fraud, or (on HMRC's contention) to fight the measures being taken by HMRC to combat MTIC fraud. One of the projects considered was a possible application to the ECJ to challenge the introduction of the reverse charge mechanism.

4. Mr. Yarde's role at Third Dimension was essentially to market the website and solicit members to FTI, and to collect monthly or other periodic subscriptions. The significance of Mr. Yarde's role at Third Dimension to this appeal was that he was well paid, such that he had free capital of approximately £130,000 when he left Third Dimension. He had also made a number of contacts in Third Dimension's many clients, and came to have some understanding of wholesale trading in mobile phones, albeit that neither Third Dimension nor Mr. Yarde were actually trading in this sector. He also gained some experience as to which of the clients had been in business for some years and appeared always to have their phones manned, and which were start-up companies, which it might be quite difficult to contact on account of the part-time involvement of their directors. He also knew which of the clients paid their subscriptions or dues to FTI on a timely basis.

5. When Mr. Yarde left Third Dimension, after some disagreement with Mr. Elliott-Square, he set up the Appellant. His initial aim was to buy and operate a bar/restaurant

in Yeovil, and to operate tanning studios. He was soon troubled at the way in which the start-up costs of the bar/restaurant in particular were eating into his capital, and so he decided to research the possibility of using his capital in wholesale trading of electronic goods.

6. The possible involvement of the Appellant in such wholesale trading came to the notice of HMRC in late June 2006, since a known trader sought Redhill verification of the Appellant's VAT registration details. This led to an immediate meeting with Mr. Yarde by two HMRC officers, following a letter from HMRC, with which he had been sent a copy of HMRC leaflet 726, warning of the risks of embarking on such wholesale trading.

7. On 11 July, the Appellant bought first 5000 Road Safety Indic8tors from The Export Company (UK) Limited ("TEC"), and then a further 2000 Indic8tors also from TEC. The VAT exclusive price paid was £100 per unit. All 7000 were then sold to a company in Luxembourg, namely 3G Trade SA ("3G") at a unit price of £104. The products were transported to Luxembourg on a "Ship on Hold" basis, prior to the Appellant receiving a £20,000 deposit that 3G had apparently paid, and following inspection 3G paid the balance of the price. The Appellant then paid TEC the considerably higher VAT-inclusive price, using his own capital to pay the excess of the price owed to TEC over 3G's payment, and to pay the freight, insurance and other incidental costs.

8. The Appellant's other deal was more involved. He had initially planned to buy more Indic8tors (6,800 on this occasion) from TEC, again at the unit price of £100, with a view to selling all 6,800 to a UK wholesale buyer called Trade 24/7 Limited ("24/7") at £101, both prices being exclusive of the VAT which would be due in respect of each transaction.

9. In furtherance of this planned deal, 24/7 sent the Appellant £100,000 as a deposit. Prior even to receiving this deposit however, and prior to the Appellant sending 24/7 its invoice, Mr. Yarde had decided to sell the Indic8tors instead to 3G, albeit on this occasion that 3G's price had fallen to £102. Mr. Yarde was aware that he would only be able to pay the VAT-inclusive price to TEC, and to meet the other incidental deal costs, after receiving 3G's VAT-exclusive payment, if he used 24/7's deposit, and indeed supplemented that with roughly £16,250 of his remaining capital.

10. Mr. Yarde accepted that he had been wrong to use the deposit paid to the Appellant by 24/7 in this way, but he hoped to recover the VAT very quickly, and he hoped to suggest to 24/7 that he had just encountered problems with the supply, and that the deal with 24/7 had to be cancelled, and the deposit returned.

11. Naturally when HMRC subjected the Appellant's claim for input recovery to extensive verification, Mr. Yarde's hopes proved ill-founded, and he had eventually to explain to the directors of 24/7 what he had done.

12. Since these transactions in July 2006, the Appellant undertook no further wholesale trading in electronic goods. Following the sale of his house, Mr. Yarde did manage to proceed with the acquisition and work on the bar/restaurant. This venture has apparently been a disappointment and has made no profits. On account of licensing complications in transferring the pub business out of the Appellant, the pub activity has always been conducted by the Appellant.

13. When Mr. Yarde acquired his first tanning studio, this was initially acquired and operated by him as a sole trader, and later incorporated into a different company. This company made loans totalling approximately £50,000 to the Appellant to fund the losses

in the pub business. The tanning business appears to have flourished. We were not informed of the details, but clearly other people were now involved in the tanning business, and the activity at several studios had been amalgamated into one company in which Mr. Yarde was not the sole shareholder. This company had apparently made profits of £200,000 in the most recent year, though the profits were substantially re-invested, and we were told that two other studios were currently being acquired and fitted-out.

14. At the time of the hearing before us, no part of the £100,000 deposit owed to 24/7 had been re-paid to 24/7 and two of that company's directors attended the hearing as observers.

15. The Appellant challenged certain features of HMRC's claim that the Appellant's transactions had been traced, to the standard of the balance of probabilities, to fraudulent tax losses, and we will explain these contentions. In the event we had no hesitation in rejecting them.

16. The essence of the Appellant's contentions in relation to lack of knowledge were that:

- Mr. Yarde's experience in relation to MTIC fraud, whilst working for Third Dimension had been very modest;
- in that employment, Mr. Yarde had however made many good contacts, and he had formed his own view on which were "reliable traders", these including TEC and 3G;
- Mr. Yarde had also concluded that, amongst countless ITC users, only about 10 to 12 had encountered MTIC problems with HMRC;
- any lack of due diligence undertaken in relation to TEC and 3G was of no significance, since Mr. Yarde had known of those companies and people within them for some years, and nothing could enhance that knowledge;
- Mr. Yarde claimed that he thought that MTIC risks were predominantly associated with trading in mobile phones and CPUs, and that the risk of encountering fraud with other products such as Indic8tors was much lower; and
- at all times Mr. Yarde had been open with HMRC officers, and had given prior intimation of his proposed deals with TEC and 3G and HMRC officers had not indicated that he should not do the deals.

17. We also acknowledge that Mr. Yarde's decision to abort the deal with 24/7, and his summary of what happened, was quite extraordinary, and hardly consistent with the way in which a "hardened" broker might have been expected to operate. In other words, he was being offered, so it seemed, a reasonable margin on selling the 6,800 Indic8tors to a UK buyer, on a broadly risk-free basis so far as HMRC were concerned, and with no "VAT gap" to fund. Instead he chose to undertake something between "unacceptably sharp practice" and fraud, in taking 24/7's deposit well after he had decided to abort the 24/7 deal, and sell instead to 3G, thereby incurring the far greater risk of needing to recover the VAT, all to make only a 2% rather than 1% margin. These steps might indicate genuine ignorance of the VAT risks, and an approach bordering again between greed and stupidity, either of which (whilst not particularly flattering to Mr. Yarde) might militate against the proposition that he knew precisely what he was doing.

18. In reaching our decision in relation to the crucial "knowledge" issue, we have been considerably influenced by our independent conclusions that we did not believe much of Mr. Yarde's evidence. This does mean that some of the reasoning, whereunder we conclude that Mr. Yarde was indeed aware that there could be no explanation for the

Appellant's transactions than that they were connected to fraud, is based on speculation. This is necessarily so where we feel unable to believe the only evidence given on behalf of the Appellant. We will, however, set out clearly the other factors that have led us to the conclusion that Mr. Yarde was aware that the transactions undertaken were connected to VAT fraud, and those reasons are far from all based on supposition.

The change of case officer

19. The case officer in relation to the Appellant's input tax recovery claim had originally been Kirsty Jolliffe. HMRC had informed the Appellant at some time prior to the date fixed for the hearing that, through illness, Kirsty Jolliffe would not be able to attend the hearing and give evidence, and that therefore her place would be taken by Steve Jenner ("Mr. Jenner"). Both Kirsty Jolliffe and Mr. Jenner had been involved with the case from an early stage, and even though most meetings on the part of HMRC with the Appellant had been attended by two HMRC officers, one of them always being either Kirsty Jolliffe or Mr. Jenner, there were occasions when the other had not been the second officer. We were asked at the commencement of the hearing to admit the Witness Statement of Mr. Jenner, in place of that initially prepared by Kirsty Jolliffe, to which the Appellant assented provided that we required HMRC to release Kirsty Jolliffe's internal presentations in relation to the case. Following considerable debate, we decided to admit Mr. Jenner's Witness Statement on the basis that he would act, and be cross-examined, as the Case Officer, and we declined the Appellant's request for a direction that HMRC provide the requested internal documents.

The facts in more detail

20. In this section of the decision, we will simply record facts, without commenting on contentions on behalf of the Respondents, or our own findings of fact, which we will give below.

21. There is no need at this point to amplify the facts given in the Introduction in relation to Mr. Yarde's employment with Third Dimension.

22. The Appellant was formed on 12 January 2006, and registered for VAT purposes from 7 April 2006, with the stated business activities of "licensed (A3) Café/Restaurant to be turned into a bar".

23. On 11 May 2006, the trade categorisation was amended to refer to "a bar/restaurant, tanning studio and wholesaler electronics/jewellery". Mr. Yarde's letter of 11 May also asked for his VAT returns to be dealt with on a monthly, rather than the more usual 3-monthly basis. It will be noted from the terms of the relevant letter that we now quote that the ostensible reason for the request to change to monthly returns was muddled, and that the reference to the existing activities of the "import/export side to the business" was inaccurate, since at this point, nothing had been purchased or supplied in relation to that part of the business. The letter read as follows:

> *"To Heather Danks, Monthly Returns.*
>
> *Following the correspondence earlier advised by monthly returns I have put the company needs into writing.*
>
> *Due to the large set up costs and running of 3 sides to the business (one in import and export, so a lot of VAT monies would be held for to long to operate the other sides to the business) the cash flow is not going to be available to pay HMRC on 3*

month returns, so the company would be looking to obtain a monthly VAT return as soon possible so I complete my payment to HMRC on a more regular basis.

The sides to the business are:
1. *Bar/Restaurant*
2. *Tanning Studio*
3. *Wholesale Electronics/Jewellery*

The import and export side to the business has only been using European countries.

Any problems please don't hesitate to give me a call.

Please change all paperwork to correspond to this address. Variations have these details.

Regards,"

24. On 30 May, this request was refused on the basis that the criteria for monthly returns had not been met, though it was mentioned that the position might be reviewed if any pattern of regular VAT repayments was in fact established.

25. In early June 2006, HMRC's Redhill office received a request from a company to verify the Appellant's VAT registration. Being concerned that this validation request indicated that the Appellant was about to participate in some possible MTIC-sensitive trade, an officer in the Redhill team wrote to the Appellant on 19 June, attaching a copy of notice 726, and making the following points in the first and third paragraphs of the letter:

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

……[Reference to verifying valid registrations through Redhill office]

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

[Having referred to the attached copy of Notice 726, the letter then specified the full information that should be provided, when seeking to verify the VAT details of potential suppliers and customers]".

26. Following the despatch of this letter, Mr. Jenner and a colleague visited the Appellant. Mr. Yarde said that they "read the riot act" in relation to trading in mobile phones and CPUs, and emphasised that trading in those items was particularly likely to involve the risk of being involved in MTIC fraud. Mr. Yarde said that he therefore

considered it safer to deal in some different commodity, though deal sheets prepared by Mr. Yarde and a colleague after this visit, summarising the type of product, and quantities, that various traders that the Appellant had contacted wanted either to sell or buy, included many references to mobile phones. It was accordingly not clear whether Mr. Yarde had concluded that trading in mobile phones and CPUs was ruled out, and certain remarks that he made later indicated that he had not ruled out trading in such items. Nevertheless he did say that he considered that the risks, when trading in other items other than those at the time that attracted the potential of joint and several liability, as explained in notice 726, would be less serious.

The contested deals

27. The Appellant's first deal was effected on 11 and 12 July 2006. It was slightly involved in that, as already mentioned, the Appellant acquired Indic8tors in two separate consignments, the first being of 5000 and the second of 2000, whilst the Appellant's own supply to 3G was all dealt with in the single transaction, that of course being a supply of 7000 Indic8tors. During the hearing, the purchases were usually referred to as Deal 1.1 and Deal 1.2.

Deal 1.1

28. There was little dispute about the transaction chain as regards the 5000 acquired in Deal 1.1. HMRC contended, and the Appellant did not dispute, that the goods in question had been acquired from a Belgian company referred to as Koornmarkt by the UK defaulter and hi-jacked trader, Pearl Cosmetics, then being transferred to RX Tech, RK Brothers, JD Group, TEC, and then the Appellant, which sold the goods to 3G in Luxembourg. The Appellant acquired the Indic8tors at a unit price of £100, with VAT in addition of £17.50; and sold to 3G for £104. The various UK buffer companies had made the traditional small margins associated with MTIC trading of 15p, 20p and 25p per unit.

29. The payments in relation to Deal 1.1 were derived in part from the Dutch server information in relation to the accounts of First Curaçao International Bank ("FCIB"). The banking payments in relation to Deal 1.1 were again not particularly contentious. The Appellant thought and hoped that 3G would pay a £20,000 deposit prior to the despatch of the goods to 3G, though the deposit, paid out of 3G's ABN Amro account, in fact arrived on 13 July in the Appellant's NatWest account (after the goods left the UK shortly after midnight on 12 May, and the balance of the price was received on 17 July. These amounts, supplemented by Mr. Yarde's capital, were then paid to TEC's Clydesdale bank account on 18 July; there was then a delay whilst the moneys were moved from TEC's Clydesdale account to its account with FCIB, and the payments then moved swiftly from TEC to JD Group, and to RK Brothers. RX Tech and Pearl Cosmetics were then omitted from the money circulation, since RK Brothers paid directly to Koornmarkt, which in turn, and significantly, then paid a substantial amount of the money back to 3G.

30. The terms of trade by the Appellant were very sketchy. TEC's invoice to the Appellant contained no terms, and did not mention when payment was to be made. Details of the FCIB account were given on the invoice, though that was not the account to which the Appellant made payment. The reverse of the invoice indicated that TEC's Standard Terms applied, but the Appellant never asked for a copy of these and did not know what they were. TEC instructed the freight forwarder, Globe Distribution Ltd ("Globe") not to release the goods to the Appellant until they were notified verbally or by fax to do so. On 11 July, TEC then notified Globe that "we have received payment from

our client and you are requested to release and or despatch goods as soon as possible". Globe's date stamp, dated 12 July, was on this release note. Payment was not, in fact, made to TEC by the Appellant until 18 July.

31. The Appellant's invoice to 3G was silent as to trade terms. 3G's purchase order had indicated that payment would be made following inspection. The Appellant's release note to Globe indicated on 12 July that the goods should be shipped on a "Ship on Hold" basis to 3G, though we noted that 3G themselves appeared to own and operate the destination warehouse. It also emerged that Globe had despatched the goods, *en route* to Luxembourg, prior to being instructed to do so, since they were checked in at Eurotunnel 6 minutes after midnight on 12 July, such that they had obviously left Globe's warehouse many hours before on 11 July.

32. As we have indicated, the Appellant did not contest HMRC's contention that Pearl Cosmetics, a missing trader, had defaulted in paying VAT; that that default was a fraudulent one since Pearl Cosmetics had disappeared, and that the 5000 Indic8tors involved in Deal 1.1 had been properly traced to the Appellant.

Deal 1.2

33. As regards trade terms, and time of despatch to 3G, Deal 1.2 was identical to Deal 1.1, and indeed so far as 3G was concerned, its payments referred to in paragraph 29 above related to the combined supply of the 7000 Indic8tors, 3G being ignorant that, at earlier points in the chain, 5000 and 2000 had been supplied.

34. There was however some acknowledged confusion in relation to the supply chain to the Appellant. One set of invoices indicated that the chain of supply of the 2000 Indic8tors in Deal 1.2 was exactly the same as in Deal 1.1. There were, however, also invoices in favour of JD Group, suggesting that not only had JD Group acquired 2000 Indic8tors from RK Brothers (as in Deal 1.1), but also from a company called IRE Limited ("IRE"). There was no evidence as to where IRE might have acquired the Indic8tors, if indeed the supply to JD Group came from IRE, rather than RK Brothers.

35. There was then conflict between the delivery and release instructions to Globe, on the one hand, and the payments, on the other. The delivery and release instructions supported the analysis that the chain of transactions was that through RX Tech and RK Brothers. Whilst JD Group did not strictly pay IRE, it did make its payment in respect of Deal 1.2 to one Syed Ausaf, one of the officers of IRE. The payment was admittedly of little eventual value to Syed Ausaf because the FCIB evidence suggested that he immediately on-paid the whole amount, less just £60, to Koornmarkt, which then paid £233,000 to 3G out of the £234,000 received from Syed Ausaf.

36. HMRC sought to clarify this confusion by asking JD Group whether they acquired the 2000 Indic8tors from RK Brothers or from IRE. The astonishing reply to this enquiry from JD Group's solicitors, Needleman Treon, was in the following terms, initially seeming to indicate very clearly that the supply was indeed from IRE, but eventually appearing to confirm the reverse, namely that it was from RK Brothers. The reply was as follows:

> *"(1) Our client company purchased the goods from IRE Ltd and it was advised that the payment should be made to Syed Ausaf who is a director of IRE Ltd. We understand that our client was informed that a bank account for IRE Ltd had not yet been set up and the payment therefore should be made to its director. The payment was acknowledged by IRE Ltd. However, our client did request IRE to*

confirm in writing what the position was and made it quite clear that pending such written confirmation with evidence that a bank account for IRE Ltd was in the process of being set up, our client would not trade with them any further.

(2) As stated above, our client informed IRE that it would not trade with that company unless confirmation, as requested above, was obtained. The original supplier for the goods was IRE, but because the requested information from IRE was not received, our client refused to accept any further goods from that company. As you may well be aware in this business the same goods are offered by many suppliers because they are on offer throughout the market. When our client decided not to purchase those goods from IRE, the goods were then offered by RK Brothers and the transaction then proceeded with RK Brothers. The documentation will show the transaction history and there is nothing untoward about the transaction.

(3) Documents were prepared on the basis that goods were to be supplied by IRE because IRE had offered those goods to our client. However, because of the information that our client had requested of IRE (as stated above) was not forthcoming, our client refused to proceed with the purchase from IRE. The documents were retained in the files simply to show the history of the matter and our client proceeded to purchase the goods elsewhere."

37. On account of this confusion, it might be clearest to summarise now the three contentions, essentially advanced by HMRC, to the effect that the Appellant's transaction in Deal 1.2 had been traced to fraudulent tax losses, and the alternative contention on behalf of the Appellant that no such tracing had been established.

38. HMRC's prime case was that the release instructions to Globe, coupled with the extremely confused letter just quoted, indicated that the chain of supply had been along the RK Brothers route, as in Deal 1.1. On the reasoning that the payment chain even in relation to Deal 1.1 skipped two buffers (RX Tech and Pearl Cosmetics) and that JD Group's payment, minus just £60, still reached Koonmarkt, the ostensible supplier in the RK Brothers route, that route was still the most likely.

39. The next possible analysis is that the evidence here seems to suggest chaos on the part of whoever organised these deals, and everything still indicates contrived transactions, stemming from a fraudulent evasion of VAT, even if the supply came from IRE, and there was no clear evidence as to who IRE had acquired the goods from. There was, in other words, no remote indication, let alone clear evidence, that IRE had acquired the goods from a reputable distributor, and there seemed to be every indication that there was a fraudulent loss via either of the contested routes.

40. It struck us that, sensible as the expectation in the previous paragraph clearly was, it would still be unsatisfactory to presume that, if the goods had come from IRE, they derived from a fraudulent VAT loss if that could not be proved to reasonable satisfaction. We did ascertain, however, that IRE had also disappeared without declaring various possible supplies, including the suggested one to JD Group, to HMRC. Since no return had been made, and self-evidently no claim had even been made for any input tax by IRE, HMRC had made assessments on IRE for the full amount of VAT owing in respect of various supplies, including the one that would have been made on the analysis that it was indeed IRE that had made the supply of the 2000 Indic8tors to JD Group. That assessment was of course not paid, since IRE had disappeared, so that it was then contended that IRE itself could be treated as the fraudulent defaulter.

41. The Appellant's contention was that it was equally or more likely that the supply to JD Group had derived from IRE; that there was no evidence as to how IRE had sourced the goods, and that it was unacceptable for HMRC to advance an "either/or" analysis in seeking to establish the tracing to a fraudulent tax loss, not least because (whilst Mr. Jenner's Witness Statement provided all the ingredients for the alternative contention advanced in paragraph 40 above) it was really only because we had advanced that alternative analysis that HMRC adopted it as their less preferred alternative.

42. We will defer giving our conclusion on this matter to paragraphs 102 and 103 below.

Deal 2

43. The VAT period in which Deals 1.1 and 1.2 had been effected had not closed by the time the Appellant undertook its further and last deal, Deal 2. We will summarise the broadly common detail in relation to due diligence, insurance, inspection and other matters after summarising the basic steps of Deal 2. Deal 2 was fundamentally similar to the earlier deals in that again it involved Indic8tors, 6,800 on this occasion, and again the supplier was TEC, and the eventual customer 3G. There were, however, two complications.

44. The major complication in relation to Deal 2 was that the Appellant had nearly exhausted its capital and could not itself bridge the VAT gap on purchasing on a VAT-inclusive basis and selling to 3G, the European customer on a VAT-exclusive basis. Deal 2 was, thus, initially planned, it seems, on the basis that the Appellant would purchase the 6,800 Indic8tors from TEC at the same unit price of £100, and then sell them to a UK customer, namely 24/7 at the unit price of £101. Since that would be a domestic sale where, as with its own purchase from TEC, the Appellant would be receiving from 21/7 £101 plus VAT, there would be no VAT gap to be funded, pending the hoped for recovery of input tax from HMRC. The deal was thus quite attractive in that, with far less risk of attack by HMRC, the Appellant would still make a gross profit of £6,800, making a considerably better mark-up than the earlier buffers in the transaction chain.

45. In the event, Mr. Yarde said that on either 27 or 28 July (it will become clear why there is uncertainty about the date) he decided, within two hours of accepting 24/7's offer to purchase (which was going to be accompanied by a £100,000 deposit) that he could make more money if instead he sold the 6,800 Indic8tors to 3G, and used 24/7's deposit to fund the greater part of the VAT gap, which would have to be funded when selling to 3G.

46. The timing of this switch of customer was all rather curious because at some time there was clearly some opportunity to try to negotiate for a better price from 3G. Instead of offering £104 per unit, as with the earlier deal, their offered price had fallen to £101, and Mr. Yarde said that he could not better that with three or four other European buyers that he contacted. In the event he managed to lift 3G's price to £102 per unit.

47. The other curious feature to the timing was that, although Mr. Yarde said that he had accepted 24/7's offer prior to his change of mind to sell instead to 3G, 3G's purchase order was in fact dated 27 July, the Appellant's invoice to 24/7 was dated 28 July and it was not until 31 July that the Appellant received 24/7's £100,000 into its NatWest bank account. When this was then supplemented by £16,250 from Mr. Yarde's savings, the Appellant had sufficient, on receiving the deposit and balance from 3G, to pay the VAT-inclusive amount owed to TEC.

48. It is not entirely clear how quickly Mr. Yarde hoped and expected that HMRC would refund the VAT claimed in his return for the period 07/06. The return was certainly made on 1 August, and Mr. Yarde rang up to chase the return, and the input recovery on 16 August, 30 August and 31 August, being told on 31 August that the return would be subjected to extended verification.

49. Mr. Yarde said that he had received several enquiries, very shortly after 31 July, from directors of 24/7, asking when the 6,800 Indic8tors invoiced to them would be delivered and released, to which he said that there were complications in relation to sourcing the product. He eventually had to explain that he had sold elsewhere, and used their deposit to part-fund the purchase price. He said that he would repay the deposit as soon as he obtained the VAT repayment from HMRC.

50. Before turning to the other quite distinct complication in relation to Deal 2, we should mention two other points in relation to the way in which 24/7's deposit was misappropriated. Firstly, in early August 2006, Mr. Yarde's colleague produced a document to be sent to a possible trading partner that gave 24/7's name as a referee for the Appellant, and Mr. Yarde himself signed the document in question. HMRC criticised this first for the feature that, as no deal had been done between the Appellant and 24/7, then as with all the referees, details of which the Appellant had provided to potential trading partners, they would have no real basis on which to give a trade reference in relation to the Appellant. More significantly in relation to 24/7 it seemed extraordinary to suggest that a reference might be given by 24/7 when the Appellant had reneged on a deal and misappropriated £100,000 of 24/7's money.

51. The other point to mention is that, whilst the letter to which Dorsey & Whitney, solicitors to 24/7, replied in the letter that we quote below was never produced, HMRC made the point that it seemed rather strange that the only written communication from or on behalf of 24/7 to the Appellant in relation to the misappropriation of the £100,000 was the following letter, in fairly moderate, rather than outraged, terms:

> *"We refer to your letter dated 21 September 2006, regarding the outstanding debt to our client in the amount of £100,000.00. Whilst we appreciate and understand the difficulties you are facing regarding the extended verification of your funds currently withheld by HMRC, we would be most grateful if you could provide the following information:-*
>
> 1. *Please provide a declaration from your solicitors/accountants regarding the current position of your funds withheld by HMRC;*
> 2. *Please provide a payment plan for settlement of the outstanding funds due to our client or part payment of the outstanding funds.*
> 3. *Please can you provide details of the current action you are taking regarding the withholding of your funds by HMRC.*
>
> *We look forward to hearing from you as soon as possible and in any event by 4.00 pm on 1 November 2006."*

52. We were told finally that no part of the £100,000 had been repaid by the date of the hearing before us, notwithstanding that Mr. Yarde personally had made profits in his tanning business. As we have already indicated, two directors of 24/7 were present in court throughout the hearing.

53. We turn now to the other confusing point in relation to Deal 2, which again relates to the possible involvement of IRE.

54. According to deal logs and purchase orders and invoices, it appeared that the chain of transactions in relation to Deal 2 was from Koornmarkt (the Belgian company) to Pearl Cosmetics (the defaulter) to RX Tech, to RK Brothers, to JD Group, to TEC, to the Appellant and to 3G.

55. The confusing feature on this occasion was that Globe provided release notes that suggested that IRE had acquired the 6,800 Indic8tors from RX Tech, and in turn released them to JD Group, so seemingly omitting RK Brothers from the deal chain and substituting IRE instead. In making their submissions, the Respondents suggested that rather than IRE being substituted for RB Brothers in the chain, IRE might have been an additional buffer, such that the relevant part of the chain involved the goods moving from RX Tech to IRE to RK Brothers and then to JD Group.

56. The payments on this occasion are entirely consistent with the chain of transactions being as suggested in paragraph 54 above, since JD Group plainly made its payment to RK Brothers. Admittedly RK Brothers diverted its payment straight to Koornmarkt, skipping RX Tech, and Pearl Cosmetics, but that was consistent with the way in which the payments skipped those parties in Deal 1.1 and Deal 1.2. The point that we make here is that JD Group paid RK Brothers, consistently with the purchase order and invoice evidence, and not IRE.

57. We will again defer rationalising this slight element of confusion until paragraph 104 below.

Other characteristics of the deals

58. We will now summarise certain features of the deals which have a bearing on whether they were genuine *bona fide* deals or not. These factors were not specific to just one of the deals 1.1, 1.2 or 2, which is why we are dealing with them generally.

The pricing

59. HMRC drew our attention to the fact that, when the Appellant purchased the three consignments of Indic8tors on a wholesale basis, always at the unit price of £100 plus VAT, this was rather surprising since there were adverts on the website, of which the Appellant had been aware, offering retail sales of the same Indic8tors at the marginally lesser price of £99.99. Both counsel soon lost sight of the following point, but it seemed likely that the price of £99.99 was in fact a VAT-inclusive price, such that the retail price was then very markedly less than the £100 plus VAT, at which the Appellant purchased from TEC.

60. We were shown various advertisements, plus some sort of offer in the Top Gear magazine that suggested that the Indic8tors were worth a much higher price, around £169, and there was a suggestion that they might generally sell on a retail basis at somewhere between the £99.99 price, which might have been a special offer, and the £169 price.

61. Mr. Yarde said that he had tried to stock a large quantity from the company offering the Indic8tors at £99.99, but he was told that it was a special offer, and that in order to put the appropriate software onto the devices, the individual buyer would have to register, and then download, the software which was an impossible way to proceed if he was purchasing thousands of units.

62. Whilst this feature of the Appellant seemingly purchasing at a price either equal to or (subject to the VAT point) significantly higher than a publicised retail price was curious, this point was never reconciled. Mr. Yarde simply said that he was content if he could find a supplier that would supply for £100, if he could find a customer prepared to pay £104, and that was his only concern. He had ascertained that he could not purchase from the source that advertised its special offer, and so he had no option but to pay the £100.

63. We will not at this point comment on the oddity of the Appellant selling the Deal 2 Indic8tors to 3G for only £102, but will refer to that point later.

Would the Indic8tors work in Europe?

64. There was considerable dispute during the hearing as to whether the Indic8tors would actually function in Europe. They were principally designed to give a driver warning of speed cameras, which they achieved not by radar detection but by the use of satellite technology. Accordingly they functioned by the main distributor locating the position of speed cameras, and then sending an alert signal to the driver, when the device's satellite receiver indicated that the car was approaching one of the marked speed cameras. The satellite method of operation also enabled the device to give an accurate recording of the car's speed, and to locate the position of the car, should the car break down.

65. We should expand on the point that the method of operation relied upon information being sent to the car by the satellite link, because this obviously meant that a central record of the location of speed cameras had to be maintained, and periodically updated. It was apparently also the case at one time that the devices were sold without the relevant receiving software, which the customer had to download after purchase, though information given to HMRC by the director of the UK distributor appeared to indicate that by March 2006 at least, the devices were sold with the software installed by the UK distributor.

66. The two areas of dispute between the parties in relation to the functionality of the devices were first whether they would work at all in continental Europe, and secondly whether the Appellant had done any research into the retail market in continental Europe. It was suggested that he might have thought it worth researching the retail market in order to ascertain the price at which the devices might be sold in the retail market in various countries, and to ascertain whether indeed there was any evidence that the devices were actually sold on a retail basis at all outside the UK and Northern Ireland.

67. Confusion was created by different internet advertisements for the products since some said that the devices worked in the UK and throughout Europe. Others indicated that they worked "throughout the UK and Northern Ireland", implying, though not specifically saying, that they might not work in continental Europe. Mr. Yarde made no mention of the following point in his Witness Statements, but he did say in giving evidence that he had ascertained from the distributor that the devices did work in continental Europe. That was indeed consistent with information that HMRC themselves obtained from the distributor, but when HMRC endeavoured to access the websites in order to see whether updated information could be obtained, they found difficulty in locating the websites, and eventually concluded that there were only websites giving descriptions in English and Spanish. Further enquiries also appeared to indicate that the devices did not work in France, and further doubt was cast on whether they worked in Europe, at least outside Spain.

68. Mr. Yarde admitted that he had done no research in relation to whether there was a retail appetite or market for the devices outside the UK. He said that, provided that he had found a wholesale customer prepared to buy them at £104 and £102, that was essentially what he was interested in. It is fair to comment that all of the internet advertisements that we were shown were in English, plainly directed principally at the UK market, and including promotions by the magazines Autocar and Top Gear.

69. We will again defer our findings of fact until later.

Due Diligence

70. The Appellant's approach to due diligence was slightly unusual.

71. The Appellant placed great emphasis on the suggestion that, through his several years of experience at Third Dimension, he knew one or more of the individuals working in several of Third Dimension's clients or website users, and he also formed a view as to which clients were reliable and which were bad in paying their fees and subscriptions on time, and quite difficult to contact as well. He said that amongst the companies where he had good contacts, and which he also regarded as reliable, he ranked TEC, 3G and 24/7 as good and reliable.

72. When the Appellant undertook due diligence in relation to TEC and 3G in particular, he considered it unnecessary to undertake credit checks, unnecessary to take up references and unnecessary to visit the companies' premises. Nothing could be a substitute for the information and experience that he already had in relation to those companies. He did obtain the more routine elements of due diligence, such as VAT numbers, Certificate of Incorporation and other normal details.

73. Whilst this is a slightly distinct point from due diligence in relation to trading partners, the Appellant was fastidious in informing HMRC (in particular the people with whom he had contact at and after the meeting mentioned in paragraph 26 above) of the details of his proposed deals. They had admittedly asked for this information, but it was given in a relatively efficient and impressive form. There was some contention about this feature of the case, in that the Appellant's counsel made the point periodically advanced on behalf of appellants in MTIC appeals, namely that "they are damned if they do, and damned if they do not". In other words if no due diligence is done, or HMRC is not informed of deals when they have requested prior details, the trader is criticised. In some cases, if a great play is made of due diligence, or of the feature of the appellant being very open with HMRC, appellants can then be criticised for an endeavour to achieve a defence to participation in fraudulent trading by relying on apparently good, but still near pointless, due diligence, or by fastidious early contacts with HMRC. In this case, the Appellant did place some emphasis on the point that if he notified HMRC in advance of the identities of proposed trading partners, and they either knew nothing unsatisfactory about either, or were not prepared to reveal anything unsatisfactory about either, then how could the Appellant have been expected to detect a chain to fraudulent transactions? HMRC responded to this point in part by indicating that taxpayer confidentiality limited the indications that HMRC might otherwise wish to give, and that in any event (as Redhill confirmations always emphasised) it is always for the trader to take his own commercial decisions and risks, and not for HMRC to authorise or block potential transactions. The only exception to that was the case were there was some existing default on the part of one of the identified trading partners in discharging their tax liabilities.

74. In the context of contact with HMRC, we might indicate that the supplies made to 3G were in fact despatched to the continent, certainly before validation of TEC's and 3G's registration details were received from HMRC's Redhill officer, and almost certainly before they were even requested. Insofar as Mr. Yarde suggested that he could have called the goods back if 3G had emerged to have been de-registered, we had severe doubt as to whether that would have been possible. Certainly 3G gave no warranty of the continuing validity of its VAT registration. The Ship on Hold restriction probably required goods to be released, once the purchaser had paid for them, regardless of whether the purchaser might have been de-registered or not. And if the goods had arrived at the destination warehouse, it was not entirely clear to us what good the "Ship on Hold" constraint would be when the purchaser itself operated the destination warehouse.

75. Due diligence is of course a two-way exercise, and in the context of the respect given to due diligence material, and in the context of our assessing Mr. Yarde's trustworthiness, we consider it appropriate to quote in full the Appellant's Introductory Letter to trading partners. It will be noted that, at the point of issuing this letter, the Appellant had done no single deal of any sort. In quoting the letter in full, we will put in bold type the portions of it that we consider to constitute lies and misrepresentations, rather than marketing puff. The letter read as follows:

> *"May I take this opportunity to introduce Bliss Trading Ltd. We are a general UK trading company* ***that prides itself in trading in all commodities worldwide.***
>
> *Here at Bliss Trading, we are committed to finding quality suppliers with high quality reliable products****, with second to none after-sales service and support****.*
>
> *Bliss Trading Ltd* ***utilises the best and most efficient business practices to source, vet, buy and sell competitively priced products in an ever changing marketplace.***
>
> *You can expect a level of service that* ***all of our customers and suppliers have come to trust.*** *This means continued long term business associations, growing into the future, based on core values.*
>
> *Our strengths are in* ***locating the right high quality products at the most competitive prices because we have such a solid foundation base.*** *Our product knowledge and* ***established contacts in the market*** *allow us to stay one step ahead of the competition.*
>
> *Technology is a fast and ever evolving medium of which we all must embrace at some time, to remain one step ahead and make our lives and business more effective and efficient.*
>
> *As we recognise this ever changing market, there is always going to be demand, that must be met with supply and this is where Bliss Trading finds its niche.*
>
> *Please keep us informed of any urgent requirements or stock offers via our contact details above."*

76. When we drew attention to this letter, and suggested that, if this was the calibre of information that the Appellant gave to its trading contacts, there would be little purpose in doing due diligence if the responses received were to the same standard, the Appellant's counsel said that the letter was just an example of marketing puff. For his part, Mr. Yarde's explanation was that the content of the letter "just came straight off our website",

which we rather took to mean that that made it (and for that matter the misleading website) acceptable.

77. We will give our finding of facts below in relation to the extent of experience that we believe that Mr. Yarde had with TEC and 3G, derived from his days at Third Dimension.

The Trading Terms

78. In summarising the deal steps, particularly those of Deal 1.1, we have already summarised the total lack of the Appellant's awareness of any trading terms. As we have said, the Appellant itself had not drafted any Standard Terms and Conditions, and also indicated no terms whatsoever on its invoice. TEC's invoice referred on the back to Standard Terms that could be obtained. What they were we have no idea. Equally the Appellant had no idea what they were. The one thing that we know about the way in which TEC operated is that it released goods to the Appellant, informing Globe that it had been paid in full for the goods when it would be many days before it received any payment at all.

79. We have already referred to the fact that we were not entirely clear, and certainly the Appellant was not clear, whether the feature that goods were despatched on a "Ship on Hold" basis was in reality ineffective when the purchaser of the goods itself operated the destination warehouse. We rather imagine that the absence of an independent warehouse operator was fatal to the effectiveness of the Ship on Hold reservation.

80. The only other point that we should mention was the claim on the part of Mr. Yarde that he knew his trading partners so well, that "if anything went wrong, we would sort it out". We will refer to this claim and this approach below.

The evidence

81. Evidence was given on behalf of the Respondents by Mr. Jenner, and by Mr. Henderson in relation to the FCIB accounting material.

82. Mr. Jenner's evidence was largely factual, and much of it has been reflected in the summary of the deals that we have already given.

83. The greater part of Mr. Henderson's evidence, or particularly his cross-examination, was dedicated to a suggestion by the Appellant's counsel that defects had recently been revealed in another case by an HMRC officer in what was referred to as the first extraction of material from the Dutch server of FCIB, and that where there were gaps in the information then extracted, they could probably be rectified by referring to the better information in the "second extraction". It emerged that Mr. Henderson had not referred to the second extraction material at all and that, notwithstanding that the Appellant was not aware of the damage to, or defects in, the information derived from the first extraction, we should treat the FCIB evidence with caution. Not surprisingly the Respondents objected to reference being made to the information from the second extraction because neither the Appellant, nor those conducting the present case for the Respondents, were aware of what corrections or additions might be based on the second extraction material.

84. We then learnt that Mr. Henderson had cross-checked all the information contained in his Witness Statement, all derived from the first extraction, with the yet more comprehensive information apparently obtained from FCIB's Paris server. He had not

made any reference to this in his Witness Statement, because he had simply decided to undertake the cross-checking exercise out of either interest or curiosity.

85. We accordingly suggested that there should be a short adjournment during which Mr. Henderson was asked to collate the information contained in the Paris server, where it related to information already inserted into his Witness Statement, so that the Appellant could see and consider this further information, and consider where there was any proper ground to object to the information contained in the Witness Statement.

86. Although the Appellant's counsel objected to this suggested adjournment, we did in fact proceed with the adjournment, and Mr. Henderson provided the further Witness Statement that he had indicated that he could provide. That Witness Statement appeared merely to confirm all the earlier evidence, and accordingly the point based on the claimed defects in the first extraction of material from the Dutch server dropped away.

87. This means that we need only to make three remarks about the FCIB evidence.

88. The first is simply to record our thanks to Mr. Henderson for having remained in London beyond his original schedule, and for having produced the further material so quickly and efficiently.

89. Secondly, we have referred to certain of the payments revealed by the FCIB evidence. That evidence was irrelevant to 3G's payments to the Appellant, and the Appellant's payments to TEC because they passed, as already mentioned, from an ABN Amro account of 3G to the Appellant's Nat West account, and then to TEC's Clydesdale account. Once TEC had switched the funds to its FCIB account, the payments then moved rapidly and, as is commonplace in MTIC transactions, payment did not flow in strict accordance with the invoice prices. Moreover, as we have mentioned, two parties were skipped in the payment arrangements.

90. The third point that we need to refer to specifically, which emerged only from the FCIB evidence and was naturally not revealed at all by invoices or deal logs, was the feature that Koornmarkt did pay the vast proportion of its receipts back to 3G. This is a significant fact in relation to our conclusions in this case.

Mr. Yarde's evidence

91. A regrettable and very significant fact in this case is that we both independently reached the conclusion that we found Mr. Yarde to be an untrustworthy witness. There were many occasions when we simply did not believe what he was saying. We regret having to make this clear, but we feel that we need to explain our conclusion by referring to some at least of the occasions when we did not believe Mr. Yarde's evidence. The points fall into two categories. First we will quote some exchanges during cross-examination where the answers seemed so preposterous that they could not be true. Secondly we will refer to matters where we might have accepted tenable evidence but for the conclusion that we had already reached that Mr. Yarde could modify facts with ease. In these instances, we concluded that a more probable version of the facts was the true one, even where the version advanced by Mr. Yarde was not manifestly untrue.

92. The first exchanges that we will refer to were between counsel for the Respondents and Mr. Yarde, in relation to why he transferred two amounts (the amounts that we had aggregated in the last sentence of paragraph 47 above) to the Appellant's bank account on 27 and 28 July.

"Counsel. Why are you putting those amounts in on 27 and 28 July?

Mr. Yarde. Just in case I was doing any more UK deals to make sure the bank account had enough money in them."

Since the amounts matched the balance of the requirement to effect the deal with 3G, and 3G's purchase order of 27 July at the price that had allegedly been negotiated between 3G and Mr. Yarde, this seems an unlikely answer.

93. After a few more questions:

"Counsel. So when you originally provided your banking documentation to HMRC to support your trading, you didn't send them the page of the bank statement that identified that you had had a deposit of nearly GBP £100,000 from 24/7, did you?

Mr. Yarde. That went into the aborted deal folder.

Counsel. No. When you sent HMRC your bank statements to support your transactions, you didn't send them the sheet of the bank statements, which would have been sheet 4?

Mr. Yarde. Yes.

Counsel. That identified the deposit from 24/7 of GBP £100,000.

Mr. Yarde. Because it wasn't a deal I did.

Counsel. The GBP £100,000 demonstrated your ability to do the deal that was the subject of extended verification; it demonstrated where the money came from?

Mr. Yarde. Right.

Counsel. Relevant to the validity of the deal, do you agree?

Mr. Yarde. Yes.

Counsel. Relevant to the extended verification process?

Mr. Yarde. It went into a folder. Obviously I was using - making sure that my accountant knew that the money had been paid. He wanted proof that obviously the money had been paid. I had kept that in the aborted deal folder and every bit of information to do with Trade 24/7 was in that folder, and when Kirsty asked for it, it was faxed or e-mailed or whatever straight away to her.

Counsel. The bank statement sheet wasn't. The only reason that Kirsty Jolliffe got the confirmation of the GBP £99,000 was because she asked you to print off the internet -

Mr. Yarde. Yes"

94. Again, after a few more questions:

"Counsel. Do you accept that in the course of those [HMRC] visits, you never once told officers from HMRC that you had misappropriated GBP £100,000 of 24/7's money to finance deal 2?

Mr. Yarde. That was between one company and the other. The information they asked for was on the deals that had been completed. The folder that I separated it off from was all kept with the other letters.

Counsel. I will ask, because I think it is important, this question again: do you accept that in the visits that were conducted by officers as part of the extended verification process, you never told them that you had misappropriated GBP £100,000 of 24/7's money in order to finance deal 2?

Mr. Yarde. They never asked.

Counsel. Can we go to page 1093, please R3. This is the typed-up copy of the aide-memoire which reflects the questions asked and the answers given by you at a meeting on 26 October 2010. Under heading 3, "Loans and Investments; question 25 – How is the VAT input financed"
They did ask, didn't they?

Mr. Yarde. Yes.

Counsel. You didn't tell them that to finance deal 2, you had misappropriated GBP £100,000 of Trade 24/7's money?

Mr. Yarde. No.

Counsel. Why not when they asked you the direct question?

Mr. Yarde. The funds had been paid over. It was in an aborted deal and the money was in dispute between Bliss Trading Limited and Trade 24/7.

Counsel. How does that answer excuse you from providing a direct answer to the question: how is the VAT input financed?

Mr. Yarde. It was financed from myself.

Counsel. No, it wasn't. It was financed from 24/7.

Mr. Yarde. And myself.

Counsel. Sorry, you are saying the fact that you put in about GBP £16,250 towards this deal meant that you had no obligation, when asked a direct question by HMRC, not to tell them that the only reason you were able to do this deal was because you took GBP £100,000 of Trade 24/7's money?

Mr. Yarde. The majority of the money needed was from me.

Counsel. Sorry?

Mr. Yarde. It was more than Trade 24/7's money.

Ms. Gable. You are referring to both deals and the question refers to the second deal.

Mr. Yarde. The second deal.

Counsel. So your excuse for not telling them that you misappropriated GBP £100,000 of Trade 24/7's money is that because in totality, you put more of your own money in than Trade 24/7's money, you didn't have to tell them -

Mr. Yarde. Yes.

Counsel - that GBP £100,000 of their money had been used?

Mr. Yarde. The funds came from me. The funds came from me personally.

Counsel. No.

Mr. Yarde. Not

Counsel. - nearly half the funds?

Mr. Yarde. The totality, yes.

Counsel. Nearly half of the totality did not come from you, do you agree?

Mr. Yarde. There was more than half that came from me.

Counsel. Nearly half.

Mr. Yarde. Not quite.

Counsel. Well, GBP £100,000?

Judge Nowlan. I think our maths is good enough for that."

95. Aside from those fairly dubious exchanges, we also note that the whole basis on which 24/7's money was misappropriated was, on Mr. Yarde's own account, dishonest and frankly if the account is to be believed, stupid. We will have to refer later to the additional issue of whether we actually believe his account of the 24/7 episode, but in his favour at this point, we are prepared to assume that the account is true, in which case it is more certainly not to his credit.

96. Other examples of the situations where we disbelieved Mr. Yarde included the following:

- The content of the Introductory Letter, which should have been something on which recipients might rely in judging whether their proposed counter-party was a substantial, long-standing and reliable company, was riddled with lies and went well beyond the point of legitimate marketing rhetoric.
- The evidence as to when Mr. Yarde switched from the 24/7 deal to the 3G deal was inconsistent with the fact that 3G's offer to purchase at the figure agreed actually preceded the Appellant's invoice to 24/7, let alone the receipt of the £100,000.

- Mr. Yarde's letter requesting monthly VAT returns was muddled, but inexplicably implied that European deals had been done. HMRC were not idiots who might accept marketing puff, but officials who would see that the information was wrong when the return was made.
- We doubted much of what Mr Yarde said about the suitability of the Indic8tor devices for use in continental Europe. We are far from clear that he contacted the UK distributor to ascertain the suitability for use in continental Europe. Complications in relation to whether the software was already loaded onto the particular Indic8tors supplied, whether it could be updated in all European countries, together with later statements to HRMC officers that the devices could not be used in France, and lack of evidence about any retail sales on the continent led us to be sceptical about Mr. Yarde's contention that the devices were entirely suitable for sale to Luxembourg.
- We judge that in working for many years with IPT at Third Dimension, and particularly when being involved with the FTE structure, Mr. Yarde would have known more about MTIC activity, and possible defences against HMRC attack than he conceded. We will refer to this below.
- We consider that Mr. Yarde greatly over-played his claims of long-standing good relations with some of the directors of Third Dimension's clients. After all, his main function was to collect subscriptions, and chase late payers. As HMRC's counsel suggested, the feature of reliable payment of modest invoices had little to do with a company's capacity to undertake deals for many hundreds of thousands of pounds, or the company's integrity. We are also influenced by the fact that, in his initial e-mail contacts with Globe, TEC and 3G, it was only in the case of Globe, the company that he admitted to having had no prior dealings with, that the correspondence was on a personal basis with someone to whom he had spoken. In the case of the two trading parties, with whom he claimed to have had long-standing good relations, such that "if anything went wrong, we could sort it out", the initial contacts were not addressed personally. We were simply not persuaded that Mr. Yarde knew very much at all about TEC and 3G.

The contentions on behalf of the Appellant

97. It was contended on behalf of the Appellant that:

- the confusion in relation to tracing the Appellant's transactions back to fraudulent tax losses in Deals 1.2 and 2 meant that HMRC had not established, to the standard of the balance of reasonable probability, that the Appellant's transactions had been traced to fraudulent tax losses;
- Mr. Yarde had been young and inexperienced when he undertook the contested deals, and his mistakes could be put down to inexperience, rather than knowing awareness of connection to fraud;
- it was plain that Mr. Yarde had intended to conduct the bar/restaurant business and the tanning business, and both have indeed been undertaken (one unsuccessfully and one successfully) proving that they were genuine and intended ventures;
- Mr. Yarde did have savings available in early 2006 and it was natural that he might try to use those savings to generate some income, since otherwise the savings were being diminished by the start-up work in relation to the bar and tanning studios, and it was most improbable that he would put his entire savings at risk, simply in return for the £4 and the £2 gross profits in the two deals;
- Mr. Yarde's belief, on leaving Third Dimension, was that of hundreds of clients, only a few (roughly put at 10) had encountered problems with MTIC fraud; and

- whilst Mr. Yarde was aware, and was certainly informed by HMRC prior to undertaking any deals, that there were MTIC risks in wholesale trading in electrical goods, he was firmly of the belief that those risks were greater when dealing in mobile phones and CPUs, and less serious with other equipment such as the Indic8tors.

98. It may not strictly have been contended on behalf of the Appellant, perhaps because we ourselves had made this observation ourselves, but it was nevertheless the case that there was something particularly odd about the terms of Deal 2. Whilst we may be precluded from referring to evidence in other cases, it is still well-known that "brokers", i.e. the UK parties that sell product to European buyers in traditional MTIC transactions, tend to make a margin of more like 5-7%, rather than 4%, and certainly rather than 2% when selling to European customers, when bearing the risk of needing to recover VAT from HMRC. It is odder still to seek to make an additional 1% profit, over the profit offered by a UK to UK deal, by exporting product. The disadvantages and risks involved in the export deal are that inevitably, unless funded by some accomplice, the trader has to fund the VAT gap, namely the inevitable excess of the VAT-inclusive purchase price over the VAT-exclusive sale price, and there is a greatly-enhanced risk of the deal being attacked by HMRC. In this case, the goods traded would have meant that the joint and several liability provisions would not have been in point, had the Appellant sold to 24/7, and although there would have been a theoretical risk of denial of input tax to the Appellant even on selling to a UK customer, the practical likelihood of HMRC denying input tax when the goods were on-supplied to a UK buyer, rather than where they merely had to deny a refund, were minimal. In the present case, the switch to the sale to 3G in Deal 2 also involved a most risky and challengeable step with 24/7's money. In short, the switch undertaken by the Appellant in selling the Deal 2 goods to 3G was so curious and inexplicable that it occasioned great doubt on why it had been done. Whether this might be set down to ignorance, naivety or stupidity, rather than complicity in fraud, was something that we should consider.

The contentions on behalf of the Respondents

99. It was contended on behalf of the Respondents that:

- although HMRC's case had acknowledged that there was some confusion as to whether or not IRE were involved in the transaction chain for Deal 1.2, the better view was that the goods had been supplied in the manner initially suggested by HMRC, and that, were IRE involved in the transaction chain, IRE could be treated in any event as the relevant defaulter;
- in the case of Deal 2, whilst there was again confusion, it was clear that whether RK Brothers or IRE had been involved in the deal chain, both routes led to the default by Pearl Cosmetics;
- accordingly, the tracing to a fraudulent tax loss had been properly established by HMRC;
- Mr. Yarde had under-played the knowledge of MTIC activity that he must have acquired when working in relation to the IPT website and the FTE structure at Third Dimension;
- reference had been made to the fact that when Mr. Yarde was working for Third Dimension, topics had included legal advice in relation to the way in which improved due diligence might enable parties to protect themselves from MTIC risks, or MTIC attack by HMRC, and also a possible application to the ECJ to challenge any introduction of the reverse charge mechanism;
- these topics suggested that the emphasis of the consideration might have been that input tax could only be denied if claimants were shown to have known that their

transactions were connected to MTIC fraud, or that they ought to have so known, so that emphasis on confidence in the immediate trading partners, and appropriate due diligence might provide a shield to attack from HMRC;

- Mr. Yarde had exaggerated the level of his knowledge about Third Dimension's clients, and his familiarity with individuals working within those companies. This was emphasised by the non-personal nature of his initial contacts to both TEC and 3G, and by the feature that the names of some individuals within the companies were not referred to in his Witness Statements, but only at the hearing. It was indeed unlikely that a person whose prime function at Third Dimension was to collect fees and subscriptions from clients, in relatively modest amounts, would have that significant a relationship with individuals within client traders;
- Mr. Yarde's claim that he decided not to trade in mobile phones, but instead to deal in the less risky commodity of Indic8tors, was undermined by the fact that the records that he maintained of the products that other traders that the Appellant contacted to check available stock or required stock included many records relating to mobile phones;
- Mr. Yarde undertook no research into the retail market for Indic8tors in continental Europe, which might have supported or undermined the feature that 3G had a genuine commercial need for the products that it bought;
- the lack of any terms on which the Appellant traded showed that the transactions were not genuine trading transactions, but pre-arranged transactions where it was clear that they would proceed, regardless of the absence of terms;
- the proposition that Mr. Yarde knew people in TEC and 3G so well that it was unnecessary to have any trading terms was unrealistic, not least because TEC apparently had Standard Terms and Conditions which Mr. Yarde did not bother to obtain; and
- while HMRC advanced no specific case as to whether the way in which the Appellant wrongly used 24/7's deposit to finance the sale to 3G was either a fraudulent application of funds by the Appellant; an odd and disguised way of 24/7 lending money to the Appellant, or some rationalisation in between the two, none of the facts were consistent with honest and genuine commercial trading.

Our Decision

100. We deal first with the issue of tracing the Appellant's transactions to properly proved fraudulent losses of VAT.

101. No issue was taken by the Appellant on this point in relation to Deal 1.1. It was accepted that the Respondents had demonstrated that Pearl Cosmetics had been a hi-jacked trader, and that this had lead to fraudulent defaults in satisfying VAT liabilities, and that the Appellant's Deal 1.1 transaction had been properly traced to an importation by Pearl Cosmetics from Koornmarkt.

102. We dismiss the Appellant's contentions in relation to Deal 1.2. Ignoring the payments, there was first a demonstrated supply chain from Koornmarkt to the Appellant via Pearl Cosmetics, RX Tech, RK Brothers, JD Group and TEC. That appeared to correspond to the release instructions given to Globe. We acknowledge that the payment flow was made through an officer of IRE, but since the subsequent payment was then made to Koornmarkt with the relevant officer of IRE retaining only £60, and the payment to Koornmarkt is strongly suggestive that any transactions via IRE were similarly pre-orchestrated transactions, rather than genuine purchases from a main distributor, we would be reluctant to undermine the tracing on account of this element of confusion, occasioned in part by the payment mechanics. We are also influenced by the fact that the letter from JD Group's solicitors, albeit incredibly confused, appears to

suggest that the ultimate chain of supply was the one through RX Tech, RK Brothers to JD Group.

103. We note, however, that although we ourselves raised the issue of whether HMRC wished to put its case on the alternative basis that either Pearl Cosmetics was the defaulter, on the chain traced through RX Tech and RK Brothers, or that IRE itself, if in the supply chain, was an alternative defaulter, we consider that that is a perfectly tenable approach. We note that Mr. Jenner's Witness Statement considered this to be a credible alternative approach. We specifically note that IRE disappeared, and that there was an unsatisfied liability for VAT on the gross supplies made of the 2000 Indic8tors material in Deal 1.2 to JD Group, IRE manifestly having sustained no claim, and made no claim, for any input deduction. Having regard to the fact that this legitimate alternative basis of sustaining the tracing of the Appellant's transactions to a default merely supports the reality that there is not the faintest indication of any honest and legitimate origin of the 2000 Indic8tors, we conclude that the Appellant's Deal 1.2 transaction was traced to a fraudulent loss of VAT.

104. We reach a similar conclusion in relation to Deal 2. Deal 2 is in fact easier in the sense that it appears that whether the goods were passed through RK Brothers or IRE or, as HMRC's counsel suggested at one point, even if IRE ranked as a further interposed buffer without thus replacing RK Brothers, it still appears from the Globe release notes that occasion the element of doubt in Deal 2, that both RK Brothers and IRE would have obtained their supply from, or ultimately from, Pearl Cosmetics. Accordingly, in part because the invoice chain supports HMRC's principal case for establishing the deal chain in Deal 2, the only doubt being occasioned by the release notes, and because Pearl Cosmetics appears to be the defaulter, whatever the tracing, we reject the Appellant's arguments for undermining the tracing of the fraudulent VAT loss in Deal 2.

105. That takes us to the core of this case, which is the issue of whether the Appellant knew or ought to have known that there could be no other explanation for its transactions than that they were connected to fraudulent losses of VAT.

106. We have no hesitation in concluding that Mr. Yarde was reasonably knowledgeable in relation to MTIC trading when he left the employment of Third Dimension.

107. We were told that the two topics that were uppermost in the minds of client traders that used the IPT website, and that contributed to the FTE fund in early 2006, were issues relating to due diligence, and secondly a possible challenge to the introduction of the reverse charge mechanism. We ignore the second, though the topic of due diligence is of considerable relevance.

108. It was not clear whether the emphasis in relation to due diligence was a genuine attention to steps that would ensure that innocent traders would not get caught up in MTIC trading, or rather (and following the decisions of the ECJ in early 2006 in *Optigen* etc.) a belief that recovery of input tax would remain feasible, even if there had been an initial fraudulent default, provided that the claimant could show some degree of lack of connection or lack of knowledge of the default.

109. Having regard to various references during the hearing to the feature that HMRC's campaign against MTIC fraud was beginning to threaten the business of the IPT website, we think it reasonable to assume that most of the attention amongst IPT's website users, in relation to which we were told that centralised legal advice was being sought, would have been the latter issue. We also think it very reasonable to assume that Mr. Yarde

would have taken the view that if he undertook a few wholesale transactions in electrical goods, perhaps particularly of the category not specifically singled out by notice 726, and if he took two precautions, his risk of being challenged by HMRC was minor.

110. The precautions that we consider that Mr. Yarde considered to be prudent were to keep HMRC officers very fully, and efficiently, informed of the deals that he proposed to undertake, and secondly to substantiate a case that his dealings were only with long-standing and reliable trading partners. We cannot express this latter point by saying that Mr. Yarde must have considered that his defence might lie in undertaking impeccable due diligence checks in relation to his immediate trading partners, because he undertook only the more technical of the checks (certificate of incorporation, VAT registration etc.) and he failed to undertake credit checks, take up references or to visit the trading partners. He clearly considered, however, that if he emphasised his great and long-standing relations with the companies with which he traded, that that evidence would be even better than impeccable due diligence. We agree that, had the suggestion of good and long-standing relations with the directors in the Appellant's trading partners been sustained, it would indeed have been better evidence of their integrity than the absent elements of due diligence. Experience in other MTIC appeals leads us to say that credit checks almost always throw up poor credit ratings, whereupon the point is inevitably made that poor credit ratings did not matter because no credit was to be extended to the relevant company, or that goods would only be released from Ship on Hold constraints, following receipt of payment. Trade references are frequently of no great use, and site visits may or may not be genuinely helpful. So we accept that if the evidence of long-standing mutual trust between the Appellant and its trading partners had been convincing, it would indeed have been very persuasive evidence.

111. We have no hesitation in this case in saying, however, that we reach the following two conclusions. First, the Appellant's attention to following the requests of HMRC officers in giving prior notice and details of deals about to be undertaken was largely designed to seek to preclude HMRC from challenging the deals after the event. The aim was to say, "You knew in advance the details of my proposed deal, and you advanced no objection to it, so how do you now change tack, and deny the input recovery"? We are clear that that was the Appellant's principal objective in giving the information. Taking into account HMRC's need to respect taxpayer confidentiality, and the invariable point that it is not for HMRC, but traders, to check the integrity of their deals, we consider that the Appellant's plain hope of being able to rely on this early provision of clear and good information does not have the desired effect.

112. We also conclude that all the evidence about long-standing relations with the trading partners was simply not genuine. We agree with HMRC that Mr. Yarde might have known that various companies had been clients of Third Dimension for some years, and he might have known that some companies had regularly paid their fees and subscriptions. The amounts involved, however, were modest, and we simply do not believe that the employee of Third Dimension responsible for chasing up late payers, and collecting fees would have been well-known and trusted by directors within the companies with which the Appellant traded.

113. This conclusion is based on a lack of faith in Mr. Yarde's evidence generally, the feature that none of the initial contacts with TEC and 3G were made on a remotely personal basis, and the irrelevance of the type of contact that Mr. Yarde would have had in the past to the trading arrangements that he was about to enter into.

114. We agree with HMRC that the way in which the trades were undertaken was extraordinarily casual, and quite inconsistent with honest and genuine trading. The

lack of attention to the issue of whether the Indic8tor devices would operate in continental Europe, and to whether there was evidence of any genuine retail market for them is significant. Had we ourselves been selling the devices, we would have made extensive enquiries to verify that the software had been loaded on to the devices. We understand now that at one time, the software had to be downloaded by end-users, albeit that by early 2006, it was being loaded by the distributor. We had, however, and Mr. Yarde had, absolutely no way of knowing whether the items traded in Deals 1 and 2 were of the older variety or the newer variety. There are certainly examples in other MTIC cases of phones being sold to European wholesalers, notwithstanding that the phones in question can only sensibly be used in the USA. That of course is immaterial if the phones or the Indic8tors are merely to revolve in circles, and not to be used by ultimate customers. It is however fatal in genuine *bona fide* transactions. In this case, everything suggests that Mr. Yarde was oblivious to the state of the software on the devices that he traded, and to where they could in fact be used, and that none of this mattered because the deals were all pre-arranged, and they were bound to work like clockwork.

115. We are particularly influenced in this context by an extraordinarily implausible exchange between the Respondents' counsel and Mr. Yarde in relation to trade terms, and effectively to what would happen if something proved to be wrong, or useless, about the goods sold. The exchange was as follows:

> *Counsel. What were TEC's standard terms and conditions?*
>
> *Mr. Yarde. I had spoken to them on the phone. I felt there was no reason to go into terms and conditions as I have known them for so long. We have always sorted things out over the phone and everything, we had no problems with whatsoever.*
>
> *Counsel. So you didn't have any interest in knowing what their terms and conditions of trading might have been?*
>
> *Mr. Yarde. I believe they may have had some but I didn't get them.*

As we have already mentioned, the TEC invoice did indicate on the reverse that their deals were indeed governed by their Standard Terms and Conditions, which were available on request.

116. The conclusion that we would feel inclined to reach at this point is that:

- the Appellant was thoroughly aware of MTIC risks; it knew of them because of Mr. Yarde's past employment, and because of HMRC warnings before trades were undertaken;
- Mr. Yarde considered that by seeking to give full prior details of transactions to HMRC and by playing up his supposed relations with trading partners, the Appellant would be able to resist an HMRC attack;
- the way in which deals were done is strongly indicative that they were pre-arranged, and not genuine; and that at best
- Mr. Yarde was a chancer who thought that he could get away with doing some un-researched transactions, and make a reasonable profit, with little risk.

117. These conclusions stop short of those that we must reach, however, because we must reach the conclusion, not that Mr. Yarde just blundered ignorantly into MTIC transactions, knowing that there might be risks of fraudulent connections to those transactions, but that he knew or ought to have known that there could be no other

explanation for his transactions than such connections. The reasons why we unquestionably conclude that those further hurdles are surmounted in this case are as follows.

118. First, we refer to the FCIB evidence which demonstrates that Koornmarkt paid 3G, when it had been paid by one of the UK parties in the supply chains. It was therefore obvious that all of these deals were circular, and thus unquestionably pre-arranged. If the Appellant found that it could source product from TEC, and then just happened to find (amongst several European customers with whom contact was said to have been made) that 3G was its most promising customer, how is it explained that Mr. Yarde happened to light on the one company, 3G, that was obviously party to a circular chain, in that it would start the payment flow (on paying the Appellant), and then get the money back from Koornmarkt. We simply do not believe that this was the product of chance. We believe that Mr. Yarde must have been told to buy from TEC and sell to 3G, or the whole circular chain structure would not have worked.

119. Mr. Yarde might have been an innocent dupe, and he might have been fed information. For instance, he might have located a possible supply from TEC, and TEC might then have fabricated some tale along the lines that it had a pre-agreed export deal negotiated with 3G, but it had no further funds to bridge the VAT gap, so that TEC offered the deal to the Appellant. But if an appellant is going to assert that it was duped, it needs to have asserted this, and the Appellant advanced no such argument. Mr. Yarde claimed that he simply sold to one of his many trusted and long-standing contacts. He did not say that the on-sale to 3G had been fed to him in some manner that he now appreciates was a deliberate attempt to lure an innocent party into the pre-arranged circle of transactions.

120. The feature of the total lack of trade terms strongly supports, were support needed, the fact that the Appellant must have appreciated, and been told, that all the trades would work like clockwork by virtue of being pre-arranged, such that the absence of terms was irrelevant. A further factor in Deal 1 that we consider to be highly significant is that, unless TEC had known that everything was pre-arranged, it would hardly have indicated to Globe that the goods should not be released to the Appellant until Globe had been notified that the Appellant had paid for the goods, only then to indicate on 11 July that the goods should be released because payment had been received, when payment had not in fact been received, and would indeed not be received until 18 July. On 11 July, although Globe had been told to release the goods to the Appellant, and had in fact "jumped the gun" and loaded the goods on the truck which arrived and clocked in at Eurotunnel at midnight between 11 and 12 July, with the Appellant only giving its release instruction on 12 July, not only had TEC not received any payment, but even the Appellant, which had hoped to receive a deposit before despatching the goods, was not to receive that deposit until 13 July, and the balance of the price until 17 July.

121. The most significant facts, however, are those surrounding Deal 2 and the way in which the Appellant used 24/7's deposit to fund the VAT gap on selling to 3G.

122. Although the Appellant's account of this transaction suggested and conceded that he had been dishonest and effectively fraudulent, we are firmly of the belief that the account was not true either.

123. We start with the most obvious point. According to Mr. Yarde's account, he operated on a greedy whim to switch customers from 24/7 to 3G in a moment of stupidity. How is it then explained that the resultant routing of the goods happened to fit in precisely with the pre-arranged circle. Conceivably 24/7 might have been destined to buy from the Appellant, and then to sell to 3G, so that on either routing the goods

would have ended up with 3G. Whichever of those two routes was true, the one suggestion that cannot be remotely plausible was Mr. Yarde's claim that he sought offers from 3 or 4 other European customers for the 6,800 Indic8tors, before settling on the deal with 3G. With the reality of the pre-arrangement, and the fact that 3G had to receive the goods, and Koornmarkt had also to pay the bulk of its sales receipts on selling to Pearl Cosmetics back to 3G, no other buyer in Europe would have done than 3G.

124. We find it totally implausible that:

- 24/7 would have paid as significant a deposit as £100,000 to the Appellant, when no prior deal had been done between the two companies;
- that Mr. Yarde would have been so stupid as to have taken the enhanced risks of an export transaction, and the risks of attack from 24/7 on misappropriating their money, simply for the chance of enhancing its gross receipts by £6,800, and its net profit (assuming recovery of the VAT, but taking into account transport and insurance costs) by considerably less than £6,800;
- Mr. Yarde would have signed forms, putting forward the name of 24/7 as a potential referee for its integrity, in early August 2006, if Mr. Yarde had just misappropriated £100,000 of 24/7's money, perpetrated unacceptable sharp practice, at the very best, towards a trading partner with whom he was meant to have good relations, and all at a time when Mr. Yarde was very worried (on his account of the facts) because he was having to produce a string of lies to directors of 24/7 in suggesting that there were problems in getting the supply of the 6,800 Indic8tors; and
- 24/7 and its solicitors would have issued just the one rather moderate sounding letter, complaining of the Appellant's conduct, if in truth 24/7 believed that they had been defrauded by the Appellant.

125. The facts listed above lead us to conclude that for one reason or another, someone decided either that it would be prudent at the last minute to switch "export-suppliers", either from 24/7 or some other party to the Appellant, or conceivably all along the plan may have been that the Appellant would effect the export, funded in the weird way selected, in other words, of arranging for the Appellant to misappropriate 24/7's deposit. We may not know precisely what did happen, but the central fact, namely that these goods had got to end up with 3G, with Koornmarkt paying the money back to 3G to complete the circle, makes it inconceivable that Mr. Yarde's suggestion, that it was his last minute, and now regretted, crazy change of mind to sell of his own volition to 3G, can be true.

126. If, by this point, anything remained in doubt, we now mention one piece of evidence that we have not yet mentioned, namely that when the Appellant effected its deal on 28 July 2006, another deal in relation to phones was undertaken on 31 July 2006, the parties in the two deals being listed as follows:

The Appellant's deal

Koornmarkt BV – Pearl Cosmetics – RX Tech – RK Brothers – JD Group – TEC – the Appellant - 3G

Trade 24/7's deal

Koornmarkt BV - Pearl Cosmetics - RX Tech - RK Brothers - JD Group TEC - 24/7 - Europeans Ltd - 3G

127. We know little about the latter chain, and we have no FCIB evidence in relation to it. The conclusions that we do draw from the similarity of the deal chains is, however, as follows:

- the circularity of the payments in the Appellant's transaction with Koornmarkt paying the money back to 3G must mean that that deal was pre-arranged by somebody. We do not know, or care, by whom, but it is inconceivable that the Appellant could have sold to some other customer;
- it seems astonishingly unlikely that if the Appellant's deal chain was manifestly pre-arranged, the same would not apply to that in 24/7's contrasted deal chain;
- if 24/7 and the Appellant were thus both parties to deals almost certainly being pre-arranged by the same party (whoever that was), it seems clear that it was that master-planner that directed the switch of customer in the Appellant's transaction from 24/7 to 3G.

128. We accordingly believe that Mr. Yarde made up the story of reaching his own last-minute crazy (and inexplicable) decision to switch customers from 24/7 to 3G, because that account (albeit that it was greatly to his discredit) did at least have the merit of concealing the critical fact that someone, to Mr. Yarde's knowledge, was directing what he should do.

129. We accordingly conclude that the Appellant's deals were all connected to fraudulent losses of VAT, and that the Appellant knew of this connection. This Appeal is accordingly dismissed.

Costs

130. An earlier direction had been given that the old VAT and Duties regime should apply in relation to costs in this Appeal, meaning that if HMRC won they appeal they could apply for their reasonable costs. HMRC has applied for their reasonable costs and we grant them that award.

Right of Appeal

131. This document contains full findings of fact and the reasons for our 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.

HOWARD M. NOWLAN (Tribunal Judge)

Released: 15 Nov ember 2011