TC01781

Appeal number: MAN/07/0691

VALUE ADDED TAX- – MTIC-sale of mobile phones and CPUs - appellant's repayment claims of £1,523,459.88 refused on grounds that the appellant knew or ought to have known that the transactions were part of an MTIC fraud -appellant in 'clean chain' knew that the deals were part of a VAT fraud – appellant failed to attend hearing without good reason — costs reserved - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

TARLO WORLDWIDE LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS (VAT) **Respondents**

TRIBUNAL: DAVID S PORTER (Judge)
ALBAN HOLDEN (Member)

Sitting in public in Manchester on 7, 8,9,10 and11 November 2011

No one appeared for the Appellant.
Jonathan Cannan, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

1. Khizar Hayat (Mr Hayat), Managing Director, of the Appellant Tarlo Worldwide Limited (Tarlo) appeals on behalf of Tarlo against the decisions of the Respondents (HMRC) contained in their letter dated 24 May 2007 denying Tarlo entitlement to a repayment of input tax of £1,523,459.88 in respect of the periods 04/06, 05/06 and 06/06 arising from the export of mobile phones. Mr Hayat says that he neither knew nor ought to have known that the transactions were connected with fraud. HMRC say that Mr Hayat carried out little due diligence and any reasonable businessman would have known or ought to have known that the transactions were connected with fraud or with a fraud in a related chain.

2. Jonathan Cannan (Mr Cannan) appeared on behalf of HMRC and produced a skeleton argument, a written submission by way of summing up and 51 bundles for the Tribunal, consisting principally of the working papers of HMRC's witnesses. He called the following witnesses who gave evidence under oath:

Peter Alan Cameron-Watson who gave evidence with regard to Tarlo's transactions
Katrina Elizabeth Wheatcroft, who gave evidence with regard to A-Z Mobile Accessories Ltd (A-Z) the contra-trader.
David Roy Booth, who also gave evidence with regard to A-Z the contra-trader.
Patricia Morgan-Davies, who gave evidence with regard to the transactions through the First Curacao International Bank **(**FCIB)

The following witness statements were accepted as evidence- in-chief by the tribunal:

Roderick Guy Stone, who gave evidence as to MTIC fraud.
Kirsty Joliffe who, prior to her illness, prepared the evidence with regard to Tarlo.
Vivien Barbara Parsons, who gave evidence with regard to the defaulter Wade Tech/ Grange Solutons.
Kym Marna Neville Richards, who gave evidence with regard to the defaulter Advertising South Limited.
Rebecca Riley, who gave evidence with regard to the defaulter Advertising South Limited.
Lydia Ndionjeh, who gave evidence with regard to the defaulter Worldwide Wholesalers Limited
Rupinder Kandola, who gave evidence with regard to the defaulter Okeda
Colin Needs, who gave evidence with regard to the defaulter Okeda
Robert James David Lamb, who gave evidence as to the defaulter Samson Traders Ltd.
Paul Johnson, whose evidence with regard to Samson Traders Ltd was adopted by Robert James David Lamb.
Norman Morrison,who gave evidence with regard to the defaulter Eutex.
Andrew Siddle, who gave evidence with regard to Eutex
Susan Tressler, who gave evidence with regard to the defaulter P & M Transport
Susan Hirons,who gave evidence with regard to the defaulter Prestige 29 Ltd.
Stephen Robert Smith, who gave evidence with regard to the defaulter Prestige 29 Ltd.

Jason Graham McGuiness, who gave evidence with regard to the defaulter G A Couriers.
Malgorzata Wanat, who gave evidence as to the defaulter Phone City Ltd.
Dean Maurice Walton, who gave evidence as to the defaulter Vision Soft UK Ltd.
Khizar Hayat Tarlo's director
Ishaq Ahmed A-Z's director

In the absence of Tarlo and its representatives two days were set aside to consider the evidence with regard to the defaulters. This involved considering the witness statements and checking, where appropriate, the underlying evidence produced as exhibits by the witnesses.

3. Mr Hayat, on behalf of Tarlo, had been represented by Mr Kevin D Andrews (Mr Andrews) of VAT Consultants Limited, PO Box 490, Folkestone, Kent.CT20 3WA, who dealt with all the preparation work leading up to the hearing. On 4 November 2011 Mr Andrews emailed the Tribunal and stated:-

> "I have been placed in something of an awkward position. I gave my client (Tarlo) until midday today to put me in funds for the upcoming hearing. Those funds have not arrived and it seems that neither Tarlo nor Mr Hayat can afford to pay anything. This means that I will not be attending and having spoken to Mr Hayat I have had to confirm that it would be unwise for him to attend alone as he would be 'set against' a high powered legal team against whom he would stand little chance. A detailed skeleton argument has been submitted that clearly lays out the major arguments and it should be possible for the tribunal to fully address, explore and consider all the points therein in a fair and just way. I can only apologise for this inconvenience'

The consequences of that email are addressed in the preliminary matters at the start of this decision.

4. We were referred to the following cases:

Axel Kittel and another v Belgium [C-439/04]

Blue Sphere Global Ltd v HMRC [2009] EWHC 1150 Ch,STC 2239

Calltel Telecom Ltd; and another v HMRC [2009] EWHC 1081 (Ch)

Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch)

Mobilx Ltd (in administration) v HMRC [2009] EWHC 133 (Ch)

Megtian v HMRC [2010] EWHC 18 (Ch)

Moblix Ltd (in administration); and others v HMRC [2010] EWCA Civ 517

G Gomms Ltd v HMRC [2010] UKFTT

Blade Ltd v HMRC [2006] UKFTT

POWA (Jersey) Ltd v HMRC [2009] UKFTT

Hawkeye Communications v HMRC [2010] UKFTT 636 (TC)

Re B (Children) (FC) [2008] UKHL 35

S-B Children [2009] UKSC 17

The Commissioners for Her Majesty's Revenue and Customs v Brayfal Limited FTC/53/2010

Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (CH)

Mobile Export 365 Ltd [2009] WL 873918

Philip Harry Wisniewski v Central Manchester Health Authority QBENF 96/0572/CMS1

Preliminary issue

5. As a result of the email from Mr Andrews, received on the Friday, before the appeal started on the following Monday, Mr R Kesteven responded to Mr Andrews on the same day, 4 November 2011, in the following terms:

> '1. Your client has been professionally represented throughout the lifetime of this appeal and it is not until the day before the Hearing that both the Tribunal and the Respondents are being told that neither you nor the Appellant intend to appear at the hearing,
>
> 2. … your letter of 29 January 2009 stated that ' all and any fees will come from any VAT, interests and/or supplement paid upon a successful completion of the appeal' You also acknowledged in that letter that, '… in the event of the appeal failing then [HMRC] would seek [their] costs from the Appellant in the normal way' You have provided a copy of a deed of assignment dated 20 January 2009 whereby the Appellant assigned to yourself any VAT repayments due presumably as security for your fees.
>
> 3. It is a matter of record that the Appellant has yet to pay its adverse costs order in appeal reference TC/2009/13957 despite the final costs order of Master O'Hara dated 15th June 2011.
>
> 4. ….He then described the actions taken by HMRC for the preparation of the bundles and evidence for the hearing…
>
> 5. Whilst it is not for us to advise you or your client how to conduct its appeal, you do of course have a duty to co-operate with the Tribunal and to further the overriding objective of dealing with cases fairly and justly. You have said that you have confirmed to Mr Hayat that it would be unwise for him to attend alone. We fail to see why that should be the case unless he intends to withdraw his appeal. We regard that approach as a serious and unreasonable failure to co-operate with the Tribunal and reserve our

position in relation thereto. In any event, if the appeal is heard in the absence of your client the Commissioners will invite the Tribunal to draw adverse inferences from his failure to give evidence without good reason…..please make sure that Mr Hayat is made aware of the contents of this letter.'

We were concerned that Mr Hayat should be given every opportunity to attend the hearing. A tribunal clerk contacted Mr Hayat by telephone to explain that it was perfectly possible for Mr Hayat to attend the appeal and that Judge Porter would ensure that his views were properly dealt with in accordance with the Tribunal's duty to deal with the case fairly and justly. Judge Porter was advised that his clerk had spoken to Mr Hayat who said that he would not be coming to the hearing because he felt he could not compete with HMRC's legal team. He said that he had already lost an earlier appeal and Mr Andrews had failed to prevent HMRC producing further evidence in two earlier directions hearings. It had been suggested that he should at least attend on the 8 November (the second day of the hearing) so that Judge Porter could advise him as to the procedures before the Tribunal. Mr Hayat said that he could not attend as he had other appointments arranged for that day. He advised that Mr Andrews had agreed to conduct the appeal on a 'no win no fee' basis. Mr Hayat had not, however, appreciated that that had meant that Mr Hayat had to pay substantial out-of pocket expenses, which he had been unable to do. He had approached another solicitor but that solicitor was not prepared to appear on a 'no win no fee' basis. Mr Hayat was not, therefore, going to attend at all, and he said that he was content for the Tribunal to hear the appeal on the basis of the written evidence before it. In the light of the above **we** agreed to hear the case under Rule 33 in the absence of the Appellant. **It is of some** concern that Mr Hayat must have known that he was not in a position to pay for the appeal if he had approached another solicitor and, more tellingly, he had made appointments for other business transactions, even though the appeal had been listed for a three week hearing. As a result of Mr Hayat's failure to attend the hearing this decision will be somewhat longer than is usually the case as we have had to read all the witness statements without the benefit of any cross-examination, and to check their exhibits.

6. Mr Cannan has referred to *Philip Harry Wisniewski v Central Manchester Health Authority*, a Court of Appeal decision arising from a medical negligence claim against the Authority. The Doctor, the subject of the action, failed to attend the hearing as he was then living in Australia. The defendants had made no effort to arrange for him to give evidence. Lord Justice Brooke considered the decisions which have been involved in the assumptions which could be made in the light of such non-attendance. From the line of the authorities he derived the following principals:

1. In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
2. If a court is willing to draw such inferences they may go to the strength **of** the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
3. There, must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference**s** in other words, there must be a case to enter on that issue.
4. If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation

given, even if it is not wholly satisfactory, the potential detrimental effect of his/her absence or silence may be reduced or nullified.
We have decided that Mr Hayat has no satisfactory reason for not attending the appeal and we shall, as a result, take such adverse inference as appropriate.

7. Most readers of this decision will be familiar with the way in which Missing Trader Fraud operates. Dr John Avery-Jones gave a helpful introduction in *Livewire Telecom Ltd; and another*:

> "In order to demonstrate where the loss arises from MTIC fraud we start with a simple example of an import of goods by X, who sells them to Y, who exports them. The tax on acquisition (import) by X is cancelled by input tax of the same amount, and the output tax charged on the sale by X will be cancelled by the input tax repaid to Y on the export, so that the United Kingdom exchequer receives no net tax".
> If both X and Y are fraudsters Y will have to finance the output tax charged by X because X disappears with it, and Y will recover the same when it is repaid to Y by HMRC on Y's repayment claim.
> "The only gain by the fraud is if HMRC pay the input tax to Y, when the exchequer is left with the loss of the amount of the import tax: The non-payment of the output tax by X is merely the recovery of what Y put in. If the exporter is innocent of that fraud he is entitled to repayment of the input tax that he has actually paid even though this represents tax never paid by X and the exchequer is left with the same loss of the amount of input tax".

In his example X is the defaulter and Y the Broker. The chains are often longer as they include intermediaries, known as Buffers, who are introduced to confuse HMRC and to make the transaction harder to trace. The 11 chains the subject of this appeal fall into this latter category

8. The case law, as now developed in *Moblix Ltd (in administration); and others*, provides that an exporter will not be innocent if he knew or ought to have known that his transaction was connected with the fraudulent avoidance of tax.

9. Mr Stone has confirmed in his witness statement that carousel fraud was rife from 2003 up to 2007, when the reverse charge was introduced. Any loss to the exchequer only occurs when the input tax is refunded on a repayment claim. HMRC had been repaying substantial sums of money, in many cases well in excess of £10,000,000. The total loss to HMRC during those years amounted to in excess of £20 billion. It appears that many of the frauds have been financed by third parties outside of the various transaction chains.

10. We think it would be helpful to set out how the money flows in such schemes and, in that regard we have been much helped by the evidence given by Patricia Morgan-Davies. Mr Stone, who did not appear, but whose witness statement we have read, also confirms that losses to HMRC only occur in all of these transactions when a repayment is made to the Broker. He states at paragraph 6 of his witness statement that there are two forms of MTIC fraud, namely 'acquisition' fraud and 'carousel' fraud. An MTIC acquisition fraud, as described above by Judge Avery-Jones, is a commodity based fraud. MTIC 'carousel' fraud, which is sometimes referred to as 'MTIC export fraud', is a financial fraud and is an abuse of the VAT system that

results in the fraudulent extraction of revenue from the United Kingdom Treasury. The fraud predominantly involved computer chips and mobile phones. The finance for the deals is provided from an outside source and is introduced to the chain when the Broker is paid by his European customer. It then cascades down the chains, each trader withdrawing their agreed profit and paying their appropriate amount of VAT. That VAT is often very small (apart from the Brokers repayment claim) because the intermediate Buffers can set off their input tax against their output tax. The money is then returned to the original funder.

11. The participants in the chain are all seen to make a small profit. Mr Stone has indicated that this amounts to 3% of the sale price for the intermediary Buffers and 6% of the sale price for the Brokers, who take the risk of not receiving a repayment. Apart from the defaulter (who ostensibly purchases the goods from Europe) each of the traders thereafter makes appropriate VAT payments to the Revenue. However, they do not necessarily pay each other the correct amounts, either under the apparent contracts, or of VAT. The participants are required, if the transactions are fraudulent, to make an initial contribution to the scheme. In the example below only half the VAT liability due to their supplier has been paid, so that the participants carry some of the risk and thereby reduce the risk of the fraudsters receiving nothing. When the repayment is obtained by the Broker, he will have sufficient money to take the balance of his profit and to pay his outstanding VAT liability to his supplier. That supplier will then be in a position to pay his outstanding VAT to the defaulter, who will then receive all the VAT he should have paid to HMRC, but which he intends to keep, less the contribution to the profits and VAT down the chain. A variation on the theme is for the VAT to be introduced as a loan in addition to the initial money being provided. The vast majority of these transactions were handled by the FCIB in sterling although the participants were, in part, European. The transactions are dealt with in sterling because the UK VAT repayments are made to the Brokers in sterling. It appears from the unique numbering of each transaction in that bank that the cash transfers are affected in a very short time. The shortness of the time suggests that the payments are orchestrated by the fraudsters, as it is unlikely that the several traders in a chain would be available at their computer consoles to make the payments in the time scales suggested. The outsider, who financed the transaction from the beginning, is presumably repaid his original investment and the loan (if any) plus any agreed interest.

12. **Example**

The participants are "E" the customer in Europe

"D" the broker, who will seek the repayment from HMRC and who sells the goods to "E"

"C" a buffer who sells the goods to "D" having purchased them from "B" and who pays the net VAT to HMRC

"B" the defaulter, who purchases the goods from Europe and charges VAT on the sale to "C", but does not account for the VAT to HMRC.

"A" the trader in Europe sells the goods to "B" in the United Kingdom (the defaulter) and receives the money back from "B" which he or the fruadsters introduced into the chain in the first place.

Many of these transactions took place through the FCIB, which appears to have been the bank of preference, and has since been closed down by the Dutch Authorities and the directors arrested. All the money appears to take a significantly little time to pass through the account, so that the initial loan, in the example £1,015,050, is only at risk for a short period. .

- A (in the EU) sells the goods to B (the Defaulter) for £1,000,000

- B sells the goods to C (the Buffer) with a profit of 1% for £1,010,000
  B charges VAT of £176,750 at 17.5 %

- C pays the full price for the goods and half the VAT of £88,375 to B and sells the goods to D (the Broker) with a small profit of ½ % for £1,015,050
  (C charges VAT of £177,633.75 at 17.5% to D
  (C pays VAT to HMRC of £883.75 the difference between the £177,633.75 and £176,750)

- D pays the full price for the goods but only pays half his VAT liability of £88,816.88 by way of payment of the VAT to C and sells the goods to E (in the EU) with a profit of 6% (£60,903) for £1,075,953

- E pays D the full price for the goods less D's profit and no VAT £1,015,050
  leaving D to recoup his profit and his VAT liability to C from the repayment.

- D applies to HMRC for a repayment of VAT of £188,291.78
  (being 17.5 % of £1,075,953 (his selling price and assuming, for the sake of this example, there is no other VAT).

- D obtains a repayment from HMRC of £188,291.78
  D recovers his VAT payment of £88,816.88
  and the balance of his profit of £60,903.00 £149,719.88
  Leaving a balance £ 38,571.90

D owes a further £88,816.87 by way of VAT to C, who accepts the sum of £38,571.90 which C then pays to B as the balance of the VAT that he presumably has agreed to pay to clear his liability.

As a result the participants receive the following:

A/B have already received part of the VAT from C	£88,375.00
and receive the balance above	£ 38,571.90
making a total of	**£126,946.90**

C receives his profit of	£ 5,050.00
Less the VAT paid to HMRC of	£ 833.75
Making a profit of	**£ 4,216.25**
D receives his VAT of £88,816.87and his profit of	**£ 60,903.00**

D will be operating on a monthly VAT cycle and C on a quarterly cycle. If the sale to E can be brought as near to D's month end as possible, the repayment will be accelerated.

13. As the fraudsters expected to obtain the repayment from D, D would only need to pay a proportion of the VAT and take some or none of his profit. He can recoup the shortfall or the entirety of his profit from the repayment. That way, the fraudsters ensure that they receive the appropriate amounts from the fraud and D will obtain a refund of the money he had introduced to the chain. The middleman C only makes a small profit because he effectively does very little and takes very little risk. He merely pays the price for the goods with the money provided by A. The Broker, D, usually takes the largest profit (6% of the selling price) because he takes the risk that the repayment may not be made. All the parties require the monies to be paid as soon as they are received to minimise the risk of a party failing to make a payment and they need to be participants in the scheme to ensure that the money is dealt with according to the planned procedure.

14. The money introduced by the third party can take various forms. They can fund the entire transactions so that the VAT is included in the first payment by the European buyer, even though no VAT is payable by that Buyer. Alternatively the necessary funds are lent to the Broker, selling to the buyer in Europe, by one of the traders in the deal chains or a third party involved in the scheme.. Much of the original monies in the fraud are introduced by a third party. So long as that party is a party to the fraud it does not matter how the money is introduced because the introducer will get all his money back when the repayment is made. In that way any money lent to the fraud whether within or outside of the chains is returned to the introducer or the lender by payment within the chain when the repayment is made by HMRC.

15. HMRC indentified a counter measure introduced by the fraudsters in July 2005 as a result HMRC introduced a more robust verification system. In a contra-trade the fraudsters, instead of making repayment claims in excess of £10,000,000, inserted another chain (an apparent 'clean chain'), and the Broker appears in the new chain as well as the dirty chain. In that way the Broker was able to set off its VAT liability. As Mr Stone explains at paragraph 18 of his witness statement:

> "**Transaction A.** Broker 1 (A-Z in this appeal) purchases goods in the UK standard rated for VAT purposes, in a transaction chain that commenced with a missing trader. Broker 1 then sells the goods into Europe and claims an input tax deduction in his VAT return
>
> **Transaction B.** Broker 1 then acquires goods zero rated from another European Trader of an equivalent value to those purchased in transaction A and sells those goods standard rated to a UK trader who in turn sells them to Broker 2 (Tarlo in this appeal)
>
> **Transaction C.** Broker 2 sells the goods zero rated to a trader in Europe and generates a VAT repayment claim, which is paid in whole or in part to his supplier (depending on how much money broker 2 has introduced into the chain). Broker 1 subsequently submits a VAT return with no VAT liability as it sets off its input VAT on its sale in transaction A against its output VAT in transaction B

16. This case relates to Tarlos 11 transactions in an apparent clean chain linked to contra-trading by A-Z. Tarlo has conceded that there are tax losses arising from A-Z 's transactions but does not accept that the losses were fraudulent. We therefore have consider**ed the** verbal evidence of Peter Alan Cameron-Watson; Katrina Elizabeth Wheatcroft; David Roy Booth, and

Patricia Morgan-Davies and the written statements from the remaining witnesses in relation to the defaults.

The Legislation.

17. In view of the decision in *Moblix Ltd (in administration)* we think it would be helpful, before considering the evidence, to identify the law as we understand it.The right to deduct is contained in sections 24 -29 of the Value Added Tax Act 1994 (the Act). Section 25 requires such a person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is allowable under s 26: see s 25(2). Section 26 gives effect to what is now Article 168 of EC Council Directive 2006/112 (the VAT Directive) and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by the taxable person in the course or furtherance of his business: see s 26(2).
These provisions are in mandatory terms. If a trader has incurred input tax, which is properly allowable, he is entitled, as of right, to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. He is required to hold evidence to support his claim (see article 18 of the Sixth Directive and regulation 29(2) of the Value Added Tax Regulations 1995 (SI 1995/2518). As a result the right to deduct or the right to a repayment is absolute, and no element of discretion is conferred on the tax authority, save that the authority may accept less evidence than normally required; it has no right to demand more evidence than that prescribed by article 18. The right is also immediate, that is it may be exercised "when the deductible tax becomes chargeable". The only limitation is the practical one that, although deductibility is determined on a transaction by transaction basis, the mechanical process of deduction or repayment is affected by reference to prescribed accounting periods.

The Case law

18. The case law has developed from *Optigen Ltd* where it was decided that a repayment must be made to a trader, who is innocent of the fraud, even though the transaction did not amount to an economic activity, through *Axel Kittel and another* which extended the concept of knowledge to include a trader, who ought to have known that there was a fraud, to *Moblix Ltd (in administration)*, which refers to the various cases and has refined the concept of knowledge and the evidence required to prove it. In the light of that decision, we do not think it is necessary to trace the development of the concept through all of the cases we have been referred to, but rather to refer to Lord Justice Moses' observations in the Court of Appeal. We have been assisted in that by the observations of Mr Cannan and Mr Armstrong in their skeleton arguments and final submissions. Moses LJ stated;

> "…The scope of VAT, the transactions to which it applies, and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:- (see ***K***ittel para 42, citing *BLP Group* [1995] ECRI/983 para 24) the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of

VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned." [Paragraph 24]

"In Kittel after §55 the Court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT… It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. Kittel did represent a development of the law, because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct…"[paragraph 41]

"A person who has no intention of undertaking an economic activity, but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person's VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see Halifax § 59 and Kittel § 53). A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and, equally, fails to meet the objective criteria which determine the scope of the right to deduct"; [paragraph 43].

19. The European Court of Justice in *Optigen Ltd* has made it clear that a trader can recover his output tax even though the transaction is outside the VAT scheme. Both *Kittel* and *Moblix* confirm that where a trader meets the objective criteria for compliance with the VAT regime, it is not open to the Authorities to withhold any tax repayment. If, however, a trader does not comply with the objective criteria, because there is a fraud, that trader cannot recover any tax. Moses LJ at paragraph 30 states:

"The Court (The European Court of Justice when considering *Optigen*) rejected the United Kingdom's argument that unlawful transactions fell outside the scope of VAT. Fiscal neutrality prohibits the distinction between lawful and unlawful transactions; such a distinction must be restricted to transactions concerning products which by their very nature may not be marketed, such as narcotic drugs and counterfeit currency (see paragraphs 49 and the Advocate General's Opinion paragraph 40). By its rejection of the United Kingdom argument, the Court made it clear that the reason why the fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria, which determine the scope of VAT and the right to deduct, have been met."

And at paragraph 52:

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

20. As the Advocate General stated at paragraph 40:

"As becomes clear from the commissioners own description of what they consider to constitute carousel fraud, its characteristic is that it makes use of lawful economic channels in order to facilitate the retention of money paid as VAT"

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

At paragraph 61 "A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct";

21. Moses LJ also expressed concern that HMRC have in the past placed too much importance on a traders' failure to carry out due diligence and not enough on the circumstantial evidence available. At paragraph 75 he stated.

" 75 The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT…..

22. We have decided that the legal test is that a trader will not be entitled to a repayment if he knew or ought to have known that his transactions **were** connected with fraud on the basis that the only reasonable explanation for the circumstances in which the transactions took place was

that they were connected with such fraudulent evasion. In contra-trading cases HMRC's ability to establish a connection between the actual tax losses in the contra-trade to the specific repayment claim in the clean chain is extremely difficult. This is not least because of the timing of the payments, where the Broker, in the clean chain, will be on monthly returns, and the transaction to which that repayment relates, will be some two or three months later, dependent on the accounting dates in the dirty chain. In *Livewire Telecom Ltd* Mr Justice Lewison stated:

> Paragraph 102: "In my judgement in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself a dishonest conspirator, there are two potential frauds:
>
> i) The dishonest failure to account for VAT by the defaulter or missing trader in the dirty chain; and
>
> ii) The dishonest cover-up of that fraud by the contra-trader.
>
> Thus it must be established that the taxable person knew or should have known of a connection between his own transaction and at least one of these frauds. I do not consider it is necessary that he knew or should have known of a connection between his own transaction and both of those frauds. If he knows or should have known that the contra-trader is engaging in fraudulent conduct and deals with him, he takes the risk of participating in a fraud, the precise details of which he does not and cannot know."

23. In *Blue Sphere Global Ltd* at paragraph 44 the Chancellor held that:

> "44. There is force in the argument of counsel for BSG but I do not accept it. The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transactions in which there is a common party whether or nor the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in *Optigen* and *Kittel* because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.
>
> 45. Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with the fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C (Infinity) in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E (BSG) in the clean chain. Such a transfer is apt, for the reasons given by the Tribunal in *Olympia* to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B.

46. Not all persons involved in either chain, although connected, should be liable for any tax loss. The control mechanism lies in the need for either direct participation in the fraud or sufficient knowledge of it."

The Chancellor concluded at paragraph 55.

"55 .In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is a party to both the clean chain with E and the dirty chain A constitutes a sufficient connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could have known, nor was the occurrence of such a dirty chain inevitable in the sense of being pre-planned."

24. We have also been referred to Christopher Clarke J's comments at paragraph 109 of *Red 12 Trading Ltd* as authority for the proposition that the Tribunal may considerer compelling similarities between one transaction and another and that it is not precluded from drawing inferences where appropriate, from a pattern of transactions of which the individual transaction in question forms part. We refer to this later in this decision.

25. Briggs J in *Megtian V HMRC* [2010] EWHC 20 (CH) stated as follows:-

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

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

We have concluded that HMRC must establish either that Tarlo, through Mr Hayat, knew that the 11 transactions were connected with fraud or that it ought to have known.

Burden of proof

26. In Mobilx Ltd (In Administration), Moses LJ considered where the burden of proof lies and observed (at paragraphs 81 and 82) that;

"..It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary.

"But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. As I indicated in relation to the BSG appeal, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focusing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in Kittel, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.

Standard of Proof

27. These are civil proceedings and, as such, the standard of proof is the ordinary civil standard i.e. on the balance of probabilities. The case of *Reventhi Shah (Administratrix of the Estate of Naresh Shah Deceased) v Kelly Anne Gale; Kelly Anne Gale v Jason Grant, Mark Young, Paul Hilton, Samantha Easton* [2005] EWHC 1087 (QB) (concerning a civil action for unlawful killing) made it quite clear that there is a single civil standard of proof (i.e. on the balance of probabilities) applicable in all civil proceedings regardless of the allegations levied. Lewison J (as he then was) stated:

"In my judgment, it would be wrong to approach this case on any basis other than the balance of probability with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation and the inherent improbability that this 22 year old young lady of good character should involve herself in such conduct as that alleged. I simply do not accept that it is appropriate, as a matter of law, to require a higher standard of proof simply because of the nature of the allegation. If murder, why not allegations of rape or the most serious fraud."

The Facts

28. We are in some difficulties with regard to the evidence in this appeal due to Mr Hayat's failure to appear and the subsequent lack of the ability to cross-examine. As a result, we can only rely on his and Mr Ahmed's witness statements as their evidence-in-chief and Mr Andrews skeleton argument and submissions to ascertain Mr Hayat's contentions on behalf of Tarlo. In his skeleton argument Mr Andrews appears to have conceded that A-Z 's transactions

gave rise to a loss of tax, but not that the dealings were fraudulent or connected to Tarlo's transactions. Paragraph 10 of his skeleton argument reads:

> "**Fraud in the A-Z chains.** Even the officers disagree over this for example officer Booth refers to defaulters and tax losses whereas officer Wheatcroft refers to fraud for the self-same items. This has the appearance of a badge of convenience rather than a charge based on weighty evidence. The tribunal is invited to consider the veracity of the free application of the badge of fraud. The tribunal is reminded that there is a significant difference between a default and fraud."

29. A defaulter is a trader, who has registered for VAT, but who fails to account for VAT in the requisite manner. As a result of the investigations of the defaulters below we are satisfied that there has been a fraudulent evasion of in excess of 3346 million pounds. We propose to examine the actions of the defaulters all of whom appear as the initial suppliers to A-Z and are therefore part of the transactions with Tarlo. We have read all the witness statements by the officers in relation to the defaulters and we have considered some of the exhibits from each of them in order to satisfy ourselves that the exhibits correspond to the statements.

30. Vivien Parsons has provided a witness statement in relation to the defaulter Wade Tech Ltd (WTL). We have also checked some of her exhibits. WLT was registered for VAT on 8 April 2004 as an off-licence and grocer with a suggested turnover in the first year of £100,000. The business apparently operated from 407 - 409 Liverpool Road, Eccles, Manchester and was owned by Fateh Kashief Ahmed. On 1 February 2006 the business was converted to limited company and it declared its business to be 'Off- licence and telecommunications sales, mobile phones & accessories'. On 6 June 2006 it changed its name to Grange Solutons UK Ltd. Mr Ahmed received a letter from Redhill as a result of an enquiry apparently by Mr Ahmed involving a fraudulent trader. On 14 September 2006 on an unannounced visit to the WTL office in Eccles, arising from that enquiry, Mr Ahmed denied that he had made any enquiries of Redhill. The business was a retail shop selling groceries. Mr Ahmed said that he had decided not to continue with mobile phones. As a result of the visit a pseudo registration number 964225905 was allocated to WLT and Mr Ahmed agreed that his original VAT registration could be cancelled. HMRC concluded that the business name and VAT number had been hijacked. HMRC internal records revealed that WLT (the hijacked business) had carried out substantial trading from 05/06 to 11.07. The assessments raised amounted to £81,000,000 approximately. The assessments have never been paid nor appealed.

31. Kym Marna Nevelle Richards has provided a witness statement in relation to Advertising South Limited, which operated from Suite 213, number 326 Kensal Road, London W10 5BZ. Ahmed Salih originally set up the business as advertising and marketing agency with a suggested turnover in the first year of £200,000. The business registered for VAT on 1 September 2005. David Smith (also known as David Everton Smith) told HMRC that he had purchased the business for £1700 from Mr Ahmed on 3 March 2006. HMRC made an unannounced visit on 28 July 2006 to Suite 213, number 326 Kensal Road, London W10 5BZ. The address was a serviced Office, it was locked and no one was available. HMRC were advised that the property had been rented since March 2006 and that mail was collected infrequently. Receipts from other traders showed that the company had sold goods to the value of £17,800,000. HMRC cancelled the VAT registration from 28 July 2006. Following a visit on

14 August 2006, HMRC refused to re-register the business until Mr Smith produced evidence of trading. They subsequently discovered that Mr Smith had the following criminal convictions:

January 1983 evading duty on goods
February 1982 handling stolen goods
July 1973 threatening behaviour
Oct 1970 Shoplifting

Mrs Richards examined HMRC's vision databases and electronic folder in relation to A-Z's transactions, which revealed that £17,788,521.81 of goods was traded with Urban Spice Ltd. On 23 August 2006 a visit was made to Mr Smith, who denied knowledge of any sales. He claimed that the VAT number must have been 'cloned'. He was, however, unable to explain how Urban Spice Ltd had his passport details and utility bill. He was handed an assessment £2,847,839.31.

32, On 6 September 2006, Mrs Richards indicated that she discovered a letter with Mr Smith ExactPay Bank details on it, which appeared on payment instructions for other companies. By way of example she stated that goods sold in March 2007 to Electica (UK) Ltd revealed a part payment to Prabud Electronics KFT FCIB account, which showed Mr Smiths' bank account number. She was in no doubt that invoices issued by Advertising South with its VAT number were genuine and not hijacked. As a result of her investigation an assessment of £4,674,112 remained unpaid. Rebecca Riley, from the Sheffield Office MTIC Team, confirmed the split payment between Advertising South Limited and Prabud Electronics KFT arising from her examination of the FCIB account.

33. Lydia Ndoinjeh, a Higher Officer from Middlesex, has provided a witness statement in relation to Worldwide Wholesalers Ltd, which registered for VAT on 1 November 2005 with a suggested turnover in the first year of £65,000. The registration indicated that the company would be dealing in furniture and household goods, hardware ironmongery and wholesale textiles, clothing footwear and leather goods. There had been various directors of the company between 6.10.05 and 8.11.06. Various persons, ostensibly officers of the company, had contacted HMRC advising of a change of address to 3 Park Street Windsor SL4 1LU. There had been 6 subsequent calls to confirm the change of address to Suite 46, Sabichi House, 5 Wandsworth Road Perivale Middlesex. Mr Mahmood, a director of company wanted verification of VAT numbers. He had been supplied with a verification letter from Redhill and Notice 726 (relating to the joint and several liability for VAT). Various meetings arranged with Mr Mahmood and HMRC did not take place. On 19 October 2006 a man, named Mahmood, turned up unannounced at HMRC's Uxbridge office and left the company's trading records for May and June 06. The company was de-registered with effect from 10 November 2006 having failed to submit VAT returns leaving an outstanding assessment of £3,295,819. There have been no further responses from company and it was wound up on 3 December 2007. In her second statement, Lydia Ndoinjeh noted that the company started trading in May 2006 and revealed no turnover for the period 01/06 and £5,583,015 for period 04/06. It also appears that the company made purchases from Phone City Ltd (referred to below) and WLT.

33, Rupinder Kandola, an officer from Ubridge VAT MTIC team, has provided a witness statement in relation to Okeda. Mr Jhaj, owner of Time Corporate, purchased goods form KEP 2004 Ltd which in turn purchased goods from Okeda. On 22 March 2007 Mr Jhaj attended at the Uxbridge office and delivered:

- 145 invoices with Okeda

- VAT registration details for Okeda
- A copy passport for Anjula Perera
- An Abbey bank statement (blank)
- A picture of Mr Jhaj in the Okeda office
- The certificate of incorporation for Okeda, and
- A blank letterhead for the company.

The VAT number on the Okeda invoices were for a company called Jool Ltd. Mr Perera was the director for Okeda as well as being a director of Jool Ltd. Jool Ltd's registration was removed on 16 June 2006 having been deregistered on15 December 2003, as it was considered to be a missing trader and it had never submitted any VAT returns. It was dissolved on 5 April 2005 well before any transactions purportedly with Okeda took place. A pseudo VAT number was set up for Okeda on 30 May 2007. Mr Perera has never been in touch with HMRC. A visit to Innovations Laborities, at Watford Road, Northwick Park, Harrow, Middlesex revealed that Okeda had occupied the premises but that it had left without paying the rent. Deal documentation provided by Time Corporates and U K Communications, customers of a company purporting to be Okeda, was used to raise assessments of £28,373,127, which have neither been appealed nor paid, HMRC say that Okeda was used as a vehicle to dishonestly evade VAT.

34. Robert James David Lamb, an officer with the MTIC team at Finchley, has provided a witness statement in relation to Samson Traders Limited. The company was incorporated on 11 January 2005. Anthony Rajah Samson and Donald Elwell were the directors and the company registered for VAT from 1 February 2005 as a general Trader operating from 38 Siddons Road London N17 9UT. Information from purchase records at the Routers Group Ltd gave rise to a visit to the registered address. It turned out to be a private house. The company was deregistered on 21 April 2006. A meeting was arranged for 16/5/06, but neither Mr Samson nor the accountant attended. The company has made no VAT returns for the periods 05 /05/, 11/05, 02/06, A final/99 assessment was raised arising from the 700 sales invoices from the company to the Routers Group in the sum of £37,542,912.99. The assessments have not been paid nor appealed and the company was liquidated on 1 November 2006. The detail of the payments for the goods appears in the FCIB evidence referred to later and shows a circular money flow. Paul Johnson, a MTIC officer operating from Euston Towers, London has seen Mr Lamb's statement and agreed with his calculations for the assessments

35. Norman Morrison, a MTIC officer operating from Dundee, has provided a witness statement in relation to Eutex Ltd. The company ostensibly operated from a rented room at Pentagon Freight, Kirkton Drive, Dyce, Aberdeen. HMRC attended at the property to enquire what dealings, if any, the company had had with P M Wholesale Electrical Ltd. They met Angela Munro, the finance director, who advised that Eutex Ltd was the British registered company forming part of a larger American Company owned by Mr Sutherland. The parent company is based in Texas. She confirmed that none of the companies dealt in mobile phones, and that the company had had no contact with P M Wholesalers Ltd. Mr Morrison has produced a copy of the invoice for the genuine Eutex Ltd which bears no relationship to the invoices raised, ostensible by the same company, for the mobile phone activities. It is clear that the principal companies' name, address and VAT number had been hijacked. The fraudulent Eutex Ltd dealt with 41 transactions with A-Z up to 05/06 and has neither appealed

against nor paid assessments amounting to £125,837,536. Andrew Siddle, a MTIC officer based in Sheffield has also researched Eutex Ltd. As the company had hijacked the authentic company's details a dummy VAT number has been created. We have examined a number of the scheduled details provided by Mr Siddle which confirm the activities giving rise to the transactions with A-Z.

36. Margaret Tressler, a MTIC officer operating from Sherbourne House in Coventry, stated that P & M Transport Ltd (P & M) was incorporated on 18 November 2002. It registered for VAT on 1 August 2003 with a suggested turnover in the first year of £150,000. It indicated in its application that its principal business was as an haulage contractor. Phillip Temme was the principal director and Barry Marshall Nicholls the company secretary. The original company changed its name to P&M Transport and Communications Limited on 31 August 2005. Until 30 November 2005 it had a small turnover as an haulage contractor. From August 2005 it had informed HMRC that it intended to deal in various types of electronic devices.

37. Mr Temme's father, John Temme, had been the director in charge of Trans Pacific Trading Limited which owed HMRC £3,999,200.15 in its insolvency proceedings. Mr John Temme was disqualified as a director for 13 years from 13 March 2006 as a result of his activities. Barry Marshall Nicholls had also been the company secretary of Trans Pacific Trading Limited, Aventis Import Export Limited (Aventis) and Sim City Phones Limited (Phones). The directors of these companies were also members of the Temme family. Insolvency proceedings were instigated against Aventis in respect of an unpaid debt of £99,457.88. Philip Temme's sister, Louise Jayne Pritchard was a director of Phones. The VAT application was compiled by Edward Prichard, Mr Temme's brother-in-law. At the time of Phones de-registration, Phones had an outstanding VAT liability of £1,234,884.

38. P & M moved its office from Mr Temme's home on 13 September 2005 to Unit 1, Sir Frank Whittle Business Centre, Great Central Way, Rugby. CV21 3XH. It moved again to Unit 8 from 9 October 2006. Mrs Tressler visited Unit 1, which was a small office consisting of two desks and a fax machine. When she attended she noted that Mr Temme was using a lap top computer. There appear to have been no employees nor were any such employees notified for PAYE purposes to HMRC. In the period ending 01/06 the declared sales were £33,000,334 compared to £1,237 in 10/05.Once P&M commenced trading in mobile phones its turnover increased. The return for the period 04/06 declared sales for that period of £172,802,736. This figure shows that in a period of 6 months the turnover grew to over £200,000,000. For the period 04/06 P & M had claimed a set off for P&M's input tax giving rise to a repayment of £36,540.36. On investigation, the repayment was changed to an assessment of £422,482.37 and no appeal in that regard has been received from P&M. The return for 07/06 declared sales of £9,574,917 and the net liability of £39,480.70 was not paid.

38. During a meeting with Mr Temme on 7 November 2006 he provided copies of deals omitted from the 07/06 return, which related to the purchase of medical test kits from a French supplier Taurus International Limited. Other deals had not been included in the appropriate returns. At a meeting in October 2006, Mr Temme denied having made any deals during September 2006. He subsequently produced the deal packs for that period when Mrs Tresslar visited the company in December 2006. P&M made all its sales and purchases on the same day and in the same quantities. No records have been obtained showing that payments had been

made to suppliers or received from customers. When the FCIB had been closed all transactions took place though the company's HSBC account. Subsequent evidence has been found of payments by customers to P & M which do not appear in the HSBC account. It appears that P & M might have another account with International Credit Bank (ICB) which it has not disclosed to HMRC. Mr Temme had been notified that he had had previous dealings which commenced with a defaulter. The notified tax losses exceeded £15,000,000. The FCIB account also revealed that P & M had made third party payments, that is they have transferred funds at the request of one of their customers to another trader with whom P & M had not had any dealings. P & M had been unable to provide appropriate CMR's in relation to many of its transactions. Mr Temme also seemed to be unclear as to whether the company's freight forwarders were J & J Trading or Tay Koff Ltd.

39. Despite repeated requests, Mr Temme failed to provide copies of the due diligence undertaken into P & M's suppliers and customers and failed to insure any of its transactions. Mr Temme had contended that insurance cover had been provided by the freight forwarders, but no evidence was produced of that insurance. The company was wound up on 3 September 2008 owing £5,225,030.67 of VAT. The company was de-registered on 7 September 2008.

40. Susan Elizabeth Hirons, a MTIC officer from Wolverhampton, has provided a witness statement in relation to Prestige 29 UK Ltd (Prestige). The company was incorporated on 6 December 2004 operating from 5 Forge Road, Pelsall, Walsall. It indicated on its VAT registration form on 1 June 2005 that it would be dealing in kitchen and bathroom supplies with a suggested turnover in the first year of £140,000. It changed its trading address to 24 Stafford Street, Walsall on the 9 May 2005. Mr Breedon, a director, confirmed all the details. Mrs Hirons visited 24 Stafford Street on 10 May 2006 and found an abandoned shop with a 'To Let' sign outside. Mr Breedon was interviewed on 29 January 2009. He indicated that he and his wife had purchased the company 'off the peg'. He said that he had been approached by Jas/Jaz. He had been unable to provide the full name, but indicted that Jas/Jaz was an Asian male, who had supplied the funds for the business. The company had traded in bathrooms. Mr Breedon had been shown the invoices from Arklid Ltd, but he said that he had no knowledge of them. When Jas/Jaz had asked him to trade inappropriately he had ignored the signs that indicated that everything was not in order and he had agreed to the requests. There is evidence that the company purchased goods from Eutex and that it made third party payments. HMRC could not prove that the company had purchased the goods without benefit of banking statements. On balance of probabilities, however, there was no other identified company which was likely to have acquired the goods. The company's turnover in the period 07/05 was nil; in 01/06 it had been £672; in 04/06 it was £6,786,544; and in the final period £10,948. The deals which allegedly had taken place with Arklid Ltd had resulted in the assessment of £5,080,286, which remains unpaid and unappealed. The company was deregistered on 10 May 2006. Stephen Robert Smith, of the MTIC team at Southampton, confirmed that the assessment had been amended to £4,773,174.06 when Prestige was liquidated on 10 May 2008.

41. Malgorzata Wanat, an officer from the MTIC team at Leeds, has provided a witness statement in relation to Phone City Limited (Phone). The company was incorporated on 2 August 2004 and registered for VAT 1 February 2005 with a suggested turnover in the first year of £350,000. It indicated on the application form that it intended to trade as a 'Contact mobile phone distributors' from 29 Manor Row, Bradford. Its directors were Tahir Idrees, a final year medical student, and Abdul Maswar. Neither of them appeared to know what was going on and appeared content to allow the secretary, Rizwan Hussain, and Kevan Rooke, the business manager, to run the business for them. Ibrar Hussian, who appears to have had some

involvement in the business, had asked Mr Idrees to open a bank account for him as he, Mr Hussain, had a bad credit rating. It appears that Mr Idrees had done so. The company's turnover up to July 2005 appears to have been £72,726,749, with a profit of only £53,496. Its turnover for the year to 31 July 2006 amounted to £535,455,378. The VAT for the periods of trading were as follows:-

a. Period 05/05 £4796;
b. 08/05 £35,857,409;
c. 11/05 £33,892,976;
d. 05/06 £6,891,461; 05/06 £64,427,411;
e. Final 99 £30,795,972

VAT repayments were claimed as follows:

- 11/05 £38,021.03;
- 02/06 £3,833.88;
- 05/06 £908,006,95;
- Final period £246,970.37

On 14 September 2005 HMRC, on an unannounced visit, collected all the company's books. It transpired that all the company's deals were connected to missing traders and all the suppliers had been de-registered. HMRC also arranged for the Redhill requests to be blocked. This had the effect of stopping any other companies trading with Phone. Mr Idrees resigned as a company director on14 August 2006. Mr Maswar resigned as a company director on 25 May 2006. The final VAT repayment was denied on 16 Nov 2007. The overall indebtedness to HMRC amounts to £34,014.672.36. Mohammed Idrees and Yasser Maswarin directors in directorship proceedings arising from the liquidation of Phone undertook not to act as directors. Their undertaking had arisen as a result of their being involved with MTIC trading Tax losses.

42. Dean Maurice Walton, an officer in a MTIC team in London, has provided a witness statement in relation to Vision Soft (UK) Ltd (Vision). The company was incorporated on 8 October 2004 having its business address at 26, York Street, London. It was registered for VAT on 10 January 2005 with a suggested turnover in the first year of £80,000. It indicated on the application form that it intended to trade as a 'Software development, Consultants and Suppliers'. By 6 February 2006 it had not commenced trading. Nirmala Mothe resigned as company secretary on 2 June 2006, Vishnu Vardhan Venumuddala resigned as a director on 3 April 2006. Muhammad Shafiq was appointed a director on 1 June 2006 and Ms Tina Malik as company secretary on 3 April 2006. A Company House search reveals that no accounts have been rendered and that the business premises were Commonside Business Centre, 1 Commonside West, Mitcham, Surrey. When an officer from HMRC visited that address there was no one there,

43. HMRC internal electrical information identifies that there have been transactions with Gemini Technology Ltd. Further enquiries showed that Vision were importers of MTIC goods. As a result the company was de-registered on 6 July 2006 and Redhill notified accordingly to prevent further trade with the company. Vision has failed to render any VAT returns leaving a tax loss of £12,068,084. The FCIB account for the company has been examined which

revealed that between 26 June 2006 to 21 July 2006 £51,295,937.97 had been paid for goods and £51,297.169.60 received for sales. No VAT has been paid even though there was clearly money in the FCIB account. From the documentation, it appears that Vision had been selling Nokia phones only suitable for the North American market, which operates on different frequency bands to Europe. The company was wound up on 16 January 2008

44. David Roy Booth, an officer on the MTIC team at Blackburn, provided evidence as to the transactions in relation to A-Z. He returned to Local Compliance work and the trader was subsequently investigated by Katrina Elizabeth Wheatcroft, who gave evidence at the Tribunal. As Mr Booth did not attend we have treated his evidence as evidence- in-chief. A-Z accessories was incorporated on 25 September 2001 and registered for VAT with effect from 1 November 2001. It indicated that its turnover in the first year would be £150,000 with estimated sales to Europe of £20,000 and purchases of £40,000. Its main business on the application form was to be 'purchasing mobile accessories and parts from China for both retail and wholesale in the United Kingdom'. From 11/05 onwards the company has dealt in the wholesale of mobile phones initially buying and selling in the United Kingdom and subsequently selling to Europe and third countries. Its annual turnover from 1 December 2002 was as follows:

- 12 months to 30 November 2003 £ 330,000
- 12 months to 30 November 2004 £ 570,000
- 12 months to 30 November 2005 £ 2,830,000
- 12 months to 30 November 2006 £ 451,370,000

45. Ishaq Ahmed has been the Director since 25 September 2001 and his uncle, Mohammed Abdul Samad the company secretary. Mr Nages was described as the manager, who completed and filed all the deal paper work. Shoayb Pathan, the company secretary for City Furnitures, was the accountant for A-Z. The company name was changed to A-Z Mobile Accessories Ltd on 23 January 2003. A-Z's compliance had been poor for the periods 08/02 to 11/03 in that it had failed to file its quarterly returns. As a consequence its request, on 20 June 2005, to change to monthly returns because it was in a repayment situation, was refused. Repayments of VAT were made on 6 September 2005, 7 March 2006 and 5 May 2006.

46. A-Z's VAT number at Redhill had been blocked on 21 December 2004, this meant that if a trader called Redhill to verify the VAT number of A-Z for transactions involving computer parts, mobile phones etc, they would be told that A-Z were not approved at that time for transactions in those products. A-Z had been advised on many occasions between March 2006 and April 2007 that some of the deals that they had been involved with had been traced back to defaulting traders. They had been advised not to trade with those parties again. In spite of this on 3 March 2006 a repayment was made even though the transaction had been traced back to a defaulting trader. The repayment was without prejudice to any other action which HMRC might take. HMRC had asked Mr Ahmed to supply all the documentation, including the original CMRs, for the periods 05/06 and 08/06. A small number of CMRS have been provided. For the period 31 May 2006 46 CMRs out of 143 acquisitions and 79 out of 115 exports were provided. For the period 31 August 2006, no CMRs have been provided for 56 acquisitions and 52 exports. Evidence of shipment has only been provided for 9 acquisitions and 37 exports for the 6 months period between 1 March 2006 to 31 August 2006. A-Z

indicated that they could not get the CMRs from its freight forwarders because it owed them money and they would not produce them until they were paid.

47. Mr Ahmed said that he did not arrange any insurance for the goods in question as all the transactions were back to back. The company relied on its freight forwarders to provide the insurance. Mr Ahmed also indicated that when the goods were in the company's warehouse he tried to get the suppliers and customers to pay for the insurance of the goods. No details of any insurance provision have been produced. It also appears that the company did not check any of the IMEI numbers on the phones it dealt in. As a result it would not have known whether the phones had been stolen or dealt with before.

48. All the deals were back to back, being made on the same day for the same amount of goods and the same product. A-Z never retained any stock. The fact that all the requirements could be instantly matched suggests that the deals were artificially contrived. There were no formal contracts and all the payments were made through the FCIB. A-Z had been supplied with Notice 700/52 and Mr Ahmed has conceded that he was aware of the MTIC trade. The due diligence paperwork provided by A-Z routinely consisted of photographs of the suppliers'/customers' office and a member of staff, a copy passport, bank details, blank letterhead, copy VAT certificates, letters of introduction, a site questionnaire, telephone bills and verification of the VAT number. Many of the site visits were undertaken after A-Z had completed its deals. A-Z provided no evidence of credit checks carried out on any of their customers or suppliers and provided few examples of trade references. The bank details which were provided were rarely the details of the FCIB account through which all payments had been made. By February 2007 A-Z had approximately £115,000,000 trade creditors and £113,000,000 trade debtors but in spite of that it continued to trade with the parties. It appears that no attempt has been made by any party to recover the monies owed to them.

49. For the period 05/06 A-Z had presented 14 VAT returns covering the period 08/02 to 11/05 of which only 3 had been for repayments:-

- 05/03 a repayment of £60.79 on a turnover of £8,491
- 02/05 a repayment of £306.43 on a turnover of £13,293
- 11/05 a repayment of £43,708.05 on a turnover of £2,295,081. This repayment had been made subject to verification as the transaction had been traced back to a defaulter.
- Prior to 11/05 the declared quarterly turnover of A-Z's VAT returns had only exceeded £20,000 on one occasion
- 08/06 a payment of £24,159.6 was declared on a quarterly turnover of £110,738,335

For the period during May 2006 all the transactions for A-Z were identified to include the dispatch, acquisition and buffer deals. All the information was obtained from the relevant HMRC registers, databases and IT applications as follows:-

- Acquisition deals 134
- Dispatch deals 115
- Buffer deals 73
- Net value of acquisitions £131,583,633.50
- Net value of dispatch deals £131,994,265.25

These resulted in a VAT payment to HMRC of £58,769.58 on a total turnover of £315,000,000. As a result of the VAT payment no extended verification of the return was made.

When A-Z bought goods in the United Kingdom and sold them into Europe they would require a repayment of the VAT paid by them for the goods in the United Kingdom. Where, however,

they purchased goods from Europe, for resale to VAT registered traders in the United Kingdom, they could off-set the VAT liability, due on the sales into the United Kingdom, against its repayment claim as a contra. As a result a very small amount of VAT would be due. In completing the VAT return for 05/06 A-Z failed to complete box 2 to confirm the EC acquisition tax.

50. Mr Booth annexed to his statement samples of sales into Europe made by A-Z. Tracing these through the defaulters the following transactions appear:-

- 24.5.06 **Grange Solutions (WTL)** (defaulter) > Worldwide Wholesales Ltd (£0.10 per units profit) > A-Z (Broker £2.50 per unit profit) >St Charles Consulting SA. Goods were 2025 units of Panasonic SDR-S100 camcorder .
    - There were 19 deals with the same parties in the chain traced to WTL and the profit margins averaging £0.10 for WTL and £2.50 for A-Z.

- 9.05.06 **Advertising South Ltd** (Defaulter) > Eclectica (UK) Ltd (£0.10 per unit profit) > ICS Ltd (£0,20 per unit profit) > Prime Telecom (UK) Ltd (£0.20 per unit profit) > A-Z (Broker) (£1.06 per unit profit) > FAF International SRL. Goods 2000 Sony Ericsson W899i.
  On enquiry, the Italian authorities confirmed that there was no such company as FAF International SRL

- 24.5.06 **Worldwide** (defaulter) (£0.10 per unit profit) > A-Z (broker £3.00 per unit) > St Charles Consulting Ltd. Goods 1700 units of Canon EOSD digital camcorders.
  15 deals started with Worldwide, 12 deals were dispatched to UMTS SL in Spain. All the deals were back to back and were bought and sold on the same day.

- 10.05.06 **Okeda Ltd** (defaulter) > UK Communications Ltd (£0.04 per unit profit) > S Electrical Store Ltd (£0.01 per unit profit) > Urban Enterprise UK Ltd (£0.20 per unit profit) > A-Z (Broker £0.55 per unit profit) > RCCI Hi Tec Ltd. Goods 1100 Archos av 100gb multimedia.
  7 deals commenced with Okeda Ltd and finished with RCCI Hi Tec Ltd. 7 of the deals were with all the same traders in the same order. In the remaining deal the buffer traders S Electrical Stores Ltd and Urban Enterprise UK Ltd, were replaced by Phone City Ltd and Worldwide Wholesalers. All the deals were back to back and made on the same day.

- 15.3.06 **Samson Traders Ltd** (defaulter) > Routers Group Ltd (£0,50 per unit profit) > SES Ltd (£0,15 per unit profit) > Mobile Phone London (£0.10 per unit profit) > A-Z (broker £2.00 – £2.50 per unit profit) > BST Best in Sweden Trading. Goods 5070 Nokia 9300i
  Of the 6 deals in March, five deals have exactly the same traders in the chain in exactly the same position. There was one deal in April 2006 making similar profit margins

- 29.5.06 **Eutex Ltd** (Hijacked defaulter) > Dialhouse (£0.02 per unit profit) > Yodem (£0.20 per unit profit) > Sabretone (£0.15 per unit profit) > Epinx Limted (£0,25 per unit profit) > A-Z (£2.00 per unit profit) > Powertec Computers Components. Goods were 2000 units of Nokia 8800s.
  - The parties were the same in all the following chains up to A-Z who then sold on in14 deals to Powertec; 11 deals to Hennar SA in Germany; 2 deals to FAF International SRL in Italy; 2 deals to Scorpion Electronics LDA in Portugal; 2 deals to Nano Infinity in France; 6 deals to Kiara Trading International SARL in France (who feature in the Tarlo chains discussed below); and 4 deals with Eurotronics International APS in Denmark. All the deals were made back to back and the majority of the deals were bought and sold on the same day.

- 18.05.06 **P & M Transport & Communications Ltd** (Defaulter) > Coast Telecom Ltd (£0.10 per unit profit) > A-Z (Broker £0.62 per unit profit) > Phone Connected Sarl. Goods 8500 Nokia 9300i

- Two deals commenced with P**restige 29 UK Ltd** (defaulter) > Universal Supplies
  (£0.10 per unit profit) > Prime Commodities UK Ltd (£0.15 per unit profit) > A-Z (Broker £0.50 and £0.55 per unit profit) > Scorpion Electronics.
  Both deals were made back to back and bought and sold on the same day

- 30.05.06 **Phone City Ltd** (defaulter) > Coast Telecom Ltd (£0.11 per unit profit) >A-Z (£0.93 per unit profit) > Kiara Trading International SARI. Goods 3200 Nokia 9300i.
  9 deals commenced with Phone City Ltd. The deal chains were more varied than the others but all were done back to back and the majority were bought and sold on the same day. 2 deals were dispatched to Hennar SA in Denmark; 2 to Kiara Trading International Ltd in France 2 to Phone Connected Sarl in France; 2 to FAF International SRL in Italy; and one to RCCI HI-Tec Ltd in Cyprus.

- 9.05.06 **Advertising South Ltd** (Defaulter) (£0.20 per unit profit) > Eclectica (UK) Ltd (£0.10 per unit profit) > ICS Ltd (£0,20 per unit profit) > Prime Telecom (UK) Ltd (£0.20 per unit profit) > A-Z (Broker) (£1.06 per unit profit) > FAF International SRL. Goods 2000 Sony Ericsson W899i.
- The deals with **Vision** took place at the end of June and in July outside the periods of the Tarlo's transactions.

50. Many of the traders were both suppliers to and purchasers from A-Z. We do not propose to go through all the acquisition deals but to examine the principal traders.

- 1.05.06 and 12.05.06 A-Z purchased 6 consignments of Nokia 8800 phones from **Powertech Computer Components** in Portugal at over £350 per phone. It had subsequently on 29.05.06 sold the same make of phone to Powertech at £232 per phone. The Portuguese Authorities confirmed that that company had no storage facilities and

only one employee. Mr Samad of A-Z visited Powertech in June some time after A-Z had been trading with Powertech

- Period 05.06: A-Z purchased phones from **Nano Infinity** in France. The French Authorities advised that the company had been registered for VAT on 5 September 2005 but had no employees no bank account in France and used an accommodation address. Only one VAT return had ever been made and that was for February 2006 and it had been blank. A-Z had made a site visit to Nano Infinity again in June
- Period 05/06: A-Z purchased camcorders, cameras and multimedia players from **Modula.** Modula had been incorporated on 31 May 1996 and registered for VATon 1 July 1996, On 15 June 2006 the company was de-registered due to insolvency.
- Period 05/06 A-Z purchased mobile phones and computer chips from **FAF International** in Italy. A-Z also sold mobile phones to FAF International during the Same period. FAF's registered office was at their lawyers. The Italian Authorities considered the company to be fictitious. Neither goods nor money passed through Italy. A-Z visited the site on 19 May 2006.
- Period 05/06: A-Z purchased mobile phones from **Eurotronics International APS** in Denmark. It also supplied Eurotonics with mobile phones. The Danish Authorities advised that the company was registered for VAT on 31 January 2006 and was de-registered on 12 February 2007. The company was suspected of carousel fraud and had no known bank accounts. No site visit was made and the utility bill, provided as evidence of the company's existence, was from London Energy at an address in London
- Period 05/06: A-Z purchased a variety of mobile phones from **Kom Team SARL** in France. The company was incorporated on 9 November 2005 In the period 1 January 2006 to 30 June 2006 Kom Team, which operated out of an accommodation address, had hired no operational nor storage facilities. It also had no staff. A site visit was made in June 2006 but the visit questionnaire is dated 15 November 2006

As a result of his enquires Mr Booth considered that the transaction undertaken by A-Z between 1 March 2006 to 31 May 2006 did not occur under normal commercial conditions but were part of an overall contra trading scheme designed to disguise actual tax loss transactions, including Tarlo Worldwide Ltd, in an attempt to defraud the public. We are satisfied that that is the case.

51. Mrs Wheatcroft, a Higher Officer based at Blackburn Audit Centre, gave evidence to the Tribunal. She had been allocated to investigate A-Z from 8 August 2008 as Mr Booth had returned to local compliance work. We have read through her statement and note that it updates the position with regard to A-Z subsequent to the periods which are the subject of this appeal. We have, therefore, only considered matters which have a bearing on this appeal. She has confirmed that A-Z went into Creditors' voluntary liquidation on 14 November 2006. Kay Johnson Gee & Co were the insolvency practitioners and they requested de-registration, which occurred on 2 July 2008. The liquidators confirmed that the estimated total deficiency was £33,702,865 of which £582,482.92 represented the VAT due to HMRC. The liquidators confirmed to HMRC that the Secretary of State for Business, Enterprise and Regulatory Reform, accepted from Mr Ahmed an undertaking in accordance with section 1A of the

Company Directors Disqualification Act 1986 that Mr Ahmed would not be a director nor be involved in the promotion, formation or management of a company for a period of 12 years. The undertaking came into force on 23 October 2009. We accept that the giving of the undertaking meant that the matter was not ventilated in the Court. However, it is clear from Mrs Wheatcroft's evidence that his disqualification arose from his involvement between July 2006 and October 2006 in MTIC fraud. She has checked the amount of the tax losses arising as a result of A-Z dealings with the defaulters and amended them to the correct figure. The amounts outstanding are still considerable and in some cases greater than the figure suggested by Mr Booth. She has also received comments from various European authorities, when enquiries were made regarding the status of individual traders. For example, the German authorities have reported that Hennar Sa, one of A-Z's customers in its broker deals, has produced no accounting documentation. The Italian authorities in respect of FAF reported that all the transactions carried out by FAF concerned intra community sales or purchases, for the year 2005 that company filed a return reporting total revenues of 215,005,606 Euros and costs 214,628,130 Euros. FAF does not possess any office, commercial premises, warehouse or other facility and has no employees. The report from the French Tax authorities revealed that Kiara Trading International SARL had never carried out any commercial activity. It appears to have been an invoicing agency playing the part of a 'conduit company' in a vast network of VAT fraud of the 'carousel' type.

52. The inspection reports that A-Z had obtained from the freight forwarders, MSG Freight Ltd and On Time Logistics, were all very basic and did not provide any details that the goods had been properly inspected. The site visit questionnaires completed by A-Z have a list of checks that A-Z was to complete, one of which requested a trade reference. However, in spite of A-Z requesting this from its suppliers, trade references were not supplied for any of the suppliers, nor were any independent third parties asked to make such checks on behalf of A-Z, A-Z has produced no evidence of any due diligence enquiries in respect of BST Best in Sweden Trading and Phone Connected SARL. The value of the goods in the dealings with these two companies between March and August 2006 amounted to £8 million and £5.2 million pounds respectively. Mrs Wheatcroft also gave evidence that A-Z had failed to submit its VAT returns for the periods 08/02, 11/02, 02/03, 05/03, 08/03 and 11/03 until 23 August 2005. As a result the return for the period 08/02 was nearly 3 years late. The returns had not apparently been submitted because of the lack of import certificates. The accountant, John V Barton, had indicated in a letter dated 5 February 2004 that the returns would be submitted shortly. In fact they were not submitted until 18 months later. The returns for the periods 05/06 and 08/06 were also submitted about a month late. HMRC, in a letter dated 12 January 2006, had required A-Z to keep full records as required in the letter. Officers from HMRC have had difficulty in obtaining the full records for the periods 05/06 and 08/06 and these still remain incomplete. As a result of her enquiries, Mrs Wheatcroft agreed with Mr Booth that the A-Z transactions did not occur under normal commercial conditions, but were part of an overall contra trading scheme designed to disguise actual tax loss transactions in an attempt to defraud the Public.

53. Kirsty Jolliffe, an officer of HMRC and a member of the MTIC Team operating from Bristol, provided a witness statement, but as she had been on extended sick leave Peter Alan Cameron-Watson had been asked to take over the investigation of Tarlo. He had been involved with the case originally from July 2006, Officer Joliffe had taken the matter over from August 2006. In the absence of the Appellant the Tribunal had withdrawn to read both witness statements and to consider the exhibits. From Officer Jolliffe's witness statement we note that

Tarlo was incorporated on 13 July 2005 and registered for VAT on 31 August 2005. In its VAT application Tarlo stated that the nature of the business would be "Electrical goods (architectural lighting for commercial use)". This remit changed in January 2006 to "trade in wholesale general electrical and other wholesale products and goods." Tarlo indicated that it intended to provide general IT products and services. Mr Hayat and Mr Ashaq Hussain (Mr Hussain) were the directors and the two shareholders of the company. We were surprised to note from the Fame company report (bundle 5 page 416) that Mr Hayat indentified his position as "Attorney at law". This is not expanded on but is at odds with his refusal to attend the Tribunal because he felt that he would be unable to give an adequate account of Tarlo's transactions. Tarlo's principal place of business was changed to Suite A, The Rafters, Fountain Mill, 503 Bradford Road, Batley. On 14 September 2006 Officer Jolliffe had attended with Officer Cameron-Watson at the business premises which consisted of several rooms on the top of a converted building and were rented by the company. Mr Hayat advised that the only asset that Tarlo had was the computer equipment, which he valued at £4000. The company employed 4 staff. On 5 August 2005 Tarlo had requested that the company should be allowed to use monthly returns as it had a contract with A-Lux Lighting and it would be exporting all the time. The request was granted.

54. Mr Hayat had formerly been a director of Fitzroy Leeds Ltd (Fitzroy) from 21 January 2004 to 30 August 2005, although he had remained as company secretary until November 2005. Fitzroy was at that time involved in the wholesale of mobile phones. During this period Fitzroy had been visited by officers from HMRC, and Mr Hayat had been present, to be advised of the problems arising from MTIC fraud; the need to carry out Redhill enquires for VAT details, and of the joint and several liability. Mr Hayat has confirmed in his first witness statement that he had previous experience in the mobile phone market by the time he formed Tarlo. Fitzroy also banked with the FCIB and HSBC.

55. Tarlo's turnover in October 2005 was £2000 and in the following periods 11/05, 12/05, and 01/06 was nil. The turnover increased dramatically in the period 02/06 to £910,750. Tarlo had been involved in one mobile phone transaction in that period and in a further two transactions in the period 03/06 amounting to £647,350. Tarlo received two repayments from HMRC amounting to £150,812.20 and £107,099.66 respectively. Neither return has been the subject of an extended verification. HMRC became concerned when Tarlo requested repayments for the periods 04/06, 05/06 and 06/06, which are the subject of this appeal For those periods Tarlo is seeking a repayment of £1,523,459.88. We set out below the details of the transactions which Tarlo undertook with A-Z and the subsequent sales to Elandour, Kiara and Evolution in Europe. The table reveals the purchase price and mark up for each deal, together with date that the goods were released to the purchasers and the date of relevant payments. The table below sets out the sequential deals between A-Z to Tarlo and then Tarlo to its customers

56. Deals Table

Note. 1. The margins are consistent at 3 % or 6% approximately.
2. The price of the Nokia 8800 for deals 106 and 108 are 10p different although purchased on the same day.
3. The goods are delivered overseas before payment, although held to order.
4. Payment is made several weeks after each transaction and out of sequence.

5. Tarlo borrowed slightly less than the total VAT presumably because it used its receipts from the sales to Kiara, Elandour and Evolution, which included Tarlos profit to fund the balance of the VAT and appears to be content to await the VAT repayment to achieve its profit and recover its expenditure
6. When Tarlo is paid by its customers Tarlo pays the full amount of the VAT to A-Z having borrowed the balance of the VAT from Global and Liban. At the time of the hearing Tarlo still owed Global £535,000 plus interest and owed Liban £466,950 plus interest with no evidence of demand for a repayment having been made by either creditor. It also owed Pearl Clothing, Mr Hussain and Electronics an overall total of £1,155,650 as below.
7. As will be seen from the FCIB evidence A-Z has retained approximately £1.4 million out of the payments from Tarlo, which appears to be the VAT introduced through the loans and the money introduced by Tarlo. There is no evidence that A-Z paid any of that VAT to HMRC but the receipt of the money would indicate why neither GFS not **Liban** have taken any action against Tarlo for the loans

VAT period	**04/06**						
Supplier	**Invoices**	**Price per unit £**	**Invoice £**	**Vat £**	**Total £**	**Difference being net VAT paid by Tarlo. £**	**Phone**
A-Z to Tarlo	3200 phones	301	963,200	168,560	1,131,760		Sony **Ericson** W900i
Tarlo to Kiara	**104**	310 (2.99%)	992,000	Nil	992,000		
Invoice	26/4/06	Released	8/5/06	FCIB	992,000	139,760	
				Paid 8/5/06			
A-Z to Tarlo	1550 phones	255	395,250	69,168.75	464,418.75		Nokia N90 CES
Tarlo to Elandour	**105**	262.75 (3%)	407,262.50	Nil	407,262.50 (1)		
Invoice	28/4/06	Released	8/5/06				
A-Z to Tarlo	1300 phones	385	500,500	87,587.50	588,807.50		Nokia 8800 CES
Tarlo to Elandour	**106**	396.50(2.98%)	515,450	Nil	515,450 (2)		
Invoice	28/4/06	Released	8/5/06	FCIB a/c	(1+2) 922,712.50	129,793.50	
				Paid8/5/06			
A-Z to Tarlo	2500 phones	193	482,500	84,437.50	566,937.50		Nokia 6280 CES
Tarlo to Elandour	**107**	198.80 (3%)	497,000	Nil	497,000 (1)		
Invoice	28/4/06	Released	8/5/06				
A-Z to Tarlo	1100 phones	385	423,500	74,112.50	497,612.50		Nokia 8800 CES
Tarlo to Elandour	**108**	396.60 (3%)	436,260	Nil	436,260 (2)		
Invoice	28/4/06	Released	8/5/06	FCIB a/c	(1+2)	131290	

					933,260		
				Paid8/5/06			
Supplier	**Invoices**	**Price per unit £**	**Invoice £**	**Vat £**	**Total £**	**Difference being net VAT paid by Tarlo. £**	**Phone**
A-Z to Tarlo	3830 phones	297	1,137,510	199,064.25	1,336,574.25		Nokia 9300i
Tarlo to Elandour	**109**	315 (6%)	1,206,450	Nil	1,206,450		
Invoice	28/4/06	Released	8/5/06	FCIB a/c	1,206,450	130,124.25	
				Paid8/5/06		VAT due	530,967
Vat period	**05/06**						
A-Z to Tarlo	1900 phones	182	345,800	60,515	406,315		Nokia 6280 Sim Free EU Sp
Tarlo to Kiara	**110**	193 (6%)	366,700	Nil	366,700		
Invoice	26/5/06	Released	23/6/06	FCIB	366,700	39,615	
			Paid23/6/6				
A-Z to Tarlo	1500 phones	168	252,000	44,100	265,100		Nokia 7370 Sim free EU sp
Tarlo to Elandour	**111**	178 (5.9%)	267,000	Nil	267,000 (1)		
Invoice	30/5/06	Released	23/6/06				
A-Z to Tarlo	2100 phones	270	567,000	99,225	666,225		Nokia 9300i Sim Free Eu sp
Tarlo to Elandour	**112**	286.25 (6%)	601,125	Nil	601,125		
Invoice	30/5/06	Released	23/6/06	FCIB	601,125	65,100	
			Paid23/6/6				
A-Z to Tarlo	1550 phones	269.50	417,725	73,101.88	490,826.88		Nokia 9300i Sim Free EU sp
Tarlo to Elandour	**113**	285.75 (6%)	442,912.50	Nil	442,912.50 (2)		
Invoice	30/5/06	Released	23/6/06	FCIB	(1+2) 709,912.50	46,013.50	
			Paid23/6/6				
A-Z to Tarlo	6600 phones	340	2,244,000	392,700	2,636,700		Nokia 8800 sim Free EU Spec
Tarlo to Evolution	**114**	350.20 (3%)	2,311,320	Nil	2,311,320		
Invoice	31/5/06	Released	12/7/06	FCIB	2,311,320	325,380	
			Paid12/7/06				
VAT Period 06/06							
A-Z to Tarlo	3000 phones	325.50	976,500	170,887.50	1,147,387.50		Nokia N91 Sim free EU spec

Supplier	Invoices	Price per unit £	Invoice £	Vat £	Total £	Difference being net VAT paid by Tarlo. £	Phone
Tarlo to Evolution	**115**	335.25(2.99%)	1,005,750	Nil	1,005,750		
	30/5/06	Released	Not known	ICB	1,005,770	141,617.50	
		Paid	16/10/6				
		Total purchases	8,705,485	Sales	9,049,230	1,148,693.75	
			Tarlo's	Profit	343,745		
				Loan o/s	1,155,650		
				Freight charges	25,018		
		's		Total	1,524,413		
			Anticipated	Repayment	1,523,459		

57. Tarlo purchased the mobile phones from A-Z for all the deals. Tarlo were aware, through Mr Hayat, of the prevalence of MTIC fraud and as a result Mr Hayat alleged that he carried out appropriate commercial checks. Tarlo required Mr Ahmed of A-Z to complete a Supplier Declaration. In that declaration A-Z confirmed that VAT had been paid by them with regard to the transactions. That was untrue. Mr Hayat in his witness statement states;

> "A-Z assured me that they were big importers and all of the stock supplied to me would be imported by them".

Mr Hayat would be aware that no VAT had been paid on the goods as they had been imported. Tarlo traded again in mobile phones during the period 10/06 having not traded at all whilst awaiting its repayment. That transaction was with Blue Star and HMRC refused a repayment. Tarlo appealed to the Tribunal on 28 February 2008 but withdrew the appeal on 26 March 2008 because the additional costs of appealing the second decision were more than Tarlo could afford. Tarlo expects that if it wins the present appeal then repayment will be allowed in relation to the period 10/06.

Due diligence

58. **A-Z.** Tarlo made enquiries of Europa, who confirmed the VAT number for A-Z on 25 April 2006, 26 May 2006, 30 June 2006. It also contacted Customs and Excise National Advice Service on 2 June 2006, who also confirmed A-Z's VAT number. Tarlo also contacted Redhill by fax on 26 May 2006 for confirmation that the VAT numbers for A-Z, Advance Solutions (the freight forwarders), Elandour Developpment SARL (Elandour) and Kiara Trading International SARL (Kiara) were correct. There is a response in the evidence dated 1 June 2006, which confirms the number for Evolution SARL (Evolution), with a similar response on 3 July in relation to A-Z and Evolution. Both these replies were after the dates of the deals. There had been no Redhill checks at the time of the first transaction on 25 April 2006. There has also been confirmation from Europa as to the validation of the Evolution and Kiara numbers in May and June of 2006. Mr Ahmed, on behalf of A-Z completed and returned Tarlo's declaration as to the payment of VAT (referred to above) on 24 April 2006, Tarlo has provided details of its due diligence documentation for A-Z as follows:-

- Certificate of Registration for VAT purposes dated 1 November 2001 which reveals that the company retailed mobile phones.
- Copy Certificate of Incorporation on change of name dated 19 December 2002
- A Credit safe report dated 5 May 2006 with details of the profit and loss accounts to 09/02, 09/03 and 09/04. The assets in 04 appear to be £6,830 and the report recommends that any credit should be given with caution.
- A due diligence report by The Due Diligence Exchange Limited dated 13 July 2006 was supplied after all the transactions**,** which are the subject of this appeal**,** had been completed. The report indicates that no Redhill enquires had been raised as it took too long to receive an answer. The report revealed that A-Z's turnover to September 2006 was £600,000,000. This in spite of the fact that an internet Companies House report, also provided but undated, revealed that the return for the year to 25 September 2005 stated that A-Z had been exempt from filing financial details because of its small turnover. The company had issued 100 shares of £1 each. Trade references were given and Mr Hayat says that they were taken up by a member of staff but there is no evidence thereof.
- An undated search at 192 .com confirming A-Z's address and the adjoining businesses in Meadow Street. The street appears to consist of a series of small businesses.
- Details of a visit by Martin Sutton on 11 July 2006 to A-Z's business premises when he saw Mr Ahmed. Mr Hayat confirmed that he knew Mr Ahmed well and that he too had visited the premises.
- An undated letter of introduction from A-Z with an attached detail of is Bank accounts with the Royal Bank of Scotland and the FCIB
- An indistinct passport photograph and a BT Direct Debit invoice dated 22 January 2006 as evidence of A-Z's address, which surprisingly revealed an overdue account for £206.18. The company was ostensibly turning over £600,000,000 in this period which on any showing must have generated substantial telephone calls.
- Photographs of fairly run down offices and an indistinct photograph of, presumably, Mr Ahmed.
- Tarlo Worldwide terms and conditions. These are dated 11 July 2006 and no evidence has been provided that such terms and conditions were provided for the purposes of the transactions which are the subject of this appeal.
- There is a further financial form (undated) from The Due Diligence Exchange Limited confirming that A-Z leased their premises and that its estimated turnover was £900,000,000 and that the company is funded by its own capital,

It appears that many of these checks were made after the transactions with A-Z had started. Checks at Europa merely confirm that there is a VAT number only Redhill can confirm that the number relates to a particular company.

59. **Elandour.** The checks which Tarlo carried out against Elandour appear minimal. Mr Hayat said that The Due Diligence Exchange Limited were unable to assist with companies abroad and that he had not taken up any trade references. Officer Joilliff received the following from Mr Hayat in September 2006 **:-**

- The back office manager confirmed in a standard letter "to whom it may concern" that the company was registered for and compliant with VAT. The letter is undated.

- An undated letter of introduction attaching legal details.
    - Undated copy of a document in French from Greffe du tribunal de Commerce de Nanterre which gives details of the company.
    - A tax return (?) again in French
    - An indistinct passport photograph.
    - Detail of the company's activities and address at Paris-la-Defense (92044)- la Grande Arche and an invoice showing the address to be 80 Avenue Jean Baptiste Clement. 92100 Boulogne, Billancourt
- Mr Hayat told officer Jolliffe that he had met with the senior manager and back office manager at their premises in France. No evidence has been produced of any of Mr Hayat's visits abroad. We would have expected that he could have provided details of the journeys together with confirmation of the tickets, which had been purchased for the trips.

60. **Evolution.** During the meeting on 14 September 2006 Mr Hayat confirmed to Officer Jolliffe that prior to dealing with Evolution he was in receipt of the businesses Companies House Certificate, VAT certificate, a passport photograph and letter of introduction, again in French and untranslated. No trade references had been taken up nor the company's creditworthiness checked as The Due Diligence Exchange Limited did not carry out enquiries abroad. Checks made by Officer Jolliffe against Alfred Fritz Warner the director of Evolution revealed that he was involved with 12 other companies and that he was a British National living in Coventry. Furthermore, no checks of VAT number for Evolution have been made at Redhill, Europa or the National Advice Service in relation to the first deal. Tarlo affirmed it had made a verbal enquiry through the National Advice Service on the second deal.

61. **Kiara.** During the meeting on 14 September 2006, Mr Hayat confirmed to Officer Jolliffe that prior to dealing with Kiara he was in receipt of the businesses Companies House Certificate, VAT certificate, a passport photograph of Mr Ferry and letter of introduction, again in French and untranslated. No trade references had been taken up nor the company's creditworthiness checked as The Due Diligence Exchange Limited did not carry out enquiries abroad. Mr Hayat had arranged to meet Mr Ferry, but the meeting had been cancelled due to family matters. Furthermore, no checks have been made of Kiara's trading address and although a request appears to have been made on 26 May 2006 in relation to the VAT registered number though Redhill there is no evidence of any reply to that request. An in-house check was carried out by Officer Jolliffe but Redhill were unable to confirm the VAT details in relation to Kiara.

Freight Forwarders

62. **MSG Freight.** Tarlo has produced documents, which it says were provided before it started trading with MSG Freight. These consisted of a letter of introduction, terms and conditions of trade, new account application, a tariff sheet and headed paper. We note that on the new application form dated 25 April 2006 that Tarlo have indicated that they banked with HSBC although all the transactions have been carried out in the FCIB with whom Tarlo registered on 4 November 2005. MSC Freight also confirmed that, unless requested in writing, IMEI checks would not be carried out. Tarlo confirmed that it made no such request although it will be seen that some of the inspection reports indicate that such checks have been made. MSG freight indicated in a Fax on 5 October 2006 that incorrect reports had been printed identifying that IMEI searches had been carried out. It would appear that although MSG Freight indicated that they adhere to BIFA guidelines and regulations, it was not a member. BIFA is a regulatory organisation set up to ensure that its members provide the highest quality

of service. Officer Jolliffe suggests that it would have been prudent for Tarlo to have used a freight forwarder who was a member as it would have ensured that it was dealing with a reputable company. Tarlo took up no trade references in relation to MSG Freight.

63. **Advance Solutions.** The only document that Tarlo could produce was a letter of introduction which is dated 25 May 2006 the day before deal 110 was made (see deal Table) when Tarlo first used Advance Solutions. It is unclear how Tarlo would have had time to make appropriate enquiries with regard to Advance Solutions.

64. **1st Freight Ltd.** Tarlo has provided a letter of introduction, terms and conditions of trade, a tariff sheet, and a completed account application. The letter of introduction is unsigned and undated. The terms and conditions appear to relate to a contract for the sale of goods and appear to be inappropriate to the movement of freight. Tarlo cannot have read the documents otherwise it would have queried them. Tarlo made no enquiries as to whether any of the Freight Forwarders were members of BIFA. None were registered at the time of the deals, although 1st Freight indicated that they were about to renew their application.

65. As a result of subsequent enquiries made by Officer Jolliffe, it appears that all of the freight forwarders used by Tarlo have now ceased to trade and in two instances (MGS and 1st Freight Ltd) have gone into liquidation. The VAT registration for Advance Solutions was cancelled on 19 February 2009.

The Deals

66. In his witness statements Mr Hayat indicated that Tarlo sourced its trading partners through its registration with International Phone Traders (IPT), other web sites and industry magazines. As a result contacts were made with Tarlo which were reviewed on a daily basis. Armed with this information Tarlo would contact suppliers to negotiate a deal. No details of any of these contacts or negotiations have been produced. We would have expected that a business that had achieved such large transactions in such a short period of time would have retained records of the traders, as would be expected in any normal commercial transactions. Mr Hayat accepts that he became aware of MTIC fraud as a result of a meeting with officers from HMRC in April 2005 but that he was not aware that it was anywhere near the scale that HMRC suggests and that no mention was ever made at the meetings of 'contra-trading'. He stated that he got to know Mr Ahmed well prior to starting to trade and it turned out that they had mutual friends in Pakistan. He does not say how he became acquainted with Mr Ahmed. He had, however, traded with companies other than A-Z prior to the deals, the subject of this appeal. He has expressed surprise that HMRC would have made the two earlier repayments if they had thought Tarlo was involved in MTIC fraud. The payments also suggested that HMRC were content with Tarlo's due diligence and the way in which it traded. HMRC advise that those payments were made without prejudice to their right to carry out an in depth verification at a later date. Tarlo was involved with 11 transactions 1 on 26 April 2006, 5 on 28 April 2006, 4 on 30 May 2006 and 1 on 31 May 2006. The deals are set out in the deal table and the following documentation has been produced by HMRC:-

- 104. The chain for this transaction was Nano Infinity > A-Z > Tarlo > Kiara. Mr Hayat says that he only knew of the sale to Tarlo from A-Z, although he has conceded that he knew that the phones had been imported. There is a stock offer to Ferry, the director at Kiara, dated 26 April 2006, which includes all the phones offered in the Stock Offer from A-Z sent to Tarlo on 25 April 2006 and related to the deals 104, 105, 106, 107, 108, and 109. The purchase order from Tarlo and the invoice from A-Z for 3200 Sony Ericson W900i are dated 25 April 2006. The invoice and purchase order between Tarlo to Kiara for the same phones are dated 26 April 2006. Mr Hayat has stated that 'it was

only if both ends of the deal were potentially in place did Tarlo commit to a Purchase from A-Z'. On this occasion Tarlo had committed itself to buy the phones before it had a purchaser. There are two allocation and release notes addressed from A-Z to MSG dated 25 April and 6 May respectively requiring MSG to allocate and release the phones to Tarlo on those dates. It is unclear why this should be the case as the one dated 25 April required the goods to be 'allocated and ship on hold' and the one dated 6 May to be 'allocated and release ship on hold'. We would have expected the release for 8 May 2006 to have been a release and no more. Tarlo's delivery instructions to MSG freight were dated 26 April 2006 with a requested delivery to MDL Sarl, Quaidypre, France for Kiara Trading. The CMR is in any event dated 5 May 2006 so that the goods were sent to France before payment had been made to either party. The delivery instructions state "Please note stock on hold until further written confirmation". That confirmation was given to MSG on 8 May 2006 when Tarlo was paid in full by Kiara and Tarlo paid A-Z in full. We are surprised that the request to release the goods to Kiara was not addressed to the freight forwarders in France. There has been no evidence produced as to whether MDL Sarl were notified by MSG. MSG were requested to inspect these goods, and those in the subsequent deals 105,106.107,108 and 109, amounting to 13,480 mobile phones, on 25 April 2006. The inspection was made on the same day and referred to an inspection of all the IMEI numbers. MSG subsequently advised that no IMEI inspection had been undertaken, see paragraph 62 above. We have not been told what inspection MSG had been asked to make, but the report indicates that there was a 'unit count and goods verification'. There is no ticket for the Eurotunnel.

- 105. The chain for this transaction was FAF International SARL > A-Z > Tarlo > Elandour. Again Tarlo's purchase order to A-Z is dated 25 April 2006 and invoiced to them on the same date. Elandour purchase order to Tarlo is dated 27 April 2006, 2 days later. The inspection report for Tarlo from MSG dated 25 April 2006 relates to the 1550 Nokia N90 phones and relates to the same request as at 104. Although the invoices are for separate phone types the stock delivery instructions dated 28 April 2006, with a requested delivery to MDL Sarl, Quaidypre, in France for Elandour, and the release notice dated 8 May 2006 addressed to MSG refer to all the phones in deals 105,106,107,108 and 109. Again the final release notice was not addressed to MDL Sarl. In fact all the final release notices are addressed to the freight forwarders in the United Kingdom, even though all the goods were by then in France. The CMR is for deals 105 and 106 and the goods were sent on 12 May 2006 as evidenced by the Eurotunnel Transport, for the 22.49 train, some 4 days after they had been paid for.
- 106. The chain for this transaction was the same as that for deal 105. This transaction followed the same sequence with Tarlo committed to buy from A-Z on 25 April 2006 and the purchase order from Elandour is dated 27 April 2006. Again there is an individual inspection report arising from the original request for all the deals from 105 to 109. The CMR is dated 12 May 2006 and relates to the phones in deals 105 and 106 and was checked on the Eurotunnel Transport on the same day at 22.49. Delivery was to MDL Sarl, Quaidypre, in France.
- 107 The chain for this transaction was the same as those for 105 and 106. This transaction followed the same sequence with Tarlo committed to buy from A-Z on 25 April 2006 and the purchaser order from Elandour is dated 27 April 2006. Again, there is an individual inspection report arising from the original request for all the deals from

105 to 109. The CMR is dated 12 May 2006 and relates to the phones in deals 107 and 108, but was checked on to the Eurotunnel Transport at 03.40 on 13 May 2006. Delivery was to MDL Sarl, Quaidypre, in France.

- 108. The chain for this transaction was as 105 to 107. This transaction followed the same sequence with Tarlo committed to buy from A-Z on 25 April 2006 and the purchase order from Elandour is dated 27 April 2006. Again there is an individual inspection report arising from the original request for all the deals from 105 to 109. The CMR is dated 12 May 2006 and was checked in at 03.40 on 13 May 2006. Delivery was to MDL Sarl, Quaidypre, in France.
- 109. The chain for this transaction was the same as 105 to 108 and follows the same pattern save that there is no Eurotunnel detail. Delivery was to MDL Sarl, Quaidypre, in France.
- 110. The chain for this transaction was Powertec Computer Components > A-Z > Tarlo > Kiara. The stock list offer to Elandour referred to for deals 111 to 113 below also listed the 1900 Nokia 6280 phones which were purchased by Kiara but not by Elandour. Tarlo purchased the phones from A-Z by its purchase order and invoice both dated 26 May 2006. A request for inspection was made to Advance Solutions (the freight forwarder for these transactions) for all the goods for deals 110 to 113 on the same day -7050 phones. The inspection report was returned on the same day separately for the 1900 Nokia 6280 phones the subject of this consignment. Apparently all the goods had been inspected and re-packed. The report refers to 8 pallets at the top and 7 pallets at the bottom and is unsigned, but date stamped- the stamp being signed by Advance **S**olutions. The delivery instruction is dated 25 May 2006 and the Stock Release Note is dated 23 June 2006. The two documents, which appear to be similar, are entirely different in format being in part in capitals with spelling mistakes. The account for these phones from Advance's services is dated 5 May 2006, some 20 days before the goods were acquired by Tarlo. There are two CMRs dated 2 June 2006 each relating to 950 Nokia 6280 phones. The deliveries appear to have been made by separate vehicles and were boarded at the Eurotunnel on 5 June 2006 at 09.26 and 9.38 respectively. The goods were not paid for until 23 June 2006 and were delivered to Entrepots Surete, Fretham France.
- 111. The chain is the same as for deal 110 save that Tarlo sold to Elandour**.** An undated stock offer indentifying the sales in deals 110, 111, 112, and 113 was addressed to Elandour, presumably on 25 May 2006 as it came from a stock offer list provided by A-Z on that date. 1500 Nokia 7370 phones were purchased from A-Z by Tarlo on 26 May 2006 and the purchase order from Elandour is dated 30 May 2006, 4 days later. The A-Z stock offer list included other makes of phones. The inspection was carried out by Advance Solutions on 26 May 2006, as before, for deal 110 save that the number of pallets are the same. The delivery instructions were dated 30 May 2006 and the Eurotunnel ticket was dated 5 June 2006 at 9.31am. The stock release note was dated 23 June 2006. This time the formats appear to be the same but there is the same spelling mistake for **Soluitions** on the Stock Release Note. The goods were paid for **on the** 23 June 2006 although the goods had been delivered to Entrepots Surete,Fretham France on behalf of Elandour at the beginning of June.
- 112. The chain is the same as that for deals 105 to 108. Tarlo purchased 2100 Nokia 9300i phones from A-Z on 26 May 2006 and the purchase note from Elandour is dated 30 May 2006. The inspection request was, as before for deals 110 to 113, but was

separately reported for this transaction on 26 May 2006. The report reveals 9 pallets at the top and 7 at the bottom. The delivery instructions and the stock release were dated 30 May 2006 and 23 June 2006 and the invoice for the reports was dated 5 May 2006, which covered the four consignments. The consignment appears to have been split again between two CMRs dated 2 June 2006 for 1100 and 1000 Nokia 9300i phones delivered on separate vehicles to Eurotunnel at 9.27 and 9.42 respectively. The phones were paid for on 23 June 2006 and had been delivered to Entrepots Surete, Fretham, France on behalf of Elandour

- 113. The chain was the same as for deals 110 and 111 for 1550 Nokia 9300i phones and followed the same pattern. The consignment was delivered to Eurotunnel on 5 June 2006 at 11.40 and on to Entrepots Surete, Fretham, France. They were released by a release note addressed to Advance Solutions when Tarlo was paid on 23 June 2006
- 114. The chain for this transaction was Kom Team SARL > A-Z > Tarlo > Evolution. There is a Stock Offer dated 30 May 2006 offering the phones to Evolution. Tarlo purchased 6600 Nokia 8800 phones from A-Z on 30 May 2006 and sold them to Evolution on 31 May 2006. Tarlo enquired of Redhill on 31 May 2006 as to Evolution's and A-Z's VAT number. There is no response in the file. 1st Freight Limited inspected the phones for Tarlo at their request on 30 May 2006 and reported on 31 May 2006 the day after Tarlo had agreed to buy the phones. The inspection was at level 3 and included a 10% IMEI inspection, which Mr Hayat has said that Tarlo never requested. Tarlo arranged for 1st Freight to deliver the goods to GR Distribution,St Folquin,France on behalf of Evolution on 31 May 2006. The CRM refers to 24 pallets for 6600 Nokia 8800 mobile telephones and is dated 31 May 2006. The Eurotunnel ticket is dated 1 June 2006 at 12.19. The stock was released by a release note addressed to 1st Freight on 12 July 2006, when the phones had been paid for, although the stock had been in the possession of G R Distribution since 1 June 2006 with no indication as to who would pay for the storage.
- 115. The chain was the same as for 114. Tarlo bought 3000 Nokia N91 from A-Z on 30 May 2006 and sold them to Evolution on the same day. Inspection of the goods was requested by Tarlo on the same day and the report was provided on the same day. The report indicated that a 10% IMEI inspections had been made when in fact that inspection had not been carried out, which was acknowledged by 1st Freight Limited when it faxed Tarlo on 18 September 2006 to advise that no IMEI checks had been made. The phones were released to Evolution on 30 June 2006. The CMR is dated 30 June 2006 and the phones were delivered to Eurotunnel on 5 July 2006 at 12.49. The phones were paid for on 16 October 2006.

Officer Jolliffe suggests that the location of the delivery depots should have alerted Tarlo to the possibility that the goods might be sold on again as they had not been delivered directly to their customers' premises. There was no need to release the goods to a freight forwarder in France before payment when the goods could presumably have been left with the United Kingdom Freight Forwarders until they were paid for, when they could have been delivered to the customers direct. No evidence has been provided as to whether delivery was ever made to the customers. It appears that all three freight forwarders in France were 35 miles from the Eurotunnel.

67. Tarlo has produced several Stock Enquiry forms addressed to its Suppliers. One dated 25 April 2006 indicates that the company is looking to purchase Nokia, Sony Ericson and Samsung phones. This is in the form of a Faxed document, but no Fax details as to the date and

the time it was sent appears on the form. Officer Jolliffe observed that many of the deals had been completed on the same day and others within a very short time scale. It was hard to see how all the parties involved in the various chains could have had the time to contact each other, agree terms, arrange for the release of the goods, make payment, and negotiate the ancillary contracts such as inspection and insurance. Throughout the chains the transactions are concluded on a back to back basis. Each member of the chain held precisely the quantity of stock required. Tarlo was never left with any stock and no member in the chain appears to have made a loss. Tarlo in most of the deals committed itself to purchase the goods from A-Z before it had secured a purchaser. We were told that Tarlo could not afford to obtain insurance cover for the goods and that it relied on the insurance it believed the freight forwarders maintained. It does not appear to have made any enquiry as to what the cover might be. The documentation provided by MSG does not mention insurance at all. Advance Solutions advise that customers should make their own arrangements. 1St Freight Ltd terms and conditions appear to relate to the buying and selling of goods. We were told that the company did not hold insurance for the goods or when they were in transit.

Loans and FCIB account

68. Tarlo paid VAT on all its purchases from A-Z. The only way it could achieve that was by providing some of the finance itself, borrowing the VAT and utilising the money provided by its customers on the sale of the phones. It does not appear to have had any capital itself. Mr Hayat advised that Tarlo's only asset was its computer, which he valued at £4000. Mr Hayat had interests in another company KH Electronics, which lent Tarlo £46,250 on 13 April 2006. Pearl Clothing Ltd lent Tarlo £10,000, £10,000 and £5000 on 26, 27 and 28 April 2006 making a total for of the company loans of £71,250. Tarlo also received a repayment from HMRC of £150,812.20 on 18 April 2005. All the funds were paid into Tarlo's HSBC account. On the 8 May 2006 Tarlo had to pay £1,131.760 to A-Z, which it was able to do because it received £992,000 from Kiara on that day and paid £140,000 into its FCIB account on 4 May 2006. It will be noted from the deal table for deal 104 that Tarlo had to find £139,760 to complete the deal. This was because it had sold the phones to Kiara for £992,000 having bought them from A-Z for £963,200 a difference of £28,800 which makes up the VAT liability of £168,560.

69. Tarlo entered into four commercial loans to cover the balance of the funds it needed to pay the VAT:

- Tarlo had borrowed £100,000 from Mr Lukman Patel of Discount Mobiles Ltd on 20 February 2006. That sum was paid into Tarlo's FCIB account on 22 February 2006. Interest was charged at 48% per annum and no security was provided. Repayment could only be made in a single amount unless Discount Mobiles Ltd agreed otherwise. £85,000 was repaid on 23 June 2006 the balance of £25,000 and interest had not been repaid at the time of the hearing.
- Tarlo entered into a second agreement to borrow £400,000 in sterling from Global Financial Services Ltd (Global) on 5 April 2006 3 weeks before the deals which are the subject of this appeal. No collateral or security was provided. The loan was solely for business or commercial related purposes. Global operates from Hong Kong and the applicable law was the law in Hong Kong. The loan was to be paid in 90 days and no interest was charged, except where repayments were not made on the due date, but a finance charge of £28,000 was levied.

- £530,000 was paid into Tarlo's FCIB account on 8 May 2006 from Global presumably to cover the VAT due for deals 104,105,106, 107 108 and 109 amounting to £530,967 (see deal table end column deal 109) although the loan was only for £400,000. Whoever dealt with the payments had not taken into account earlier VAT repayments which had been received form HMRC. As a result Tarlo's FCIB account was £139315.70 in credit. £130,000 was immediately transferred back to Global through an 'Intra Account Transfer' leaving the correct amount of the loan of £400,000 still due to Global.
- The FCIB account details reveals that a payment of £922,712.50 was made from Elandour's account to Tarlo's account as payment for deals 105 and 106 at 7.00 pm on 8 May 2006. £252,506.20 and £800,000 were paid out of Tarlo's account to A-Z's account to cover the purchase of the phones from A-Z in the same deals. Those payments were made at 7.12 pm and 8.06 pm respectively on 8 May 2006. £992,000 was paid in from Kiara's account for deal 104 at 8.57 pm and Tarlo paid out £1,131.760 to A-Z at 9.03pm on the same day. When that payment had been made there was a balance of £139,315 70 on Tarlo's account, which appears to have given rise to the repayment of £130,000 back to Global. The only explanation for all the payments, and the repayment to Global, must be that Global or some other third party had authority to operate the account for all the participants. We enlarge on that when considering the FCIB account in detail below. It is inconceivable that Mr Hayat was at his computer on 8 May 2006 from 7.00 pm to 9.03 pm just to make 3 payments out of sequence. On 23 June 2006 Tarlo repaid £170,000 as a part repayment of the loan of £400,000 to Global leaving a balance of £345,000.

- Tarlo borrowed £114,000 on 5 May 2006 from Global which, as will be seen below from the FCIB details, was the principal trader in the chain and appears to have been the principal financier of the transactions. The loan agreement of that date refers to 'collateral' but none was provided. The loan was repayable within 90 days. There was no interest payable but a finance charge of £7980 was levied. In spite of the loan being for £114,000, £115,000 was credited to Tarlo's FCIB account on 6 June 2006. Significantly, Tarlo appears to have had no funds out of which to pay A-Z for the phones and the VAT at the time it agreed to buy the phones from A-Z.

- Tarlo had been unable to repay Global within the 90 days and Global , having initially demanded payment in full in a letter dated 18 August 2006, ultimately agreed, in a letter dated 13 September 2006, to extend the loan on the following basis;
    - £515,000 loan amount
    - 35,980 finance charge for 90 days
    - 51,500 surcharge for additional 90 days (equivalent to 10%)

      £602,480

On 10 November 2006, Global confirmed that both loans would be combined and there would be a financial charge of 8.25% per annum commencing on 1 December 2006. No repayment has been made by the time of the appeal and the financial charge will amount to an additional

£248,523 by 1 December 2011. It is inconceivable that a funder would enter into a transaction of this nature, without security and knowing that the borrower had no net worth, unless the funder believed that a repayment would be made to clear the debt. Mr Hayat also knew that the only way Tarlo could repay the loan within 90 days would be within the VAT cycle for repayment of its VAT, as had been the case with the earlier two repayments. He was not available at the Tribunal to explain what Tarlo would do if a repayment was not forthcoming. We can only assume that he believed that the repayment would be made and that there was no risk. No honest businessman in Mr Hayat's position could expect to borrow in excess of £1,000,000 with no assets and no security,

70. Tarlo also borrowed £325,300 on 12 July 2006 from Liban Trust Communication (Liban) based in the Lebanon. The borrowing was to increase working capital and was repayable on 3 months notice form either party. The agreement was deemed to have been made in the Lebanon, whose law would govern the contract. The loan was paid by Intra Account Transfer on 12 July by 3 payments £200,000, £67,300 and £58,000 respectively. A monthly payment of £2,497.50 was required to be made. A further loan of £145,000 was made by Liban on 16 October 2006 on the same basis, the second loan required repayments of £2000. No security has been provided for either loan. Tarlo have confirmed that £466,950 is still outstanding to Liban.

71. Tarlo also advised that they had carried out no commercial checks with regard to any of their lenders. It also appears that no documentation was provided to any of the funders which would have been sufficient for those funders to be aware of Tarlo's credibility.

72. Patricia Morgan-Davies, an officer working for the Bristol MTIC team, who, from July 2010, took responsibility for analysing the FCIB bank statements and extracting the relevant detail for the HMRC investigation of Tarlo's account. Since the FCIB was closed down by the Dutch authorities, HMRC have had access to the bank's servers. The data basis has details of the applications to open an account and the Bankmaster Plus data identifies all the debits and credits within the accounts and their timings. Each customer had its own designated account number. The first two digits indicated the currency. In Tarlo's case, and its related chains, the currency was sterling. We understand that sterling was used because HMRC's repayments were in sterling. The next 3 digits indentified the type of account. In this appeal number 801 was identified, which was an 'Intra account' .The last 6 digits were the customer's reference. Within the narrative of each entry is a detail of where the receipts came from and where the payments went to. The date and time of all the payments is given.

73. Officer Morgan-Davies provided a detail of when all the accounts in the chains were opened as under:-

- Global Financial Services Management Limited opened 3 April 2005.
- Discount Mobiles Limited opened 18 July 2005
- SNV Worldwide Ltd opened 22 July 2005
- **A-Z opened 1 August 2005**
- **Liban Trust Communications opened 19 August 2005**
- **Evolution SARL opened 30 August 2005**
- Estocom Distributions OU opened 12 September 2005
- Nano Infinity SARL opened 21 September 2005
- Zorba SRO opened 21 September 2005
- Regent SP Z.O.O opened 21 September 2005
- **Tarlo opened 4 November 2005**
- Scorpion Electronics LDA opened 14 November 2005

- Powertec Computer Components LDA opened 14 November 2005
- **Elandour development SAL opened 22 November 2005**
- Avoset OU opened 23 November 2005
- **Kiara Trading International opened 28 November 2005**
- RCCI High tech Limited opened 11 January 2006
- Kom team SARL opened 13 January 2006

Tarlo's account was opened by Ashaq Hussain on 4 November 2005 and Mr Hayat, who was working for Fitzroy at the time, gave a reference to the FCIB on 28 October 2006. Mr Hayat became a director of Tarlo on 22 November 2005. Significantly Elandour and Kiara registered with the FCIB within two weeks of Tarlo. Officer Morgan-Davies provided details of the applications made by all the above traders to FCIB. We do not propose going through all of them but we note that Joakim Broberg, of Coburg Trading has provided references for Avoset OU, Elandour Developpement SARL, Nano Infinity SARL, Regent SP Z.O.O, Scorpian Electronics LDA, SIA Vunders, Zorba SRO and FAF International. Several of the applications, signed and stamped as received by the FCIB, are identical. Similarly, references provided by Tommi Neuovonen of FAF International are all in identical form, even though one was supposed to have been completed in Marbella and the other in Milan. We are satisfied that the opening of all the accounts was contrived.

74. Having interrogated all the accounts, Officer Morgan-Davies traced the flow of the monies through all the suppliers in the chain and she has provided exhibits showing those chains, to which we refer below. We have also been provided with a schematic of deals 104, 105 106, 109 and 110 which shows the timing of all the payments. The account numbers for all the accounts start with 04/ which indicates a sterling account and are followed by 801, which identifies the type of account-'an Intra Account'. There were 7 participants in all the chains and all the transactions, apart from 2, took place on the same days, namely 8 May 2006 and 23 June 2006. Deals 114 was paid on 12 July 2006 and deal 115 on 16 October 2006. It is unusual that the last two payments were made so late in view of the fact that the deals were made at the end of May 2006. It is also evident from the exhibits that GFS started the payments and had dealings with the **Liban** Trust as payments with Liban appear in GFS' FCIB account. The payments appear to have been taken out of sequence to the invoices of the goods. In some case GFS paid out a trader's account before it had received payment from its customers. As the payment dates bear no relationship to when the invoices were actually raised, and all the participants within a particular chain all pay on the same day, it would appear that there was a controlling factor orchestrating the payments rather than a commercial need to make a payment settlement. We also note that all the accounts appear to be in the same group namely 801, which would enable one individual to make payments on behalf of all participants by operating the intra bank account. All the FCIB accounts were frozen on 5 September 2006.

75. We do not propose to identify all the payments, but set out below the flow of funds for deals 104 and 110. We have also inserted the times of the payments from the schematic. All the payments start with GFS. As the patterns are the same for the deal at the start and the end of the deals and for deals 105,106,109 and 110 we have concluded that all the deals were on the same basis and contrived. The other chains follow a similar pattern:-

Deal 104 paid 8 May 2006

• GFS paid Estocom Distributers	£994,240	at 20.51.14 pm
• Estocom Distributers paid Kiara	£993,120	at 20.54.03 pm and retained £1120
• Kiara paid Tarlo	£992,000	at 20.57.02 pm and retained £1120
• Tarlo borrowed £400,000 from GFS, added its own money and paid A-Z	£1,131,760	at 21.03.08 pm and retained £28,800
• A-Z paid Nano Infinity SARL[1] Two payments	£293,400	at 21.18.27pm
	£665,000	at 21.51.04 pm and retained £1120
• Nano Infinity SARL paid Zorba	£665,000	at 21.03.07 pm
	£292,280	at 21.21.03 pm and retained £1120
• Zorba paid GFS	£665,000	at 21.06.04 pm
	£665,000	at 21.06.04 pm
	£291,160	at 21.24.02 pm and retained £1120
Totals	I hour	£34.400

All the transactions were carried out within one hour and GFS has only had to fund £34,400 in the FCIB account, as all the above entries were in and out payments. It would have needed to have a facility, either from the FCIB to fund the initial payment of £994,240 and the loan of £400,000 to Tarlo, or from a third party, which it would repay. It can be seen that because of the circular nature of the payments GFS, or the funders, has only had to fund £34,400. Significantly if Tarlo made the payments Mr Hayat would have needed to be at his computer terminal before 20.57.02 pm, Dutch Antilles time, or 12.57.02 am United Kingdom Time, to receive the payment from Kiara and to have remained at his terminal until 21.03.08 pm, or 01.03.08 am United Kingdom time, so that he could make the payment to A-Z. The Dutch Antilles time is 4 hours earlier than Greenwich Mean Time. We have not been told which time zone is recorded although we consider it reasonable to assume it is Dutch Antilles time. In those circumstances Mr Hayat would have had to have been at his computer 4 hours later, which we consider unlikely. In Mr Hayat's absence we have had no evidence that he used his computer at all. We think it is unlikely that he would deal with his commercial business transactions through the Bank at either 11 .00 pm or 2.00am. Even if we accept that in this case he did, it would be too much of a coincidence for him to be at his machine at the same time as all the other 7 when the payments are so disparate. We have also been told that the same computer server has been used in each individual transaction. That would have enabled GFS, or a third party, to use the Internet Banking System, which would enable it to move money between accounts electronically. We are satisfied that Mr Hayat must have given authority to GFS to make the payments on Tarlo's behalf.

76. Deal 110 paid

• GFS paid Estocom Distribution	£367,745 at	16.39.05 pm
• Estacom paid Kiara	£367,270 at	16,45.20 pm and retained £475
• Kiara paid Tarlo	£366,700 at	16.51.03 pm and retained £570
• Tarlo paid A-Z	£406,315 at	16,57.02 pm including £39,615 VAT

[1] A-Z also retained part of the VAT of £38,080 and a total of £1,400,817 from all the deals 104 to 114

- A-Z paid Powertec £342,000 at 22,33.07 pm and retained £64,315
- Powertec paid Avoset £341,430 at 22.42.02 pm and retained £570
- Avoset paid GFS £341,145 at 22.48.02 pm and retained £285

Totals: The first 4 transactions took place in 18 minutes. The last took place in3 15 minutes.

Estocom, Kiara,Powertec and Avoset each appear to have taken approximately .13% profit. Tarlo paid all the VAT to A-Z which kept £64,315 and only paid £342,000 to Powertec. GFS paid their supplier Estocom at 16.39 pm but did not apparently receive the funds until 22.48.02 pm – six hours later. At the end of the deal GFS had lost £26,600 being the difference between the money it introduced and the amount refunded to it. (£367,745 - £341,1454). GFS appears to have funded £305,502 in the deals 104 to 113 being the total of all the shortfalls for those deals. We do not believe that Mr Hayat or the other traders transferred the monies using their own computers. It is not conceivable that individuals in different countries, and time zones, could all have been sitting at their computers to transfer the funds in the 18 minutes for the first set and 15 in the second set. The times clearly demonstrate that the money transfers were made by a single person. It also appears that on many occasions the same server has been used to carry out the transactions.

77. We have not been supplied with the timings for all the transactions, but the timings for the following deals were:-

105 and 106, which occurred at the same time, started at 18.45.47 pm and finished at 20.51.18 pm - 2 hours and 6 minutes.
109, started at 18.45.45 pm and finished at 20.48.05pm – 2 hours and 3 minutes.
114, started at 16.03.08 pm and finished at 19.48.02 pm - 3 hours and 45 minutes.

The timings, in Dutch Antilles time, for Tarlo's payments from their customers to A-Z were as follows:

Deal	Paid in	Paid to A-Z	Time
104	20.57.02 pm	21.03.08 pm	6 mins
105/106	19.00.29 pm	19.12.14 pm	12
109	19.09,03 pm	19.12.11 pm	3
110	16.51.03 pm	16.57.02 pm	6
114	19.11.58 pm	19.53.27 pm	42

It appears that the same server was used for each chain, but that different servers may have been used for each set of deals, which would explain the overlap for the timings.

78. The deal table reveals as follows:

Tarlo's anticipated profit	£ 343,745
Loans to be repaid	£1,155,659
Freight charges	£ 25,018
Total	£1,524,413
Anticipated VAT repayment	£1,523,459

It is too much of a coincidence that the figures balance with an error of only £954. The financial model is similar to that shown in the example at paragraph 12 save that Tarlo has paid for all the VAT from the loans. If HMRC make the repayment, Tarlo will be able to repay the loans to GFS, the Liban Trust and its own borrowings, effectively transferring the majority of the VAT payment to the fraudsters. As a result GFS will receive into its FCIB account, if the repayment is made, £1,001,950 as a return on its investment of £305,502. HMRC have suggested that GFS is still £835,000 in deficit, being the loan which was in addition to the money that it had to introduce into the scheme. This is not correct as the VAT payments and Tarlo's contribution have been deducted by A-Z in the repayment cycle and presumably will be repaid to GFS or whoever funded the deals. The only funding that GFS had to provide was the profit for the parties, which has been totally funded by Tarlo when it introduced the £392,079 from the earlier repayments, itself, Pearl Clothing and Electronics.

Submissions by Mr Cannan for HMRC

78, Mr Cannan has provided a written submission and refers to his skeleton argument. Mr Andrews has, on behalf of Tarlo made further submissions arising out of the Upper Tribunal's decision in *HMRC V Brayfal* on the basis that there cannot be a finding of actual knowledge unless the pleaded case is that Tarlo is a co-conspirator. HMRC do not accept that there is any requirement to allege or prove a conspiracy between A-Z and Tarlo and *Brayfal* is not an authority for any such principle. Moses LJ in *Mobilx* requires that the Tribunal look at all the circumstances of the transactions. *Kittel* represented a development of the law because it enlarged the category of participants to those who themselves had no intention of committing fraud but who, by virtue of the fact that they knew or ought to have known that the transaction was connected with fraud, were to be treated as participators. As a result, whilst a trader in the position of Tarlo could be a conspirator in a fraud, there is no requirement to establish it as such in order to deny input credit. It is impossible to reconcile Tarlo's submission on conspiracy, with the principle that constructive knowledge ("should have known"), will suffice to deny input tax credit.

79. Mr Andrews, on behalf of Tarlo, also relies on what might be described as a "timing issue". Mr Andrews contends that "a contra-trader can start a clean supply chain with the intention of hiding a fraud, but until that fraud has been committed, the clean chain remains just that, 'clean' and unconnected with fraud.' Mr Cannan submits that there is no significance in the fact that the tax losses post date the transactions in issue and, in any event, in the present case the tax losses do not post date transaction in issue. In *Moblix* the Court of Appeal considered the matter and dealt with it as follows:-

> "The principle of legal certainty provides no warranty for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader's purchase. If the circumstances of that purchaser are such that a person knows or should know that his purchase **is or will be** connected with fraudulent evasion, it cannot matter a jot that the evasion precedes or follows that purchase. That trader's knowledge brings him within the category of participant. He is a participator whatever the stage at which the evasion occurs."

In the present case the fraud of the defaulter and the fraud of the contra-trader are all part of an orchestrated and pre-ordained fraudulent scheme. The timing of the various steps within that scheme is determined by the fraudsters. It is not part of the Commissioners case, nor is it a requirement of *Kittel* or *Mobilx* that Tarlo should be aware of the timing of the tax loss transactions. Indeed it is clear from *Mobilx, Megtian and Livewire* that it is not necessary to

demonstrate knowledge or means of knowledge of the detail of the fraud. It is knowledge of the connection with fraud that is required. In any event, in A-Z's periods 05/06 the so called dirty chains mostly took place in March and May 2006 with acquisition deals leading to brokers such as Tarlo taking place throughout the period.

80. The existence of Tax losses in all the broker transaction chains of A-Z is common ground. The Commissioners' case is that those tax losses arose as part of a fraudulent scheme. There is no serious challenge to the evidence of the losses by Tarlo in its skeleton argument. All the transactions, which have been traced to A-Z lead back to a tax loss. Trading in the period 05/06 involved broker deals in March and May 2006 to the value of some £131.5 million which would otherwise have resulted in a large repayment claim. Acquisition deals took place throughout the period leading to a net VAT payment of just £58,769.

81. Notwithstanding the large number of deals and enormous turnover generated, there were only a limited number of United Kingdom and European traders and defaulters. A-Z's due diligence was either non-existent or wholly inadequate with no commercial checks carried out by A-Z on Tarlo. It also produced very few CMRs. A-Z traded with Kiara but still found it necessary to trade with Tarlo, which in turn sold the goods to Kiara. Tarlo had the opportunity to call Mr Ahmed from A-Z as a witness. Tarlo has served a witness statement from him, which amounts to a bare denial, but does not respond to the allegations of fraud. A-Z went into creditors' liquidation on 14 November 2006.

82. It is not necessary for the Commissioners to identify the individual or individuals who are the controlling minds behind the fraud. Nor is it necessary to show a trail of funds passing to the controlling mind or others connected to the fraud. Tarlo made a significant gross profit of £343,745 from the deals. Even after the deductions of the loans with their penalty charges Tarlo would still make £217,755.(see Deal table paragraph 56).

83. Mr Cannan submitted that the evidence from the FCIB accounts shows a highly controlled, circular flow of money and goods in relation to each of the deals. GFS was central to the frauds being a participant in 10 of the 11 cash flows and a lender of funds to Tarlo. The only payments made between companies registered in the same European state are between United Kingdom companies. Hence no liability to VAT arises in any other member state. The payments are always in sterling, regardless of the country of origin of the individual traders. None of the traders appear to have been a manufacturer, authorised distributor or retailer of the goods involved. Tarlo's deals were connected with the fraud because Tarlo was either an exporter or broker in deals, which trace back to A-Z.

84. HMRC invited the tribunal to accept that Tarlo entered into the transactions knowing that they were connected with fraud. If the Tribunal does not accept that then it must find that Tarlo should have known of the connection. Mr Hayat has not attended the appeal and the Tribunal is entitled to, and should, draw adverse inferences from the failure (see *Wisniewski v Central Manchester Health Authority* referred to above). Mr Hayat steadfastly refused to attend the Tribunal, even when requested by the Tribunal to attend so that the proceedings could be explained to him. He indicated that he could not attend as '*he had other appointments arranged*'. It is clear that Mr Hayat knew that there was a very significant risk of fraud in the market place. In each deal (save theoretically deals 110 and 115) Tarlo was committed to purchasing the goods before its customer had committed to buy, and in some cases before the goods had even been offered to a potential purchaser. There were unexplained delays between the date shipping instructions were given and the date the goods were actually shipped. In deals 104 and 110 to 115 there were further delays between the date of arrival at various

warehouses in France and the date of release. In deal 115 the delay was from 5 July 2006 to 16 October 2006. There has been no explanation as to which company would be liable for the storage charges during the periods from delivery until the release of the goods. A-Z had released the goods to Tarlo which in turn had sent them to the freight forwarders for its customers without having paid A-Z, which it eventually did some time later.

85. Tarlo's transaction were wholly uncommercial:-

- Mr Hayat, with little experience, was able to make considerable and consistent profits risking very little of his own capital
- There is no evidence of any discussions with suppliers, customers or freight forwarders regarding price, date of payment, terms of credit, delivery date, method of shipping, costs of shipping, storage charges, place of delivery or the date or authority for inspection by the European customers.
- Tarlo was given credit until such time as its customers paid in spite of the market being 'volatile' as contended by Mr Hayat.
- Tarlo could ship the goods whenever it liked, without recourse by the owner of the goods, whoever that might have been.
- Tarlo's suppliers could have found the same customers as Tarlo ostensibly found through IPT or Phone Traders Websites, and thereby kept the profit for themselves.
- None of the parties including Tarlo and A-Z appeared to be concerned as to the specification of the goods or the type of charger.
- The inspection reports from MSG and 1st Freight were incorrect and there is no evidence as to when, if at all, the inspection reports were paid for.
- There appears to have been some ongoing relationship with Fitzroy – it cannot be a coincidence that GFS was a lender to both customers. Indeed the £115,000 lent to Tarlo on 6 June 2006 was the same amount as Fitzroy repaid to GFS on the same day.
- Tarlo obtained a monthly repayment basis when it said that it was going to export lighting to A-Lux Lighting Limited. A few weeks later Tarlo changed its trade classification to add '*other wholesale'*. Only £2000 of lighting products were sold in the period 10/05.
- Tarlo was content to carry out the transactions without any understanding as to whether the goods would be insured or not.

86. Mr Hayat would have wanted good evidence as to the integrity and reliability of its suppliers and customers. Tarlo's due diligence enquiries were far from acceptable:-

- Tarlo simply obtained the minimum amount of documentation which it thought would satisfy HMRC.
- Tarlo had little or no information on its suppliers and customers sufficient to make a commercial judgment as to whether it should deal with them or not. Much of the information obtained was provided after it had been trading with the supplier or customer.

The extent of a trader's commercial checks is of particular significance in considering actual knowledge. Where there is no real explanation for the failure to conduct appropriate checks, the Tribunal can infer that it is because the trader knew that the deals were not legitimate commercial deals.

87. The deal documentation shows no evidence of the usual 'to and fro' that one would expect in a genuine commercial transaction. In deals 105 to 109 payment was made on 8 May 2006 but the goods were not shipped until 12 and 13 May. In deals 114 and 115 time appears to have been of the essence but in deal 114 the goods were shipped on 31 May/1 June 2006 but not paid for nor released until 23 July 2006. In deal 115 the goods were shipped through Eurotunnel on 5 July 2006 but not paid for until 16 October 2006. Tarlo's invoices indicate that the goods remain their property until paid for even though A-Z owned the goods on a similar basis. A-Z had never authorised the shipment of the goods to Tarlo's customers. Deals 106 and 108 were for the same model of phone and offered to Elandour at £396.50 and £396.60 on the same day. The inspection reports from the freight forwarders were unsatisfactory, they indicated that the IMEI numbers had been checked on two occasions when they had not been checked.

88. The loan for £400,000 with GFS was entered into on 5 April 2006 but the deals, which it was designed to finance, were not carried out until 25 April 2006. Given that GFS appears to have financed most of the deals it is clear that the matters were preordained for at least 3 weeks before the deals were carried out. An additional £130,000 was made available, but there is no evidence as to how that came about. The £130,000 was repaid on the same day as it coincided with the second repayment from HMRC with regard to the earlier transactions. The position with the other loan of £115,000, although the agreement was only for £114,000, was no better. It was entered into some 3 weeks before the deal for which it was intended. On 23 June 2006 GFS lent £190,000 to Tarlo without any agreement at all. Tarlo returned £170,000 on the same day as the loan was made and retained £20,000 for itself. There is no explanation given for this payment. Furthermore, GFS do not appear to have taken this payment into account when writing to Tarlo agreeing to re-schedule its debts. Deal 114 was for £325,300, which was exactly funded with the loan from the Liban Trust on 12 July 2006 when the payment was made to A-Z. Mr Hayat indicated that he had met a representative from the Liban Trust at a conference in London in June 2006. It appears that Mr Hayat had committed Tarlo to a deal on 30 May 2006 when it did not have the funds to finance it. Similar facts arose when Tarlo was required to finance deal 115.

89. No one single factor is determinative of the issue of knowledge or what Tarlo should have known. The Tribunal must weigh all the evidence in the balance in deciding whether Tarlo knew or should have known that the deals were connected with fraud. It is entitled to look at the series of transactions and draw appropriate conclusions (see *Red 12 Trading Limited)*. It is not credible that Tarlo would be permitted to take part in these trades and generate such large profits if it was simply an unwitting accomplice. On the basis of all the evidence available and for the reasons given above, the Tribunal can be satisfied that the transactions entered into by Tarlo were connected with fraud, and that Mr Hayat knew they were so connected. If the Tribunal cannot agree that Mr Hayat knew that his transactions were connected with fraud the Tribunal should conclude that Mr Hayat should have known that the transactions were connected with fraud. To an honest businessman, that would have been the only reasonable conclusion.

Costs

90. In its written decision the Tribunal is invited to reserve the question of costs so that any necessary applications and full submissions in the light of that decision can be made. The Commissioners will invite the Tribunal to apply Rule 29 of the 1986 Rules and to disapply Rule 10 of the 2009 Rules and to direct Tarlo to pay the Commissioners' costs. The

Commissioners would wish to reserve their position as to any application pursuant to Rule 10 (1)(b) seeking a direction of the Tribunal that Mr Andrews should show cause as to why he should not pay some or all of the costs of the hearing.

Submissions by Mr Andrews for Tarlo

91. Mr Andrews has acted for Tarlo up to the hearing and in that capacity has provided the Tribunal with a skeleton argument. He has also had the opportunity to comment on Mr Cannan's submissions and we have incorporated those submissions. Tarlo's primary submission is that there is no evidence that it knew or should have known of the fraud. In *G Comms Limited* on similar facts as to the movement of funds through the FCIB the Tribunal held that the Appellant could not have actual knowledge of the movement of the funds, but it should have provoked some suspicion or concern. Similarly in *Blada Limited* the Tribunal decided that Blada should have known, not that it had actual knowledge. The Commissioners have to prove that a fraud has been committed, that the fraud is connected with Tarlo's transactions and that Tarlo knew or should have known of these facts. Mr Andrews also submits that with regard to the contra-trade the Commissioners must prove a conspiracy to commit fraud between all parties in both chains. Tarlo conceded that there is a tax loss, but not that the loss was fraudulent. The officers disagree as to the fraud in that Officer Booth refers to defaulters and tax losses and Officer Wheatcroft refers to fraud for the selfsame items. There are many references to tax losses and in witness' statements to defaults. These defaults simply transmogrify at a whim into fraud. There is and always must be a significant distinction between default and a fraudulent activity. To have your input tax disallowed does not mean that you are a fraudulent trader.

92. Mr Andrews submits that it is suggested by HMRC that A-Z created a 'clean' chain during the periods with the sole intention of hiding the fraud in its later 'dirty' supply chains. The Tribunal were invited to read the two decisions in *Brayfal* which it has done. The Tribunal in *Brayfal* took a sensible approach by refusing to aggregate several inconsequential issues to establish a single major one. The Tribunal, in this case, is respectfully urged not to be drawn into the Commissioners trap (which conflicts with legal authority) of believing that everything which is not text book business practice must in some way arouse suspicion. The Commissioners put forward an unsupported and unrealistic theory that there is a 'Mr Big' who instructs each member in the chain what, when how much and from/to whom purchase and sell. If there is such a person there would appear to be no need for the IPT website unless 'Mr Big' controlled that as well, which is demonstrably absurd. In the alternative, the transactions relate to the existing brokerage market. The fraudsters are simply making use of a long standing, tried, tested and secure trading route. Only the first (importer and possibly the first step in the United Kingdom chain) and last (the ultimate foreign buyer) members of the chain would know of the fraud. The others, like A-Z and Tarlo, would have no knowledge or means of knowledge of the existence or intent of the fraudsters.

93. Tarlo's business is a brokerage business as a result the deals :-

- are back to back as in the normal world
- are entered into with high level products resulting in significant turnover.
- are for agreed goods accounted for before the deal is implemented so that there are no goods left over..
- require no capital. These are brokers and the goods are shipped on hold, the deal values are high but the comparative outlay is nil or minimal in comparison

- have no faulty goods as these would only be discovered in the hands of an end user.
- used the FCIB because of the need for a rapid transfer of funds a service the High Street Banks could not provide. Tarlo would have no way of knowing that there was a circularity of the funds.

Tarlo has had to provide HMRC with full details and documents for each of its trades and at no time has HMRC raised any issue or problem with respect to any paper work, customer, supplier, freight forwarder or anything else. No warnings or cautions have been issued.

94. As to the due diligence the onus is on the Commissioners to say what Tarlo could have found out, (i.e.) what results would have indicated fraud had that check been conducted. HMRC have provided no such evidence. Mr Andrews submits that the evidence of what could have been discovered makes it abundantly clear that there was no possibility for Tarlo to have identified the fraud. It is respectfully submitted that this evidence effectively ends any argument that Tarlio 'should have known' of the fraud. The Tribunal is left with one other issue - did Tarlo have actual knowledge of the fraud in its supply chain. In *Blue Sphere Global Limited* the Court indicated:

> "The relevant knowledge is that BSG ought to have known that by its purchases it was participating in transactions which <u>were</u> connected with the fraudulent evasion of VAT; that such transactions <u>might</u> be so connected is not enough".

Tarlo must have known that its transactions <u>were</u> connected to a fraud and not just believe that they <u>might</u> be connected. In those circumstances the Tribunal would have to find that Tarlo was so directed by fraudulent controlling minds, that Tarlo knew without doubt that its transactions were for fraudulent purposes, thus making the director a fraudster himself, with specific instructions from others in what, therefore, must be a conspiracy to defraud the revenue. No allegation of it being a fraudster, nor one of conspiracy, is in the pleaded case. It believes that any allegation of a conspiracy has its place in a Crown Court, where the alleged conspirators, such as A-Z et al, can defend themselves, with civil matters being dealt with through joint and several liability provisions.

95. Whatever information may now be available to HMRC, Mr Andrews submits that it was the situation at the time and the evidence available to Tarlo at the time that is material. There is no evidence that Tarlo was on notice that the freight forwarders were in some way behaving either dishonestly, or even oddly and thereby requiring further investigation.There is nothing in HMRC's pleaded case, or witness evidence, that indicates that the use of any freight forwarder, either here or abroad is an issue at all. In *Livewire* Mr Justice Lewison stated:-

> " ……. In my judgment ….. if a taxable person has not taken every precaution that could reasonably be expected of him, he will not forfeit his right to deduct input tax in a case where he would not have discovered the connection with fraud even if he had taken those precautions".

He also said:-

> " In my judgment in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself a dishonest co-conspirator, there are two potential frauds:
>
> i) The dishonest failure to account for VAT by the defaulter or missing trader in the dirty chain: and
>
> ii) The dishonest cover-up of that fraud by the contra-trader.

96, Mr Andrews submits that the evidence is very clear on this point; A-Z had been exporting goods for some time and HMRC knew this. Officers visited A-Z regularly and A-Z knew of this. Officers monitored the trading activities of A-Z, who were aware this was taking place. The periods were, on any basis, extremely likely to be subject to extended verification in order to identify whether fraud existed or not. How could A-Z possibly hide the fraud when they knew HMRC would verify every export transaction and continue to conduct regular VAT visits? As A-Z would know that it could not hide the fraud it cannot be classed as a dishonest party. Fraud is too serious a matter to be reduced to supposition based upon convenient and incorrect definitions and interpretations of standard and innocent business practices. No charges were or have been raised against A-Z or its directors by HMRC. There are only two possible frauds that the Tribunal can consider. Hiding the fraud in the 'dirty' chain is one of them. Balancing the books so that A-Z can continue to export in the chains that provide good profits and they know are contaminated with fraud is not good enough. In the penultimate paragraph in the High Court Judgment in *Blue Sphere Global* the chancellor stated:

> "55. In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is a party to both the clean chain with E and the dirty chain A constitutes a sufficient connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could have known, nor was the occurrence of such a dirty chain inevitable in the sense of being pre-planned."

It should be noted that A-Z must be party to a conspiracy, which has not been pleaded by HMRC. It also highlights the problems when the clean chains were conducted before any specific dirty chains may have been planned.

97. Contra-trading is not illegal and it is likely that A-Z would seek to increase its profits and cash flow. The best profit can be made in exports, but the VAT has to be funded, which can be alleviated by seeking United Kingdom sales at the same time. In summary, fraud is not the only reason for a contra-trade. If fraud is not the only reasonable explanation for the existence of the contra- trading there can be no link direct or otherwise between the A-Z transactions and Tarlo's deals. Furthermore, HMRC must have visited all the other companies and yet no Officer has served one statement to evidence the involvement in the fraud. Each of the companies in the 'dirty' chains have been allowed to deduct their input tax, which is inconsistent with HMRC allegation that they were all conspirators in the 'dirty' chains. It is extremely important for the Tribunal not to exercise hindsight in its assessment of the conduct of Tarlo and Mr Hayat – but rather to consider what actually happened and what evidence was actually available <u>at the time.</u>

98. Mr Andrews submitted that as HMRC had not pleaded a conspiracy the Tribunal can make no such finding. (See *POWA (Jersey) Limited* and Floyd J's observations in *Mobilx* at paragraph 16.) The statement of case does not mention any of the following;

- Tarlo is a fraudster, be it by cheating the Revenue or through conspiracy
- Tarlo's trading partners are fraudsters.
- An allegation that the goods do not exist
- A conspiracy between the parties in Tarlo's clean chains, with the parties in A-Z's alleged 'dirty' chain.

The Tribunal is invited to abandon consideration of any allegations and issues that were not clearly formulated in the Statement of Case and to ignore any new evidence that HMRC have introduced at the appeal.

99. Tarlo could not have known of the circularity of the funds. For such a fraud to work there must be an initial importer/seller of goods and an eventual buyer, outside the United Kingdom, of those goods or a member of a carousel. The goods route from initial seller to final buyer matters not as any such trading is always conducted within strict rules of conduct; these include trust and honour. The nature of the trade is such that there is always a higher margin when exporting goods if there were not then the trade would not happen as any profit margin is commensurate with the risk taken. If there is a controlling mind it will be present at the beginning of the chain and in the case of a carousel the end. It will not be and indeed cannot be in the middle part; this is self evident because

- The level of secrecy and logistics would simply be ridiculous.
- There would be no failed or cancelled deals in any MTIC dealings yet there are.
- When finance is required it would have to come from an external source at the risk of the exporting trader.

Mr Hayat in his witness statement confirms that he has notified HMRC of all his deals prior to then being carried out. He would not have done that if he was acting fraudulently.

100. Mr Andrews submits that it is disproportionate to deny one party its rights on the basis of perceived irregularities with paper work, while allowing other parties (such as those purchasing from alleged defaulting traders) to exercise the same right. It is for Mr Hayat to bring his own business experience to bear in evaluating the commercial viability of any transaction. HMRC fail to appreciate the realities of conducting a brokerage business. Mr Andrews submits that *Kittel/Recolta* is a case of narrow application, only suitable in cases where the taxable person is a counter party to fraudulent transactions. Tarlo's have an absolute right to deduct input tax which cannot be limited. All the questions in that case were based on the premise "*that the transaction concerned was part of a fraud committed by* ***the seller***". The ECJ concluded that only a 'witting' counterparty could be refused their repayment. The wording in *Mobilx* is not open to interpretation it is clear and exacting in that fraud has to be the **only** reasonable explanation. In this appeal fraud is most certainly not the only explanation. If this is accepted then it is clear that Tarlo's clean chain is standing alone as a clean chain and the appeal must be allowed. Furthermore, the amount of missing VAT is the net amount for which each missing trader failed to account (being, in respect of each deal chain, a lesser sum than the amount of input VAT being reclaimed by Tarlo) and Tarlo should receive credit for the difference between the total amount of repayments claimed and the missing tax. There is simply no circumstance in which Tarlo could have or should have known that its transactions were connected in any way with fraud. At the end of the day it was not connected with fraud as there is no tax loss in any of Tarlo's chains. The link to fraud via another trader whose guilt, which has been neither charged nor proven but merely assumed, is simply untenable. The tribunal is invited to allow the appeal

101. Mr Andrews submits that Mr Hayat has not attended because he considers that the Tribunal will have made its mind up come what may, as has been the case in other MTIC appeals. He feels as an innocent man and company, he has been set up in a position that does not allow any form of defence against the fiction of charges made against him. He was further disadvantaged by not having the resources to fight a fair legal battle with the might of the HMRC and their legal team combined and with the apparent intolerance of the Tribunal to any

argument that counters that of HMRC; of which there are and always have been in the history of MTIC cases many and various such arguments. It seems to Mr Hayat that the above feeling may have some justification:-

- He felt pressurised when contacted by the Tribunal via a clerk.
- It was indicated to him that his non-appearance would have an adverse bearing on the costs
- It transpired that the conversation was passed on in court to HMRC. Mr Hayat was not aware that this would be done
- As a result of that comment Mr Hayat considered that the appealed matter and the costs had already been decided.

Costs

102. Mr Andrews submitted that the costs should be considered under the new Rules as the majority of the costs have been incurred after April 2009. Mr Andrews has referred us to the case of *Hawkeye Communications Limited* and submits that no costs should be awarded to either party no matter what the outcome of the appeal may be.

The decision.

103. We have considered the law and the evidence and we dismiss the appeal. We have decided that Mr Hayat, on behalf of Tarlo, knew that Tarlo was participating in fraudulent transactions. Mr Hayat's failure to attend is not helpful to his case. We do not accept that by arranging to contact him by telephone there was any intended pressure on him. It is apparent that, although Mr Andrews' firm appears to have agreed to deal with the appeal on a 'no win no fee' basis, that agreement was withdrawn because Mr Hayat had failed to pay the ongoing expenses. Mr Hayat told us that he had approached a solicitor, but that solicitor was not prepared to deal with the case on a 'no win no fee' basis. Mr Hayat made that approach some days before the appeal was due to start. He also indicated that he could not attend the Tribunal as he had arranged another appointment. His behaviour is even more unusual in the light of the note from the Fame Company report (bundle 5 page 416) where Mr Hayat was identified as "Attorney at law". This is not expanded on but is at odds with his refusal to attend the Tribunal because he considered that the Tribunal had already reached a conclusion and that he felt disadvantaged by not having the means to fight a fair legal battle against HMRC.

104. Mr Andrews submitted that as HMRC had not attempted to query the VAT payments in the intermediate chains, it was not proportionate to deny the input tax to Tarlo, which was far removed from the alleged fraud. We cannot agree with him. The joint and several liability enables HMRC to pursue those parties it believes will be most able to account for the VAT. In this case Tarlo is seeking a substantial repayment and as it has not been successful in achieving this HMRC are able to retain the tax.

105. Mr Andrews has referred to the *Brayfal* decisions to justify his submission that Tarlo was dealing as a broker and that HMRC did not appear to understand how brokerage transactions work. Mr Justice Lewison dismissed HMRC's appeal on the basis that HMRC had not proved on the balance of probabilities that Mr Kibbler, on behalf of Brayfal could have known of the contra-trading. He referred to the third test in *Axel Kittel*:

> "iii) The principle does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion".

The two members in the First-tier Tribunal were of the opinion that Mr Kibbler, on behalf of Brayfal, had done all that he might reasonably have done as a prudent businessman to ensure that Brayfal's transactions were not fraudulent. Mr Andrews submits that Tarlo has done the same.

106. At paragraph 16 Mr Justice Lewison said:

> "The members began their detailed reasoning by saying that the clean chain (in which Brayfal found itself) was created before the dirty chain. This was a vitally important point. In order for deduction of input VAT to be withheld, HMRC must prove, having regard to all the factors, that the taxable person, *at the time of his transaction*, knew or should have known that his transactions were connected with fraud. Where the impugned transactions are transactions in the clean chain this presents problems for HMRC. As the Chancellor pertinently asked in *Blue Sphere Global Ltd v HMRC* [2009] STC 2239: how can a trader who is not part of a conspiracy *know* of the fraud before it happens? If there is a regular course of conduct in which the trader knows that his transaction are connected with subsequent transactions that he knows *ex post facto* are fraudulent, there may come a time at which he can be credited with knowledge of the future. But that is not the case that HMRC advanced in this case. Moreover, in the present case, as the members pointed out, all Brayfal's transactions were in the clean chain where every trader correctly dealt with its VAT. Thus the members' findings in paragraphs 138 and 149 were also relevant to, and supportive of, their rejection of the case based on actual knowledge. In a subsequent passage paragraph 153 they said that HMRC were not aware at the relevant time that there was anything amiss with Future; so that Brayfal was "most unlikely" to be aware. Mr Black drew attention to paragraph 152 in which the members said:
>
> "Question 3 is, in our view, the one the Commissioners have to prove. They have already accepted that Brayfal was not an honest co-conspirator so must show that he had 'means of knowledge' at the time of entering into its transactions that they were connected to the fraudulent tax losses",

107. Mr Andrews in his submissions submits that there cannot be a finding of actual knowledge unless the pleaded case is that Tarlo is a co-conspirator (Brayfal J/para 16). There is a lack of evidence to support the allegation of conspiracy. The transactions were not connected with fraud, as they were in clean chains. The most which could be said is that they were almost certainly going to be connected with fraud; but suspicion is not enough, no matter how suspicious one is. (Moblix J/para 55/56).

108. Mr Cannan submits that there is no requirement for HMRC to either plead or prove that Tarlo was a co-conspirator. In *Kittel*, the ECJ took the view that where the tax authorities find

that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retrospectively (paragraph 55). Put simply, a co-conspirator is by definition a participant in the fraud. Furthermore, in *Mobilx Ltd,* Moses LJ held:

> "The test in *Kittel* is simple and should not be over-refined" (paragraph 59); Moses LJ did not find that conspiracy formed part of the Kittel principle".

It is noteworthy that in the recent decision of *Brayfal,* there is no reference to the judgment of Moses LJ in *Mobilx* in respect of the timing of transactions. It is the decision of the Court of Appeal that takes precedence. Moses LJ held:

> "The principle of legal certainty provides no warranty for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader's purchase. If the circumstances of that purchase are such that a person knows or should have know that his purchase is or will be connected with fraudulent evasion, it cannot matter a jot that the evasion precedes or follows that purchase. That trader's knowledge brings him within the category of participant. He is a participant whatever the stage at which the evasion occurs…" (paragraph 62)

109. It cannot be right, and according to Moses LJ in *Mobilx* it is not right, that Community Law would allow a trader that has actual knowledge of a fraudulent scheme to retain his right to deduct merely because he and other participants in the scheme have orchestrated the transactions so that the "clean" chains take place before the "dirty" chains.

110. We cannot agree with Mr Andrew's assessment. It is no part of the *Mobilx* decision that a conspiracy has to be proved. Moses LJ in *Moblix* at paragraph 16 said

> "Complete absence of evidence, or of evidence being to the contrary effect, are two of the grounds on which it may be said that a tribunal was not entitled to reach a conclusion of fact. It is also well settled that a tribunal is not entitled to find serious allegations established against a party who calls relevant witnesses unless those allegations are clearly formulated and put in cross-examination. As Briggs J said in *HMRC v Dempster* [2008] EWHC 63 (Ch) (unreported)
> ".. it is a cardinal principle of litigation that if serious allegations, in particular allegations of dishonesty, are to be made against a party who is called as a witness they must be both fairly and squarely pleaded, and fairly and squarely put to that witness in cross-examination".

111. Tarlo can have been in no doubt as to HMRC's belief that it was party to a fraud. The amended statement of case indicated that HMRC considered that Tarlo knew or ought to have known that it was participating in a fraud.

a. Paragraph 38A. "… the Respondents will contend that the Appellant's transactions formed part of a contrived and orchestrated scheme to defraud HMRC.

b. Paragraph 39A " The Respondents will rely on all facts and matters set out in the witness statements of Kirsty Joiliffe and Peter Cameron-Watson in support of their case that the Appellant, through Mr Hayat, knew or should have known that the relevant transactions were connected with fraud".

c. Paragraph 48 "Given all the above factors, the Commissioners properly concluded that the Appellant knew or should have known that the transactions were 'connected with fraudulent evasion of VAT'.

112. We consider that Tarlo participated in the transactions in such a way that it enabled the fraudsters to complete the scheme. Tarlo was not a conspirator as it was not a party to the overall scheme. It did not need to be. All A-Z required was that it would allow itself to be used to accommodate the transaction with which it was involved. The chance of a profit of £343,745 for two days, and at best less than a week's, work was an opportunity too good to miss. Tarlo's assistance does not, however, mean that it was a conspirator. It could not have known of the deals in the 'dirty' chain, but what it did know was that it could make a great deal of money, in a very short period of time, without any risk. It knew it would be paid for all its transactions out of the VAT repayment, as had happened with the two earlier deals, otherwise it would not have entered into the transactions. As Judge Colin Bishopp suggested in C*alltell TelecomLtd & Another*:

"Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating conspicuously generous profit for no evident reason. A trader receiving an offer would be well advised to ask why it had been made; if he did not he would be likely to fail the test set out in paragraph 51 in the judgement of *Kittel*."

113. Tarlo has agreed that there has been a tax loss, but does not agree that the loss was due to fraud. We have considered in detail the actions of the defaulters and we are satisfied that very considerable sums of money have been lost to HMRC as a result of deliberate schemes designed to evade VAT. We do not accept Mr Andrews proposition that the use of the words default, tax loss and fraud have the appearance of a badge of convenience rather than a charge based upon weighty evidence. There is weighty evidence that a substantial amount of tax has been lost by HMRC and that A-Z's transactions did not occur under normal commercial conditions.

114. Mr Andrews has rightly submitted that the Tribunal cannot rely on hindsight and that it must only consider what was before Tarlo at the time of the transactions, bearing in mind that Mr Hayat is an honest businessman. We have been told that Mr Hayat had gained experience in the mobile trade business at Fitzroy. He was aware of MTIC fraud and must have made several contacts with traders whilst at Fitzroy. GFS had lent money to Fitzroy whilst he was working with the company and he must have been aware that they lent money to mobile phone traders. In his witness statement he makes it clear that it was his intention to trade in mobile phones when he joined Tarlo. The shareholders of Tarlo were Mr Hayat and Mr Ashaq Hussain, both were also the directors. Tarlo was formed on 13 July 2005 and registered for VAT on 31 August 2005 indicating that its business would be "Electrical Goods (architectural Lighting for commercial use)". Mr Hussain applied in August 2005 for the company to be allowed to use monthly returns as it was expecting repayments because the company had a contract with A-LUX Lighting Ltd and Tarlo would be marketing A-Lux' products throughout Europe. Mr Hussain does not appear to have had any further dealings with the company and has not provided a witness statement. In January 2006 Tarlo changed its trade to "trade wholesale general electric and other wholesale products and goods". The company indicated that it intended to provide general IT products and services. It is unusual that Mr Hayat, as an honest business man, did not indicate that the company would be dealing in the wholesale of mobile phones. It was also convenient that the company had authority to prepare monthly returns. The

FCIB account was opened on 4 November 2005 and Mr Hayat provided a reference from Fitzroy on 26 October 2005 when he knew that he was joining Tarlo in November. Hardly the actions of an honest businessman.

115. What would Mr Hayat have known about the circumstances of the appeal deals? He knew that Tarlo's turnover from October 2005 to January 2006 had been £2000 only. In February 2006 the company entered into its first mobile phone transactions of £910,750. This was in spite of the fact that the company had no capital and assets comprising a computer worth £4000. Tarlo entered into a further two mobile phone transactions in the period to 03/06 amounting to £647,350. As a result of these transactions Tarlo received two VAT repayments amounting to £150,812.20 and £107,099.66 respectively. In making the payments HMRC indicated that the payments were made without prejudice to a more detailed investigation. Judge Bishopps' comments in *Calltel* appear apposite. There is no doubt that as a result of those three transactions Mr Hayat could have felt not only that his system of working was satisfactory but sufficiently robust to enter into the transactions the subject of this appeal.

116. Mr Hayat has indicated that he entered the mobile phone market by sourcing potential supplies and customers through the International Phone Traders website. Mr Hayat, as a prudent businessman, must surely have retained some of that information on his computer, in case he needed it again, and he could have produced samples to the Tribunal of the various stock sheets he examined and the companies, other than A-Z Kiara, Elandour and Evolution, he might have found at the IPT site. He has not done so. We have not been told whether Tarlo approached A-Z or the other way around. On 25 April 2006, on the first deal, the subject of this appeal, he obtained two declarations from A-Z, signed by Mr Ahmed indicating that VAT had been paid on the phones by the company and that it had carried out checks including those at companies house. A-Z's introductory letter, supplied to Tarlo at the same time, also confirms that their customers and suppliers are situated in Europe, Middle East and Asia. Mr Hayat has confirmed that he knew that A-Z had imported the phones and he has conceded that he was familiar with the market place by the time of the April deal. He had after all carried out three earlier transactions. He must have been put on enquiries as to why A-Z said it had paid VAT when he knew that VAT did not arise on phones delivered from Europe. There has been no suggestion that the phones came from elsewhere than Europe. He must also have realised that enquiries could not have been made at companies house in the United Kingdom relating to the formation of a European business. Did he not consider it an unusual business arrangement that A-Z were buying phones from Europe, when Tarlo was going to sell them back into Europe at a higher price? Why did A-Z wish to trade with a United Kingdom business in those circumstances and in sterling? He confirmed that he was aware of MTIC fraud and we believe he should have been put on enquiry. He understood A-Z to be a substantial and successful company. The supplier declarations appear to be Tarlo's standard forms and we suspect that Mr Ahmed never read either of them but merely signed them. We believe all the documentation was no more than window dressing.

117. Mr Hayat has indicated that he was not able to obtain VAT details from Redhill and that instead he relied on information supplied from the Taxation and Customs Union Europa. There are two applications dated 25 April and 26 May 2006 in respect of A-Z confirming A-Z's VAT number. Mr Hayat has produced several copy faxed sheets addressed to Redhill in relation to A-Z, Advance Solutions, Elandour and Kiara to which there has been no response. All the other applications to Redhill are dated after the deals in question and could not be relevant to those transactions. We are concerned that the faxed copies do not bear the fax legend as to the date and the time they were sent. We would have expected photocopies to

reveal that standard information. This does cast doubt as to whether they were ever sent. As they were never replied to in time they are of no assistance to Tarlo.

118. In his witness statement Mr Hayat has told us that he got to know Mr Ahmed very well before he started trading with A-Z. He had visited Mr Ahmed and he understood that A-Z were a long established business that had a very good product knowledge. Mr Hayat did obtain a copy of A-Z's VAT certificate. He does not appear to have noticed that its trade classification relates to Mobile telephones, Retail of. If he had read this he would have been put on enquiry as to why the phones were being dealt with wholesale. Tarlo started to trade with A-Z on the basis of the Europa VAT confirmation and the detail of the VAT certificate, which he had failed to read. We doubt that any honest businessman would have been prepared to do that. Mr Hayat has confirmed that he obtained a report from Creditsafe but this was not made until 5 May 2006 by which time Tarlo had carried out 6 transactions totalling £4,586,050.50. The report revealed that A-Z had only £6,830 of assets and no capital reserves. In fact it was effectively insolvent. Tarlo was not looking to give A-Z any credit but any businessman carrying over £4,000,000 of business with A-Z would have been concerned that any credit should be 'given with caution'. Mr Hayat has confirmed that he understood that A-Z was a substantial business, how he could possibly have believed that in the light of the reports escapes us. He should have made substantial enquires before he carried out any more transactions. Mr Hayat also arranged for The Due Diligence Exchange Limited to carry out an independent report, which was not received until 13 July 2006 after all the deals the subject of this appeal, had been carried out. This report is even more damning than Creditsafe's. It revealed that the company's estimated turnover from October 2005 to September 2006 would be £600,000,000. This is clearly nonsense. The report also annexed a report from companies house which reveals that the accounting period is to September in each year and that the last accounts made up to September 2005 were exempt from recording the results as the turnover and profit were small. The Creditsafe report revealed that A-Z was insolvent in May 2006, which left 4 months for the company to achieve its estimated turnover. A turnover of £600,000,000 for any business, never mind the size of A-Z as evidenced from the photographs provided, is clearly extraordinary and would have put Mr Hayat on enquiry had he obtained the information earlier. We have come to the conclusion that the due diligence in relation to A-Z was merely window dressing. Mr Andrews has suggested that it is not necessary for enquiries to be made if they would have given reassurance if made. He has also asked what Tarlo would have found out if it had made any such enquiry. It is clear that it would have found out that it should not carry out any transactions with A-Z.

119. The due diligence checks carried out against Elandour, Evolution and Kiara were minimal. Mr Hayat states that he met with the management of Elandour, but there is no evidence supporting that claim. Subsequent checks with regard to Evolution revealed that Mr Warner was a British National living in Coventry. Mr Hayat had arranged to meet Mr Ferry, a director of Kiara, but the meeting was cancelled. Redhill had subsequently been unable to verify the VAT number for Kiara. The due diligence for the freight forwarders was even less substantial and no trade references were taken up. We accept that it would not be unusual for a customer to ask that their freight forwarders should be used. We would have expected, in view of the value of the goods, that Mr Hayat would have satisfied himself as to their commercial status. MSG was based in Birmingham and Advance Solutions in Silverdale in Staffordshire. 1st Freight was in Essex. Given that they were all in the United Kingdom it should have been possible to make some rudimentary enquires. The fact that the contract with 1st Freight appeared to relate to the sale of goods should have put Mr Hayat on enquiry.

120. The actual transactions all follow the same pattern. We are asked to accept that the three customers were found as a result of interrogating the IPT website. No evidence has been given to show how that was done. Mr Hayat states that the stock lists from A-Z were sent round its various potential customers it would appear by Fax although again no fax legend appears on the copies. As a result, Elandour, Kiara and Evolution all agreed to purchase the phones in exactly the same quantities and makes as those offered by A-Z to Tarlo. Mr Hayat has indicate that as the transactions were back-to-back he would only conclude a deal if both ends of the deal were potentially in place. He might have argued that it was acceptable to enter into the contract to buy several days before Tarlo's customers had agreed to purchase the phones, as he believed that those customers would agree to buy. Tarlo had no money of its own, other than that invested by Mr Hayat and the other companies and the loans secured with GFS, and Liban referred to below. Tarlo was in no position to take the risk of a sale falling though in such a financial position. The only basis on which Mr Hayat could allow Tarlo to take the risk is that he knew that the customers would enter into a contract to buy. The inspections of the goods were of no value, MSG and Advance Solutions both confirmed after the event that they had not carried out IMEI checks. Given the volume of the goods, the letters from GFS and 1st Freight as to the inaccuracies of the reports, and the time that all the freight forwarders had to inspect the goods, it is unlikely that the goods were checked at all. The release notes make no sense at all. Why would any businessman allow goods to leave a freight forwarder before they had been paid for? If the goods were never paid for Tarlo would have to have arranged for the phones to be returned from France at Tarlo's expense. Neither do we understand why the United Kingdom freight forwarders were notified to release the phones when the phones were already abroad. Tarlo knew where all the goods were and went to the trouble of having them held to its order until payment. It is significant that the requests for an inspection to Advance Solutions in relation to deal 110 also include deal 113, but the reports came back separately. Furthermore, deals 105,106,107,108 and 109 were all to Elandour on the same day, but separately invoiced. A-Z was able to submit its stock offers on one sheet of paper why were the goods not invoiced together? We note that Advance Solutions' fees for the inspection of the goods in relation to deal 110 is dated 5 May 2006 but the goods were not purchased by Tarlo until 26 May 2006 some 21 days later. The timings on the Eurotunnel Tickets indicate that part loads or two separate lorries were used to make the delivery to the Eurotunnel. We have had no evidence as to the way in which the phones have been freighted but we note that 7 to 8 pallets were usually involved. Given that quantity we would not have thought it would have been necessary or sensible to split a load, In the light of all the discrepancies we believe that the inspection reports and Eurotunnel tickets are window dressing.

121. Mr Stone in his witness statement suggests that carousel fraud is a financial fraud. This means it is concerned with retaining the VAT and merely uses the commodities as a smoke screen to confuse the authorities, which might account for the individual invoices. This must mean that the fraudsters set up the trading to accommodate the money flows. Mr Stone suggests that the initial funds are invested with FCIB, go round the traders and are returned to the original investor less any profit taken out by the participants.

122. From the print-outs provided by Officer Morgan-Davies, it is clear from the recorded times that most of the transactions started with GFS and took some 2 hours to pass through all seven traders. We were not told which time zone the times represent. Dutch Antilles is 4 hours earlier than United Kingdom time. The server appears to have been in Spain, which is one hour earlier than United Kingdom. Whichever time is adopted they are sequential in that time zone.

We have not been told how Mr Hayat accessed his FCIB account. On the face of it he would have needed to be at his computer at all of the above times when the money was received from Tarlo's customers and subsequently paid to A-Z. We do not believe that he could have been at his computer to accommodate those timings. It is unlikely that an honest businessman would be carrying out the transfers at the times Mr Hayat appears to have done. Neither do we believe that it was necessary for the payments to be made in the way they were. We would have expected Tarlo to wait until it had received all the monies from each of its customers before it made any payment to A-Z. It is much more likely, if Mr Hayat was controlling the payments, for there to have been some delay between the receipt of the monies and their subsequent payment. It is also necessary to assume that all the other traders in different parts of Europe were also at their consoles at exactly the correct time. This is further complicated by the differences in the time zones. There is no basis to believe that any of them were. No honest businessman would agree to change his bank account to that of his suppliers and customers, particularly if that bank was outside his country's jurisdiction, without being put on enquiry. It is no answer that the FCIB could move the money quickly. There was no commercial reason for the funds to be moved quickly. Most businessmen would try to keep the money in their account for a little time. No commercial deal of this nature, normal brokerage, would require the funds to be moved so quickly and out of office hours. The only way in which the cash transfers make sense is if they were orchestrated by one individual, which the use of one server in each set of transfers would also suggest. This method of transfer also suggests that Tarlo must have allowed GFS to access its accounts so that GFS could make the payments. This is born out by the repayment of £130,000 to bring the first GFS loan back to £400,000. The first VAT repayment appeared in Tarlo's HSBC account on 4 May 2006 and was paid out as £140,000 on the same day to its FCIB account arriving as £139,993.14, after bank transfer charges. This was 4 days before any payments were made to A-Z. GFS had agreed in April to lend Tarlo £400,000 to cover its VAT payments, but must have thought that anticipated VAT repayment had not been paid, because it actually paid £530,000 on the 8 May to cover the loan to Tarlo. No explanation has been given as to why and how the loan was increased. GFS must have realised its mistake as it immediately withdrew £130,000 (on the same day) from Tarlo's account. We say that GFS or someone else must have been manipulating the account as Tarlo would have known it had received the repayment on 4 May and that it had paid it to the FCIB account on the same day. As a result it would only have requested a transfer of £400,000.

123. Anyone with an internet account with more than one account in it knows that funds can be manipulated around the accounts automatically. If GFS or a third party manipulated the account in normal banking circumstances, they would need to have sufficient money in the account at the beginning. In deal 104 this would have been £1,131,760. We have been told that GFS or a third party on their behalf, invested £994,240 and by the time the funds reached Tarlo they were at £992,000. This had allowed Estocom and Kiara to retain their £1120 profit. Tarlo needed a further £139,760 which was funded by the money it had put into the transactions and the £400,000 loan for GFS. A-Z retained £183,360 being the VAT of £168,560 the fraudsters intended to keep in that transaction and £14,800 of Tarlo's contribution. It paid £958,400 to Nano, which paid £957,280 to Zorba which paid £956,160 to GFS. Nano and Zorba retained £1120, their profit, and GFS was £38,080 out of pocket. It is beyond coincidence that four out of the seven independent traders could come up with exactly the same profits. As the transaction took place in an 'intra account' the deal has only cost GFS £38,080 on the first occasion. All the deals to 114 cost it £305,502, so that at that stage it has got all the money back, apart from the individuals' profits. As the payments have passed through the account in

the one day the fraudsters have been exposed to no loss as A-Z has received a further £398,867 from Tarlo, which will fund the £305,502 leaving the fraudsters with a profit of £93,365 for their trouble. HMRC have suggested that neither GFS nor Liban have got their loans back. This is incorrect. As indicated above A-Z appears to have taken out the VAT payments before making the onward payments. All A-Z receipts on that basis to deal 114 amounted to £1,400,817 made up of £1,001,950 loans due to GFS and Liban and £398,867 the approximate money invested in the transactions by Tarlo namely:

Repayments	£139,993	
	£144,993	
Freight inspection	£ 25,018	
Money due to Patel	£ 85,000	
Loans Electronics	£ 2,093	total £397,097 (a difference of £17700)

Tarlo will be refunded these amounts from the VAT repayment and presumably A-Z will pay the loan back to GFS or whoever provided it in the first instance.

123. The loans make no commercial sense at all. Firstly, they appear to have been negotiated and agreed between GFS and Tarlo before Tarlo had entered into the transactions. How did Mr Hayat know how much money to borrow, if he did not know what the deals were? Secondly, no security has been offered. Tarlo had no assets and no commercial organisation would have lent that amount of money without any security. Thirdly, no trader in Tarlo's position would have agreed to a loan where the law controlling it was other than English Law. Fourthly neither party have sued for the debt. This is because they do not need to as they have had the money back as indicated above and they had retained a further £398,867 invested by Tarlo. The fraudsters have not received the VAT, but the deals have cost them nothing except their time, with a profit of £93,365 (£398,867 - £305,502).

124. What did Mr Hayat know? He probably would not have known of the circularity of the funds nor the way the deals were structured. He did know that he was assured of sufficient money to pay his liabilities and that he would make a gross profit of £343,745 and receive a refund of his investment, when the repayment was made, otherwise, as a businessman, he would not have entered into the deals. He saw the phenomenal growth of his business from £2000 by February 2006 to over £9,000,000 by May 2006 a period of 4 months, which does not occur in normal commercial circumstances. As *Moblix* propounds Tarlo accommodated the overall scheme by allowing itself to be a participator. It was not a conspirator as it was not a party to the overall scheme but merely to that part of it which it knew was connected with fraud.

Costs.

125. We reserve the position as to costs in the light of this decision. Either party may apply to the Tribunal within 48 days of the release of this decision for the matter of costs to be considered

126.This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to

that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

TRIBUNAL JUDGE
RELEASE DATE: 25 January 2012