TC01889

Appeal reference: MAN/2007/0918

MAN/2008/0168

VALUE ADDED TAX – input tax – denial of right to deduct on grounds of alleged knowledge or means of knowledge of fraud by others – involved in defaulter and contra-trading – whether appellants had knowledge of connection between their transactions and fraudulent evasion of VAT – yes – whether appellants should have known that only reasonable explanation for circumstances in which certain contra-trading transactions took place were that it was connected to fraudulent evasion of VAT – yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

HAROON YOUNAS
t/a MICROMEDIA **First Appellant**
- and -
THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRITON COMMUNICATIONS.CO UK LTD **Second Appellant**
-and-
THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

Tribunal: **David Demack (Judge)**
Alban Holden (Member)

Sitting in public in Manchester on 5,12,19,24,25,26,27 & 31 January and 1 February 2011

Rajesh Rai - counsel for the first Appellant
Colin Wells - counsel for the second Appellant
Jonathan Cannan and Joshua Shields, both of counsel instructed by the Solicitor and General Counsel of Revenue and Customs for the Respondents

DECISION

Introduction

1. The two appeals before us are concerned with what is known as MTIC (Missing Trader Intra-Community) fraud, and are made by Haroon Younas t/a Micromedia ("Micromedia") and Triton Communications.Co.UK.Ltd ("Triton"). The appeals were directed to be heard together as Mr Younas was both the sole proprietor of Micromedia and the director of and a shareholder with other family members in Triton, and each appeal concerned input tax repayment claims which were rejected by the Commissioners on the basis that the trader concerned knew or had means of knowing that his or its transactions involved VAT fraud. Where it is convenient to refer to the two appellants together, we shall describe them as 'the appellant traders'.

2. As to Micromedia's appeal, there is one matter with which we should deal at the outset. In his six witness statements, which formed his evidence in chief, Mr Younas consistently described Micromedia as a 'sole proprietor company'. On investigating the precise status of Micromedia, we confirmed our initial understanding that it was nothing more than the name or style Mr Younas adopted in operating as a sole trader: Micromedia was not a company of any sort.

3. Before us, Mr Younas was represented by Mr Rajesh Rai of counsel, Triton by Mr Colin Wells, also of counsel, and the Commissioners by Mr Jonathan Cannan leading Mr Joshua Shields, both of counsel.

The Micromedia Appeal

4. The appeal by Micromedia is against a decision of the Commissioners by letter of 23 January 2008 denying its entitlement to deduct input tax of £685,923 for which it claimed credit for the quarterly accounting period 06/06. The input tax concerned was incurred in 7 purchases of mobile telephones, four of which the Commissioners traced back to JOS (UK) Limited ("JOS"), a company said to be a fraudulent contra trader, and the remaining 3 of which led directly back to an alleged fraudulent defaulter, 3D Animations Ltd ("3D Animations").

5. In their letter of 23 January 2008 the Commissioners expressed themselves satisfied that the transactions set out in the appendix thereto formed part of an overall scheme to defraud the revenue, and that there were "features of those transactions, and conduct on the part of you (Micromedia) which demonstrate that you knew or should have known that this was the case". The Commissioners did not allege that Mr Younas was a party to such fraud.

6. The Commissioners added that in making their decision not to repay the input tax claimed they had taken into account a number of items of information and features of Micromedia's trade, including:

- That certain of the deals under consideration (to which we shall refer as Micromedia deals 1 to 3) had been traced back to tax losses in period 06/06
- That other deals (to which we shall refer as Micromedia deals 4-7) had been traced back to a contra-trader.
- That all 7 deals had identical supply chains.
- That each of the deals was back-to-back, being made on the same day for the same quantity of goods and for the same product
- That Mr Younas was not required to pay his suppliers before receiving payment from his customers.
- That despite the high value of the goods in which Micromedia was trading Mr Younas did not enter into any formal written contracts with his suppliers, customers or freight forwarders; he knew that he would not need formal contracts because the transactions had all been pre-arranged and were part of a scheme to defraud the revenue.
- That despite the high value of the goods Micromedia was buying and selling, Mr Younas did not insure them.
- That Micromedia's turnover was "extraordinary", its net income as declared in the 6 calendar years commencing on 1 January 2001 being:

2001	£221,741
2002	£91,272,501
2003	£2,151,352
2004	£73,464
2005	£5,375,622
2006	£5,711,739

The Triton Appeal

7. By letters dated 18 July 2007 (as amended by letter dated 9 November 2007) and 30 October 2007 the Commissioners denied Triton's entitlement to the right to deduct input tax of £1,660,056.12 and £673,225 respectively claimed in respect of accounting period 06/06. The input tax credits related to 13 wholesale purchases, 11 of mobile phones and the remaining 2 of Intel processors or CPUs. All of the purchases were in chains of transactions which the Commissioners alleged led directly back to fraudulent defaulters:

a) 7 of the purchases of mobile telephones were in chains of transactions which led directly back to RS Sales Agency ("RS"), a defaulting trader.

b) The remaining 4 purchases of mobile phones were in chains of transactions which led directly back to West 1 Facilities Management Ltd ("West 1"), another defaulting trader.

c) The 2 purchases of CPUs were in chains of transactions which led directly back to a third fraudulent defaulter, Heathrow Business Solutions Ltd., ("Heathrow").

8. In the earlier letter denying Triton's input tax claims (based on transactions involving more than £11 million), the Commissioners said that, in arriving at their decision, they had taken account of:

i) the fact that the deals under consideration had been traced back to tax losses;

ii) starting with a visit on 11 September 2002 and in subsequent visits prior to period 06/06 Triton (and for that matter Micromedia and Kasbyte) had been informed in discussion of MTIC fraud, had been sent Notice 726, and had received de-registration letters advising of defaulters in its deal chains;

iii) that due diligence on both suppliers and customers had been extremely weak, consisting of, inter alia, EU VAT registration checks via the Europa site (including one where the check took place after the deal took place), and Redhill verification checks carried out for the most part after the deals had been completed;

iv) that third party checks on suppliers and customers all contained negative indicators such as: low to non-existent credit ratings, a company trading from premises held on a 6 month lease (Highbeam), a company trading from the home of one of its employees (2 Trade BVBA), a company (Highbeam) having a director with no previous experience of the mobile phone and computer trades, she being an estate agent, and companies with no working capital disclosed;

v) that Nemesis checks on 10 per cent of IMEI number supplied for Triton deals 1-6 and 11 (purchases from Highbeam) revealed that 43 of the 26,850 mobile phones had previously been exported or dispatched, clearly showing that some at least of the stock traded had been used in carousel fraud;

vi) that despite the high value of the goods being traded, Triton did not enter into any formal contracts with its counterparties;

vii) that despite the high value of goods being traded Triton did not insure any of them instead relying on its freight agents to insure them;

viii) that all deals were back-to-back, made on the same day, for the same quantity of goods and the same product, so that Triton was never left with unsold stock;

ix) that all the mobile phones were manufactured to a European specification (where they could not be used in the UK without a new charger), yet were being traded in the UK

9. In the later letter, which dealt with Triton deals 7-10, in addition to most of the matters mentioned in the earlier letter, the Commissioners rejected Triton's claim in reliance on:

i) the fact that Triton used an account with the FCIB, ("First Curacao Investment Bank") as did its suppliers and customers. The Commissioners added that "a very significant number of traders suspected of involvement in MTIC fraud held accounts with FCIB. FCIB was appealing to traders because it offered first class e banking services supported by sophisticated bank software and a reliable 24 hour service. MTIC traders were able to pay monies to and from each other without these payments being visible to law enforcement agencies including HMRC. Monies could easily be transferred from FCIB to other accounts outside the jurisdiction, e.g. Dubai, without being traceable";

ii) Triton's turnover was "extraordinary". It commenced trading on 1 May 2002, and in the first 11 months turned over £1,366,729, and turnover increased in the following three years to £14,047,000 before falling back in the year to 31 March 2007 to £13,187,037. The Commissioners noted that "the latter figures were achieved despite the fact that Triton appeared to have employed no staff. It is impossible to believe that, in a legitimate market, small traders can achieve turnover figures of which most legitimate traders, with years of business behind them, can only dream, by quickly identifying sources of huge numbers of goods which they can as quickly sell to another trader who is willing to pay more, even if little more, than the cost of acquisition";

iii) it was "implausible that Triton, with little or no capital or assets, could have entered into a multi-million pound trading arena almost from the word "go" and be seen as a viable trader to do business with. The only conclusion that can be drawn is that it is a part of a scheme to defraud the revenue and that it knew it was".

10. Again, the Commissioners did not allege that Triton was a fraudster.

The Kasbyte Appeal

11. There is a further appeal we must mention, although it is not before us, having been withdrawn on 4 November 2010. It is the appeal of Kasbyte Ltd ("Kasbyte"), a company of which Mr Younas became the director late in 2005 whose shares were purchased by him and his family very early in 2006 in the same proportions as they held shares in Triton. The Commissioners maintain that Kasbyte's dealings provide further indications that Mr Younas was prepared to enter into transactions knowing that they were connected with fraud, and that the dealings of Kasbyte were closely connected with those of the appellant traders. Consequently, they made application for evidence in the Kasbyte appeal to be allowed to be introduced in the instant appeals. Their application in that behalf was granted on 29 November 2010.

MTIC Fraud generally

12. The disputed decisions of the Commissioners, as is usual in cases of alleged MTIC fraud, were based on the European Community doctrine of abuse, as recognised by the Court of Justice of the European Communities ("ECJ") in a number of cases and, in the present context, particularly those of *Axel Kittel v Belgium* and *Belgium v Recolta Recycling SPRL* (Joined Cases C-439/04 and C-440/04) [2008] STC 1537 ("*Kittel*"). In those cases the ECJ expounded the principle that a trader who has participated in a fraudulent scheme involving the purchase and sale of goods knowing or having the means of knowing that he is so participating, forfeits the right to deduct input tax he has incurred on his purchase of the goods used as the vehicle of the fraud.

13. The basic structure of MTIC fraud takes the following form. A "missing trader", i.e. a UK VAT registered trader, or one who uses another's VAT registration, purchases goods from abroad and imports them into the UK. The importation bears no VAT. The trader sells the goods intra UK, charging VAT at the standard rate on the sale to an intermediary known as a "buffer". The goods then pass along a chain of purchase and sale transactions intra UK through a series of other buffers. Each buffer properly charges and reclaims VAT. The final buffer in the chain then sells the goods to a "broker" – in the present case the appellant traders were the brokers in most of the chains concerned - who, as the last link in the chain, sells the goods abroad in a zero-rated transaction and proceeds to reclaim the input tax he paid to the final buffer. Consistently with his name, the missing trader then disappears having failed to account for the VAT he charged the first buffer.

14. In the more complex form of MTIC trading known as contra-trading, the broker in the chain of transactions described in the last preceding paragraph himself purchases goods from abroad of equal value to the goods he sells, and sells them along a second chain of transactions before a second broker sells the goods abroad. The first broker has a net liability to VAT of nil, and so declares in his VAT return. (The claim for input tax in the first chain is cancelled out by the output tax in the second chain). The second broker – again in this case the appellant traders were the brokers in the chains other than those at [12] above - who has no apparent connection with the fraudulent VAT loss in the first chain, then proceeds to claim repayment of the input tax on his purchase.

15. In a number of joined cases led by that of *Mobilx Ltd (in administration) v Commissioners of Revenue and Customs* [2010] EWCA 517, Moses LJ, delivering the leading judgment in the Court of Appeal, made plain that the refusal of a right to deduct input tax does not depend on any specific Community or UK legislation:

> "49. It is the obligation of domestic courts to interpret the [Value Added Tax Act] 1994 in the light of the wording and purpose of the Sixth Directive as understood by the ECJ (*Marleasing SA* 1990 ECR 1-4135 [1992] 1 CMLR 305) (see, for a full discussion of this obligation, the judgment of Arden LJ in *Revenue and Customs Commissioners v IDT Card Services Ireland Ltd [2006]* EWCA Civ 29 [2006] STC 1252, § § 69-83). Arden LJ acknowledges, as the ECJ has itself recognised, that the application of the *Marleasing* principle may result in the imposition of a civil liability where such a liability would not otherwise have been imposed under domestic law (See IDT § 111). The denial of the right to deduct in this case stems from principles which apply throughout the Community in respect of what is said to be reliance on Community law for fraudulent ends. It can be no objection to that approach to community law that in purely domestic circumstances a trader might not be regarded as an accessory to fraud. In a sense, the dichotomy between domestic and Community law, in the circumstances of these appeals, is false. In relation to the right to deduct input tax, Community and domestic law are one and the same."

The Appellant traders' notices of appeal

16. Micromedia gave notice of appeal on 19 February 2008. Triton served 2 notices of appeal, the one dated 3 August 2007, and the other dated 19 November 2007. All three notices asserted broadly the same bases of appeal:

> a) That the Commissioners had applied the wrong legal test, seemingly that for the "Kittel" test to be satisfied a taxable person only lost the right to deduct input tax i) where another transaction directly in the taxable person's chain of supply was vitiated by fraud; and ii) that the taxable person knew or had the means of knowing that the specific other transaction was so vitiated. Furthermore, it was not legitimate for the

Commissioners to deny the right to deduct on the basis that the "transactions formed part of an overall scheme to defraud the revenue".

b) Also, the factors taken into account by the Commissioners in making their decisions were "wrong, irrelevant, embarrassingly unparticularised, did not 'address' the correct legal test, failed to explain what the Commissioners contended the [traders] ought to have done that was not done and were based on the false legal and factual premise that (undisclosed) action on the part of the Appellants could have 'addressed' the problem of fraudulent activity to be found, apparently, elsewhere in a separate chain of supply at a point substantially removed from the purchase and sale transactions to which the [traders were] party."

c) Yet further, "in the present circumstances, the [traders enjoy] a 'right to deduct' the claimed input VAT credit provided for in Article 17 *et seq* of the EC Sixth VAT Directive, 77/388/EEC, which right must be given effect to immediately and sections 24-26 of the VAT Act 1994 must be construed purposely [sic] ie. in accordance with the relevant provision of the EC Sixth VAT Directive."

17. All three notices of appeal concluded:

"The decision to disallow the claimed input VAT credit is in breach of the fundamental principles of the EC law viz. proportionality, legal certainty, fiscal neutrality and/or fundamental principles of Human Rights law, viz, the right to pursue a trade or professional activity to the peaceful enjoyment of property [sic]."

18. As each of the matters referred to in the last preceding paragraph was dealt with, and rejected, by the Court of Appeal in the *Mobilx* appeal, we need say nothing more about them.

The consolidated statement of case

19. Although the two appeals were not consolidated, the Commissioners were directed to serve a consolidated Statement of Case. They served it on 19 November 2010. In it they alleged that the appellant traders were generally aware of MTIC fraud, and that the due diligence they undertook was inadequate and / or raised negative indicators of fraudulent activity in their deals which they claimed should have resulted in their realising that their transactions were connected with fraud, namely:

a) that all the appellant traders' deals in period 06/06 were connected with VAT fraud;

b) that the traders accepted that all the transactions into which they had entered were connected with fraud;

c) that the evidence relied on by the Commissioners indicated:

i) that all the appellant traders' deals in 06/06 were linked to fraudulent tax losses either directly or through contra-trading;

ii) that the transaction chains in question had been contrived rather than occurring in the ordinary course of business.

iii) that the deal chains involved no manufacturers, authorised distributors, retailers or end users;

iv) that consistent mark-ups were achieved by traders in the deal chains;

v) that the deals of JOS were orchestrated as part of a fraudulent scheme involving the transactions of Micromedia;

vi) that mutual assistance information on all the EU companies involved in the transaction chains of Micromedia and Triton evidenced the involvement in fraud of the EU companies and freight forwarders connected with them;

vii) IMEI numbers obtained for some of the phones exported by Triton indicated that they had been exported from the UK at an earlier date, or were subsequently re-exported from the UK at a later date;

viii) the nature of the transactions and the deal chains was such that they could not have formed part of the legitimate grey market in mobile phones;

ix) the appellant traders' transactions displayed many of the typical characteristics of MTIC fraud, e.g:

a) documentation included inadequate/inconsistent information;

b) a lack of underlying paperwork, e.g. no paperwork for Micromedia deals 4-7 was available from its freight forwarder;

c) there was no clarity as to title to goods;

d) there was a general lack of commercial reality.

x) Triton obtained a loan of £1.3 million from DRA Corporation Ltd, a Cypriot company, in order to fund Micromedia deals 1-3;

xi) Micromedia obtained a loan of £200,000 from Voltek Automation Ltd apparently intended to benefit Triton following an injection of funds by Triton and Micromedia to finance Kasbyte's trading in February 2006;

xiii) Triton obtained a loan of £93,000 not at arm's length and not made on commercial terms from Cellcom Inc FZC in June 2006. Cellcom was connected with Com 2 K (UK) Ltd which supplied Triton in period 06/06 and also supplied SNN and Eurovision Export, both of which were customers of Kasbyte and were involved in carousel fraud in the deal chains of the contra-trader, Rioni;

xiv) Triton's deals 7-10 involved goods held by Capital Logistics on 21 and 22 June 2006, but visits to Capital Logistics premises on those dates by the Commissioners' officers revealed that no goods were held on the premises, nor had any arrived or been dispatched;

xv) in relation to all the Triton and Micromedia deal chains, the money flows through FCIB accounts were circular;

xvi) in each of Micromedia deals 1-3 a third party payment was made to one Yasar Ahmed, by passing the defaulter 3D Animations;

xvii) in Micromedia deals 4-7 payments for the goods were made and received by Kasbyte on behalf of Micromedia. Further, Kasbyte also received separate payments totalling £500,000 from Yayha International, which appeared in the circular money flows from those deals, and without those additional funds Kasbyte would have been unable to make full payment to Micromedia's supplier.

The evidence

20. We took oral evidence from the following witnesses:

- Anthony James Johnson, the Commissioners' officer responsible for the affairs of Micromedia from 8 September 2006
- Peter John Smith, a control officer of the Commissioners responsible for both Micromedia and Triton.
- Mrs Michelle Brierley, the Commissioners' officer responsible for the affairs of Triton.
- Dean Foster, the Commissioners' officer responsible for the affairs of Micromedia until the 7 September 2006.

- Mrs Lesley Camm, a specialist officer of the Commissioners' responsible for the viewing and analysis of data obtained from the Dutch Revenue Authorities relating to the FCIB.

- Mr Younas

21. We also had statements from a considerable number of other officers which were unchallenged. We shall refer to the evidence of those officers if and where necessary.

22. The documentary evidence put before us consisted of 27 lever arch files. We shall deal with individual files and the documents within them by reference to the file title and relevant page numbers e.g. C4-11 refers to file C4 page 11.

23. It is on the basis of the whole of that evidence that we make our findings of fact.

The questions before the tribunal

24. In MTIC cases the tribunal is usually required to answer each of the following questions in relation to each deal chain concerned:

1) Was there a tax loss?

2) If so, did the loss result from the fraudulent evasion of VAT?

3) If there was fraudulent evasion, were the appellant traders' transactions, the subject of the appeal, connected with that evasion?

4) If such a connection is established, did the appellant traders know, or should they have known that their purchases were connected with the fraudulent evasion of VAT?

25. However, in the instant case, counsel for the appellant traders accepted that the Commissioners' evidence was such that we could answer questions 1-3 in relation to each deal of each of the appellant traders in the affirmative, leaving only question 4 for decision. We are satisfied that we should proceed on that basis, and do so. As a result, we consider it unnecessary to detail the contents of all the individual deals and the transaction chains of which they formed part and will merely identify those aspects of them the Commissioners considered uncommercial and as indicating knowledge or means of knowledge of VAT fraud on the part of the appellant traders. We do, however, include in the Schedule to our decision a summary in tabular form of all the deals.

The Facts

a) The appellant traders' trading model

26. The appellant traders' wholesale trading model was explained to us by Mr Younas. It would appear, and we find, that its transactions were both supplier and customer led.

27. Before commencing trade with their counterparties, the appellant traders obtained from them introductory letters of a general nature, and details of their company and VAT registrations. They did not seek bank or trade references, and in many cases did not obtain credit references. They made no checks on freight forwarders with which they dealt. And, in relation to individual deals, in most cases they carried out no contemporaneous checks, but instead relied on what Mr Younas described as his historical knowledge of their counterparties. Indeed, in evidence Mr Younas observed of the evidence of the Commissioners on the security for checks on credit ratings:

> "I do not agree with officer Johnson's comments regarding credit ratings. If someone has stock but a low credit rating I am not going to view this as an indicator of fraud" (3-1168)

28. The terms on which the appellant traders dealt, as explained to Mr Younas, were, to say the least, unclear and, to the extent that they existed at all, were basic in the extreme, being restricted to a general description of the products concerned and the price agreed. They provided no arrangements for matters such as the transfer of title, warranties, payment and delivery, returns and exchanges for faulty or damaged goods. In every case with which we are concerned the goods were released to the appellant traders and Kasbyte on the dates their transactions were completed, but they did not make payment for them until they themselves had been paid.

29. Nor did the trading model require the appellant traders to make credit arrangements with those with whom they dealt, or to enter into credit agreements with them. The only exception was Pearl of London, Triton's supplier in its deals 12 and 13, where the documentation provided for 7 days credit, albeit that in both cases Triton took 10 days credit.

30. In the absence of credit arrangements, in all the remaining deals with which we are concerned the appellant traders were provided with, and took advantage of, unrestricted credit provided by their suppliers, and in turn offered a similar facility to their customers. When we say 'unrestricted credit' we mean that it was left to customers to determine when they would pay for supplies made; they could pay at a time of their own choosing. Nor did the model involve the appellant traders entering into any formal written contracts with their counterparties or freight forwarders.

31. The appellant traders' purchase orders contained no information regarding the warranty, battery, charger, manual or auxiliary software, all of which details were necessary fully to identify the products concerned.

32. Mr Younas's evidence as to the true ownership of the mobile phones and CPUs being traded whilst passing through the appellant traders' chains of transactions was unclear. It appeared, and we find, that he did not know, indeed did not care about, the true ownership of goods in which the appellant traders dealt. Once a trader in a chain of transactions had taken possession of goods, notwithstanding that he had not paid for them and had no credit arrangements in place with his supplier, he claimed to be able to deal with them. Mr Younas implicitly maintained that it was a case of, "It's how the market works". But no independent evidence to support the claim was adduced. Mr Younas offered no evidence as to any transfer of title to the appellant traders prior to payment for goods or, in the absence of transfer, to show that they were authorised to transfer them abroad. In its absence, we find that they were authorised to ship goods abroad, title or no title.

33. The appellant traders used the Europa website to verify VAT registrations, rather than verifying them through the Commissioners' Redhill office, but did not await the results of their enquiries before completing the deals. They used the Europa site in preference to Redhill due to what Mr Younas described as unacceptable delays, i.e. up to 3 or 4 days, in providing the necessary registration confirmation, despite being specifically instructed by the Commissioners to use Redhill for verification purposes. It was plain from Mr Younas's evidence that he regarded checks on VAT registrations as a mere formality.

34. Stock was always held and handled by the company's freight forwarders. In all the transactions with which we are concerned, the freight forwarder holding the goods on their arrival in the UK continued to hold them on instructions for all the traders in a chain of transactions, including the appellant traders, as they passed along the chain until they left these shores.

35. Mr Younas made a commercial decision not to insure goods when they were theoretically in the appellant traders' possession, maintaining that insurance cover was too expensive and that, in any event, in most cases the freight forwarders themselves insured them. No evidence of any insurance cover was adduced.

36. The freight forwarders were instructed by the appellant traders to inspect and report on their purchases to confirm that the goods matched those allocated to them. No details of the inspection instructions were given to us, and we can only presume that whatever they consisted of they were delivered orally.

37. The trading model described made no provision for inspection of goods by Mr Younas or the appellant traders' employees. None of them ever visited the premises of any of the appellant traders' suppliers, customers or freight forwarders. Mr Younas relied on the freight

forwarders both to establish that the goods traded did in fact exist, and to inspect them to ensure that their packaging bore no Customs stamps, that being an indication that they had previously been imported or exported. All the evidence points to the goods traded to have existed, and we find that they did so. Every transaction was back-to-back and completed within a day. As a result, the appellant traders never held stock and were never left with unsold surplus stock.

38. The appellant traders advertised goods they knew to be for sale on the IPT website or would seek to make deals with traders Mr Younas had met at trade fairs. Seemingly, only were a purchaser to be found at a price guaranteeing the appellant traders a profit would they enter into an oral contract to purchase the goods, but would pay no deposit on them. It was unclear whether purchasers were attracted by the adverts on the IPT website but, if not, no explanation was offered by Mr Younas as to how they discovered that the appellant traders had supplies available for sale.

39. Once the appellant traders had agreed a sale of goods held by their freight forwarders on the same day, and despite them not having been paid for and no credit arrangement having been made with the customers, the goods were transferred abroad, allegedly "ship on hold".

40. Although Mr Younas claimed that the appellant traders always instructed the freight forwarders to ship goods to their customers "on hold" so that they were not released until payment for them was made, we are not satisfied that they were so shipped or, if they were, were then held as instructed. Our dissatisfaction arises from the fact that Mr Younas took no steps to enquire of the ownership of the goods the appellant traders purchased, so that we gravely doubt that he even gave consideration to the protection of them on their selling the goods, let alone took steps to do so.

41. The appellant traders and Kasbyte always used the current accounts they held with the FCIB to make payment for goods purchased

42. Mr Younas implicitly maintained, and we find, that it was not unusual in commercial terms to issue instructions orally and to follow them up with the associated paperwork.

b) The remaining facts

43. In his evidence in chief, Mr Younas explained, and we accept, that he commenced business on his own account by opening a retail shop in Keighley in January 1999 selling computer equipment and accessories. He said that he rented the shop on an "informal basis", trading under the name or style of Micromedia. Some six months later he applied to be registered for VAT, claiming it to be necessary as most of his customers required VAT receipts for their purchases.

44. In his Form VAT1, Mr Younas disclosed Micromedia's principal activity as "computer and accessories" and that he anticipated supplies in the first 12 months of trading to reach £60,000. On 1 August 1999 the Commissioners registered Micromedia under classification 72220 – "other software consultancy and supply".

45. It was not at all clear to us from the evidence what capital Mr Younas invested in Micromedia. However, as will shortly appear, the two deals into which Kasbyte entered and resulted in the input tax repayment claims it made but subsequently withdrew had to be financed with money provided by Micromedia and Triton. And, in evidence, Mr Younas admitted that Micromedia had been unable to conduct wholesale deals in period 06/06 until it received its input tax repayment claim for period 03/06. From that evidence we find that the appellant traders had insufficient capital to finance the wholesale trade they wished to carry on.

46. Micromedia's turnover in the first year of trading was £221,741. In the following year it increased exponentially to £91,272,501, the Commissioners considering the fact that it made no input tax repayment claims which an ordinary retailer would not have made indicating that it was acting as a buffer in MTIC deals. In the following years turnover fell, first to £2,151,352 and then to £783,464, before increasing to £5,375,622 and £5,711,739 in 2005 and 2006 respectively. In the last two of those years Micromedia made large input tax repayment claims when acting as a broker in wholesale sales to customers outside the UK. Micromedia made no EC sales declarations until 2005.

47. Having claimed to have been advised by his accountant to form a limited company to deal with wholesale trading transactions, Mr Younas formed Triton in 2002, its application for VAT registration being made on 1 May of that year. In its form VAT1, he estimated its turnover in the first 12 months of trading as £3 million, and described its business activities as "computers, software, consultancy networking, mobile phone accessories". The Commissioners acted on the application and proceeded to register Triton. As we earlier mentioned, Mr Younas was sole director of the company and its major shareholder. The remaining shareholders were his three sisters.

48. From 11 September 2002 onwards, and prior to the transactions with which we are concerned taking place, the appellant traders received a considerable number of visits from officers of the Commissioners in which MTIC fraud was discussed, and they were provided with copies of Notice 726. They were also sent deregistration veto letters, and letters advising of defaulters in their deal chains. That evidence was relied on by the Commissioners to support a claim, which we accept, that the appellant traders and Mr Younas had a general awareness of MTIC fraud.

49. On 11 September 2002 officers of the Commissioners paid an unannounced visit to Triton. That followed the disclosure in the company's VAT return for period 03/02 of a very significant increase in turnover. The officers recorded that they required Triton in future to provide details of payments made and of all deals undertaken, and that they discussed MTIC trading at length with Mr Younas. He was issued with the "standard Redhill letter" advising him to verify the VAT status of new and potential suppliers and customers with the Redhill office. On 30 April 2003 officer Baines contacted Mr Younas to discuss the contents of the 2003 Budget, and particularly those aspects of it designed to deal with MTIC trading. Mr Younas told the officer he had no knowledge of the contents of the Budget. He was referred to the Commissioners' website, and briefly told of the proposals as to joint and several liability to VAT, and of the new rules regarding valid VAT invoices.

50. Officers Jones and Robinson visited Mr Younas's accountant to discuss Micromedia's and Triton's VAT affairs on 16 August 2004. Mr Younas was present at the meeting when the officers again stressed the need for him to verify all his customers' and suppliers' VAT registrations with Redhill. On the same date Triton was sent a letter saying that its 06/04 return was to be subjected to verification, and advising the company of the risks associated with VAT fraud. The letter included the statement, "The commodities regularly involved [in missing trader cases or unjustified refund claims] are computer-related products, mobile phones and accessories, and the estimate of VAT loss from this type of fraud in the year 2001/2002 in the UK alone was between £1.7 and £2.6 billion per annum". A further letter was sent to Triton on 1 September 2004 informing it of the supplementary powers given to the Commissioners in 2003, namely the evidential requirements for input tax deduction, the power to require security for VAT at risk in a supply chain, and the ability to impose joint and several liability for VAT on supplies.

51. On 22 September 2004 Mrs Jones wrote to Triton in relation to its 06/04 return saying, "There are eight transactions that give rise to the repayment. Four of these have traced back to companies that appear to have defaulted in their VAT liabilities. The remaining four are still in the process of being traced. I will contact you again when I have further facts available". In evidence Mr Younas claimed the Commissioners use of the word "appear" in the first sentence to be significant, and to indicate that they had not actually traced back the relevant transactions to defaulters. Consequently, he maintained that he was not on notice that transactions that he and his companies had entered into involved VAT fraud.

52. Officer Peter Smith paid a further visit to Micromedia on 22 December 2004 to deal with an input tax repayment claim it had made in respect of transactions with Triton but for which Triton had not accounted for the related output tax, its VAT return for period 09/04 not having been submitted. On 21 January 2005 officer Smith noted that Micromedia's repayment claim could be paid, clearly indicating that by then the missing return had been made. But, he added, Triton was "clearly not meeting due diligence requirements" at that time.

53. On 25 February 2005 Mr Younas made application to the FCIB to open an account for Micromedia. The FCIB was a bank widely used by wholesalers in mobile phones and CPUs in the period with which we are concerned. It was based in the Dutch Antilles, and was closed down by the Dutch authorities in October 2006, its directors being arrested and charged with money laundering. Every deal in every transaction chain with which these appeals are concerned, including those of Kasbyte, was paid for by an intra-FCIB bank transfer, every trader concerned holding a current account with that bank. Further, every transaction was carried out in sterling. As is now common practice in cases such as the present one, and following a number of cases in which traders holding such accounts have admitted being involved in MTIC fraud or been found so to have been involved by the tribunal, the Commissioners rely on the appellant traders' use of accounts with FCIB to allege involvement by them in MTIC fraud. The exact date on which Triton opened its FCIB account was unclear, but it was certainly open by 12 April 2005, for on that date Mr Younas confirmed the fact to the Commissioners by email. We were not told the date on which the Kasbyte FCIB account was opened but, as we have said, its two transactions in February 2006 involved transfers into and out of that account.

54. On 14 March 2005 the Commissioners again issued Triton with their standard Redhill letter in which they set out the problems they were experiencing in relation to VAT fraud. Once more they advised traders to verify the VAT status of all new customers and suppliers through their Redhill office, and indicated the information they required to deal with verification requests.

55. From April 2005 onwards Triton was in a net repayment situation, and the Commissioners' records were endorsed to show that it had changed from acting as buffer to broker.

56. On 22 March 2006 Micromedia obtained a loan of £200,000 from Voltek Automation Ltd ("Voltek") for the benefit of Triton following an injection of funds into Kasbyte by Triton and Micromedia to finance Kasbyte's trading in February 2006. Voltek was both a supplier to and a customer of Triton, and a supplier to Micromedia. The loan was interest free, and said by Mr Younas to have been provided because he knew Voltek's director when at University. The loan was repaid in two tranches of £100,000, the first on16 June 2006 and the second on 8 August 2006. The loan agreement contained terms inappropriate to a loan to an individual trader, and its terms were uncommercial.

57. On 31 March 2006 officer Karen Davidson sent a letter to Kasbyte listing some of the checks the Commissioners recommended traders make on their suppliers and customers following the introduction of anti-fraud measures in the Budget of 2003. Enclosed with the letter were Notice 726, Notice 700/52 (Requirement to give security to Customs), Notice 725 (The Single Market), and the Statement of Practice "Input Tax Deduction without a valid VAT invoice". By email of 21 June 2006, Mr Younas's accountants, Rehman Michael, confirmed to the Commissioners that Mr Younas had been "fully briefed" on Notice 726.

58. On 26 May 2006 Mr Younas emailed officer Davison to confirm that he was carrying out due diligence "normally" through Redhill, and "recently" had started to verify European "countries" through Redhill.

59. Each mobile phone was allocated a unique International Mobile Equipment Identity ("IMEI") number. Triton kept a record of but very few of the IMEI numbers of mobile phones in which it dealt, despite being advised by the Commissioners to do so. Records of such numbers enabled the Commissioners to check whether the phones had previously been dealt in, had been stolen or had previously been imported or exported. In the event, as mentioned in the Statement of Case, 43 of the 26,850 mobile phones which Triton purchased from Highbeam in period 06/06 had previously been exported or dispatched. The absence of full IMEI records indicated to the Commissioners, and we accept, that Triton knew that it would not receive any returned goods, because all the transactions had been pre-arranged and were part of a scheme to defraud the revenue.

60. Despite title to goods unpaid for being unclear as possession of them passed along a chain of transactions, in every transaction with which we are concerned, the appellant traders' customer was expected to and did subsequently pay them. Not until they had been paid, and in turn had paid their suppliers, and the payments due under the remaining transactions in the chain had cascaded down the chain, did title, equally rapidly, ascend it. We so find.

61. The businesses involved in the appellant traders' transactions were all wholesalers: in none of the transaction chains with which we are dealing was there a manufacturer, authorised distributor, an end user or retailer.

62. The Commissioners adduced evidence, which we accept as fact, showing that in each chain of transactions the profit obtained by the appellant traders was considerably greater than that obtained by any of the other traders in the chain. We doubt that the appellant traders were aware of that fact.

63. Micromedia continues to trade, a fact that Mr Younas claimed to indicate that it was engaged in legitimate trade in 2006. We accept that it may have been engaged in some such trade but, viewed against its involvement in the various invoice chains, we are not satisfied that all its dealings were legitimate.

64. None of the mobile phones with which these appeals are concerned was manufactured to a UK specification, but rather, with the exception of the Nokia 8801 (see Triton deal 7), to a European one. European phones could not be used in the UK without a change in the charger. The Commissioners questioned why the phones should have been imported into the UK when it was well known that they could not be used here without a new charger, and the change in charger would necessarily have involved the importer in unnecessary expense, and delayed the transaction.

65. As an example of his honesty relied on by Mr Younas, we might mention a transaction in which he bought a quantity of mobile phones from Dubai, carrying them to the UK in suitcases. Prior to arrival with them at Manchester Airport he contacted the Commissioners to arrange for them to be properly declared on importation.

66. The Commissioners uplifted Micromedia's records from Mr Younas's accountant on 25 July 2006. Those records included freight forwarder documents as to the shipment of goods.

67. We then turn to deal with the transactions carried out by Kasbyte and the appellant traders. Chronologically, the first transactions we must consider are those of Kasbyte. They took place in February 2006. We can deal with the relevant evidence quite quickly. The company was incorporated on 11 May 1998 as Kasbyte Computers Ltd., and was registered for VAT on 1 February 2004. It disclosed its business activity in its Form VAT1 as "sales and repairs of computer systems. Sales of components, i.e. hard drives etc". Mr Younas became its director on 15 July 2005, taking over that position from Kasbyte's principal shareholder, Sohail Nazir. But it was not until early 2006 that Mr Younas and his three sisters acquired the share capital of Kasbyte. That capital consisted of 200 £1 shares, of which Mr Younas acquired 140.

68. In period 02/06 Kasbyte made an input tax repayment claim of £207,987.50. It arose from two deals, the first of which involved what we find to have been the sale of 2500 very poor quality units of Kompas Pro Software. The units were useless for commercial purposes, and were sold at a very uncommercial price in highly suspicious circumstances. The second involved 5500 Sandisk USB memory sticks, that quantity being almost the whole of Sandisk's production of those sticks in the relevant period. In the two deals Kasbyte was supplied by Pan Euro Ventures Ltd ("Pan Euro") which in turn was supplied by Rioni, a contra-trader. The deals were funded by an injection into Kasbyte of £145,737.50 by the appellant traders, Kasbyte itself not having the necessary funds. The goods in the deals were purportedly dispatched to Worldwide Logistics BV, a freight forwarder which on other occasions was found by the authorities to have produced paperwork showing that it had handled goods which it was proved not in fact to have handled. The FCIB evidence showed that the money flow in the two deals was not only circular, but that the same funds circulated to cover both deals.

69. Subsequent analysis of the two deal chains by the Commissioners showed that in both the goods were imported from France, the vendor in one being Eurovision Export SARL, and re-exported to that country, the purchaser being SNN SARL. In the second deal, the positions of Eurovision and SNN were reversed, the former being the importer and the latter the exporter. Further analysis showed that in each transaction chain there were two buffers, each of which made a profit of £1 per unit on resale of the goods. In contrast, in deal 1 Kasbyte made a profit of £6.50 per unit, and in deal 2 a profit of £8.50 per unit. And, since both deals involved an importation from France and export to the same country, the Commissioners

questioned why a French customer would be prepared to pay the much higher amount required to purchase the product.

70. In its letter to the Commissioners of 4 November 2010 withdrawing its appeal, Kasbyte accepted that the evidence established that its supplies from Pan Euro were the subject of invalid invoices and, implicitly, were connected with fraud. By a further letter to the Commissioners of 1 December 2010, the appellant traders accepted that Kasbyte's transactions in period 02/06 were connected with fraudulent tax losses.

71. As an example of the checks carried out as part of Kasbyte's due diligence process by Mr Younas we list below the documents he provided to the Commissioners on 10 October 2006 on its supplier in one and the customer in the other of Kasbyte's two deals:

- A Veracis credit report dated 15 August 2006
- A Europa website print of 22 February 2006 showing that Pan Euro's VAT registration number was live
- A First Report credit check dated 7 February 2006
- A First Report individual directors search dated 7 February 2006
- Pan Euro's introduction pack, including a letter of introduction, company details, director's photocopy passport, rental invoice, certificate of incorporation, Form VAT3, and a trade application form.

72. In his witness statement, officer Andrew Robert Waller made the following observations on those documents:

a) At the time of Kasbyte's deals on 22 and 23 February 2006 the only documents available to it were the Europa print and the First Report credit check.

b) The Veracis report was dated approaching 6 months after the deals were carried out and highlighted a number of areas of concern.

   i) It illustrated a negative attitude to the Commissioners' due diligence requirements
   ii) Veracis was told that it was not to visit Pan Euro's business premises, but must visit the director's residence
   iii) Veracis noted that Bascom Systems Ltd, an associated business of Pan Euro, was involved in an ongoing dispute and had a poor relationship with the Commissioners.
   iv) Companies House records showed "various connections recorded under slightly different names and addresses", a number of which companies were dissolved and one of which was in liquidation. Veracis carried out no follow up on those companies.

v) A Dun & Bradstreet report showed Pan Euro as having a "higher than average" credit risk.

vi) Pan Euro's director, Greg Candy-Wallace, had acquired the company only a short time before the Veracis interview on 29 March 2006, and prior to his acquisition it had been a CD pressing business. Yet despite the recent change in trade the company anticipated a turnover of £80 million per annum;

vii) Accounts for both Pan Euro and Bascom were overdue at Companies House.

c) Mr Younas was aware of the need to clear deals with Redhill in advance, but claimed that as at the relevant time the Redhill phone lines were "too busy", it prevented him from conducting checks.

d) Mr Waller did not consider the Europa and First Report checks "provided adequate due diligence reassurance".

e) The Europa database was not as up to date as that of Redhill. Moreover, the Europa website only confirmed that a given VAT registration number was "live"; it did not confirm the name, address or other details of the registration.

f) The First Report Credit Check:

i) Was out of date, showing 2004 information;

ii) Showed Pan Euro as "dormant";

iii) Gave the credit rating as "inconclusive"

iv) Made comparisons with industry average figures that were of little assistance as Pan Euro was classed under "other business activities";

73. We accept without reservation the correctness of all the factual observations of Mr Waller.

74. The documents Mr Younas provided in relation to the remaining deals of Kasbyte and also the appellant traders revealed similar deficiencies to those identified by Mr Waller.

75. Second, chronologically come the Micromedia deals. On 26 May 2006, Micromedia entered into three deals, Micromedia deals 1-3, all of which the Commissioners' analysis subsequently found to lead back to a fraudulent defaulter, 3D Animations. All were back-to-back transactions, and the transaction chains were identical. In the same accounting period, on 30 June Micromedia carried out a further four deals, Micromedia deals 4-7, all of which the Commissioners' analysis subsequently showed to trace back to the contra-trader, JOS. Again the deals were all back-to-back, and each supply chain involved exactly the same traders, albeit different traders from those involved in Micromedia deals 1 – 3.

76. Although the invoices for Micromedia deals 1 - 3 were, as previously stated, all dated 26 May 2006 and the transactions took place on that date, all payments were made on 18

August 2006. And whilst the invoices for deals 4 - 7 were all dated 30 June 2006, payments due under them were made between 17 July 2006 and 21 July 2006.

77. The Commissioners were unable to obtain the records of 3D Animations. The invoices for those deals were all dated 26 May 2006. On the goods in the deals being supplied abroad by Micromedia to LBS, the foreign purchaser, they were seized by the Dutch authorities, whereupon LBS refused to make payment for them to Micromedia.

78. The Commissioners were also unable to obtain any paperwork relating to deals 4 -7 from Total Logistic Solutions Ltd, the freight forwarder that held the goods in the UK throughout the time they were here. Further, the transactions were not recorded in the EU sales listings of the alleged EU supplier, BRD Werbung or JOS; and JOS was unable to produce inbound CMRs for the acquisitions. In all seven deals in the period, each of the buffers involved in each transaction chain made exactly the same profit in each chain.

79. In the 91 days in period 06/06 Micromedia undertook wholesale transactions on but two days. Its retail sales during the period totalled but £50,256.86, VAT inclusive. Mr Younas explained that he had no capital with which to conduct wholesale trade in the period until the Commissioners had made repayment of Micromedia's 03/06 repayment claim of over £1.3 million.

80. By email of 31 May 2006 the FCIB informed Mr Younas that his Micromedia account could not be used for what it described as "corporate purposes", presumably indicating that the account for his sole trader business could not operate in the same way as that for a company. That presented Mr Younas with something of a problem for he had somehow to finance Micromedia purchases and sales.. He surmounted it by using the FCIB accounts of Triton and Kasbyte. Thus the Triton account was used to pay Micromedia's supplier, New Ora, for the goods comprised in Micromedia deals 1 -3, and the Kasbyte account to pay for the goods in Micromedia deals 4 - 7. The former case necessitated £1,271,115 being paid into the Triton account, and the latter required nine transfers totalling £2,922,880 into the Kasbyte account. We should record that Mr Younas did inform the Commissioners that he had used his Triton account with FCIB to receive and make payments for transactions he undertook as a sole trader as a result of FCIB's refusal to allow it to use its account for corporate purposes.

81. On the Dutch authorities seizing the goods comprised in Micromedia deals 1-3, LBS refused to pay for them. Mr Younas had to decide whether to pay his supplier or refuse to make payment. He was advised that if he were not to make payment, proceedings would probably be commenced against Micromedia for their purchase price. His dilemma was solved by a Cypriot company, DRA Corporation Ltd ("DRA") unexpectedly contacting him and offering to lend Micromedia £1.3 million to complete the purchase. Mr Younas was unable to say why that company did contact him, but claimed that earlier dealings with it might have been the reason. He did, however, produce no evidence to support his claim and, in its absence, we are not prepared to accept it. The Commissioners investigations showed

DRA to be based at the same address in Cyprus as Rezaco Trading Ltd, which company was the original supplier of the goods in Micromedia deals 1 – 3. In cross-examination Mr Younas maintained that he had no suspicion at the time that DRA might be a fraudster, and that the loan might be part of the fraud. He further claimed that the person who contacted him suggested that he "get an agreement drawn up in English" and that he "should add some additional security on there". By letter of 18 August 2006 to Mr Younas, DRA confirmed that it would lend Triton £1.3 million which was to be repaid "plus our fee of 10 per cent".

82. The agreement evidencing the loan arrangement drafted by those instructed by Mr Younas showed the borrowers to be Triton and Mr Younas, with Mr Younas giving his personal guarantee for the loan. The loan was to be drawndown in two tranches, each of £650,000, and was to be paid into Triton's FCIB account. In evidence Mr Younas explained that, "I originally asked them [DRA] to put the money into the Triton account and because I was personally getting it. Micromedia didn't have the banking facilities and I asked them to put the money into the Triton account. They said they couldn't because it wasn't my account, so that's why Triton actually had to have the agreement on there". Drawdown took place on 18 August 2006.

83. Mr Younas claimed to have provided stock valued at £185,000 and the stock seized by the Dutch authorities as part security for the loan.

84. On 18 December 2006 Mr Younas wrote to DRA saying that, as the Commissioners were carrying out extended verification of Micromedia's deals 1-3 preventing it from discharging the loan, he would like them to extend the loan period. DRA agreed to do as he asked, and also to remove Triton as a borrower. In 2007 Micromedia brought proceedings in the Netherlands to recover the seized goods, and on 24 August 2007 the Haarlem District Court made an order releasing the seized goods. It did so on the basis that the plaintiff, said to be Micromedia Ltd, did not have an account with the FCIB. Since there never was a company bearing the name Micromedia, in our judgment the court order was made in error. Subsequently, DRA agreed to take stock valued at £592,800 in part satisfaction of its loan, leaving a balance owing to it of £837,000. In cross-examination, Mr Younas accepted that if those behind DRA had been honest businessmen, they would not have settled the matter of the loan on those terms.

85. Subsequent to the transactions with which we are dealing, the Commissioners obtained access to the FCIB records, and had their officers analyse them. They established to our satisfaction that transaction chains their officers had constructed were correct and could be relied upon. In relation to Micromedia deals 1 – 3, Mrs Camm explained that the Commissioners had traced the payments through the FCIB accounts of the participants in the deals and found them to form a complete carousel, started and finished on 18 August 2006. That was the case notwithstanding that LBS refused to make payment for the goods were seized by the Dutch authorities. The carousel started with Zaagoug International SARL ("Zaagoug"), which made payments to DRA of £649,100 and £650,000, the FCIB transaction

numbers for them being EB1185414 and EB1185812 respectively. Those sums were in turn paid by DRA to Triton under FCIB transaction numbers EB1185770 and EB1185822. Triton then made payments of £650,000 and £621,115 to its supplier New Ora Ltd under FCIB transaction numbers EB1185785 and EB1185805 respectively. New Ora made payments to its own supplier, Zenith Sports (UK) Ltd, and the latter company then made third party payments to one Yasar Ahmed, 3D, Zenith's own supplier, being by-passed in the payment process. Mr Ahmed was company secretary of Heathrow, the defaulting trader identified by the Commissioners in relation to Triton's two purchases of CPUs included in its input tax repayment claim. Mr Ahmed made payments to Rezaco Trading Ltd, and from there the money concerned was returned to Zaagoug in transactions numbered EB1185803, EB1185848 and EB1185852. Mrs Camm observed that there were but 389 entries between the first and last transaction numbers and, since those numbers were activated when the transactions were booked and must necessarily have taken place within a very short period of time, she maintained, and we accept, that the timing of the payments was contrived: it could certainly not be as being the result of the dynamics of a legitimate grey market.

86. In so far as Micromedia deals 4 – 7 were concerned, the Commissioners FCIB evidence showed, and again we accept, that there was a complete monetary carousel for each of the four deals. Once the carousel for deal 4 was complete that for deal 5 commenced, and when it too was complete, the carousel for deal 6 commenced. The same pattern followed through to deal 7.

87. Micromedia was £411,000 short in funding Micromedia deals 4-7, but Mr Younas claimed that he could have funded it had the commissioners met Kasbyte's input tax repayment claim of £210,000 for period 02/06, his creditors paid sums due from them of up to £140,000, and New Order, the buffer between JOS and Micromedia, provided credit for the balance. In the absence of Micromedia funds necessary to complete those deals, Yayha International ('Yayha') provided Kasbyte with a sum of £500,000. On the face of it Yayha was not involved in those deals but before us Mr Younas acknowledged that there was a relationship of some sort between Yayha and New Order, and they were complicit in fraud. In evidence, Mr Younas claimed that in July or September 2006 Micromedia tried to sell part of the Dutch seized stock to Yayha, in order to make use of the £500,000 "deposit" it had paid. However, if there ever was the prospect of such a deal it had fallen down by 18 August 2006, by which stage Mr Younas claimed to have discovered that Yayha was not bona fide. Subsequently, Mr Younas not having repaid the £500,000, Mr Nasser, the director of Yayha, first indicated that it would commence legal proceedings for its recovery and then he threatened to beat up Mr Younas.

88. We finally turn to the Triton deals. That company was registered for VAT on 1 May 2002, the date on which Mr Younas was appointed its director. The company's issued share capital was £15, consisting of 15 £1 ordinary shares. Eleven of them were held by Mr Younas, and the remaining four by his three sisters.

89. On 2 June 2006 the credit balance on Triton's FCIB account stood at £949.63. Between 22 June 2006 and 10 July 2006 Triton received a total of £14,206,590.50, and paid out £15,666,316.12. Thus it had a requirement for £1,459,725.62 to complete its purchases. That sum was provided in the following way:

Date	Additional amounts paid in	Source of payment
14 June	£139,993.16	Mr Younas
21 June	£119,993.17	MicroCity
22 June	£150,000	Mr Younas
22 June	£130,000	Mr Younas
26 June	£165,000	Mr Younas
27 June	£80,000	Kasbyte
28 June	£155,000	Mr Younas
30 June	£210,500	Mr Younas
30 June	£40,000	Barclays*
3 July	£121,000	MicroCity
10 July	£54,988.81	MicroCity
10 July	£93,000	Cellcom Inc FZE**
	£1,459,475.14	

*This payment was made out of an account at Barclays plc held by Mr Younas or Triton.
** The Commissioners considered this payment to be a loan to Triton (see para 19 (xiii) above): Mr Younas maintained that it was a deposit on a transaction. As neither the appellant traders nor Kasbyte sought or received a deposit in relation to any of the other transactions before us, on the balance of probabilities we find that the sum paid was yet another loan obtained on non-commercial terms.

90. In her principal witness statement, which formed the basis of part of her evidence in chief, Mrs Camm usefully summarised the results of other officers' analyses of Triton's deal chains, and set out her own analysis of the money flows through the various FCIB accounts of the participants in the chains. We accept the correctness of the analyses, which provide appropriate elaboration of the contents of that part of the Schedule to our decision which relates to Triton.

91. We need provide but two examples produced by Mrs Camm of the money flows in Triton's deal chains. We take Triton deals 1 and 7 as each relates to a different one of the two customers it had in period 06/06. In the former, all transactions were invoiced and completed on 15 June 2006, and all payments made on 22 June 2006. Mrs Camm showed that Triton purchased 4275 Nokia N90 mobile phones from Highbeam Ltd for which it paid £1,499,006.25. Highbeam was deregistered for VAT on 31 August 2006 as being insolvent, its total insolvency claim to 8 August 2008 exceeding £1.7 million. Its director was disqualified from acting as a company director for 13 years from 12 December 2008 for the company's involvement in MTIC fraud. Highbeam purchased the goods from RS Sales

Agency Ltd for £1,496,230.31. On receipt of the monies paid by Highbeam, RS Sales Agency, the defaulting trader identified by the Commissioners, paid £1,493,454.38, inclusive of VAT, to the account of Worldcall LDA of Portugal. That meant that RS Sales Agency was deprived of the VAT for which it should have accounted to the UK revenue authorities. Worldcall then made payment of £1,084,792.50 to Thierra Investments of Poland, and that sum was used to fund the transactions in the Triton deal 2 chain. (Similarly the monies received by Worldcall in deal chains 3 and 4 were used to start the chain of payments for deal 6). Triton sold the phones in its deal 1 to 2 Trade BVBA ("2 Trade") of Belgium, and received payment therefore of £1,351,350, leaving a balance owing of £945, which was later paid with the monies for deal 2. Immediately prior to making payment to Triton, 2 Trade received £1,357,965 from Global Mobile Leasing GmbH, that company having received £1,360,327.50 from Thierra Investments, which in turn had received £1,361,508.75 from Worldcall.

92. In relation to Triton deal 7, where all parties in the chain were invoiced and the transactions carried out on 21 June 2006, all payments were made on 27 June 2006. In deal 7, Triton purchased 2,000 Nokia 8801 mobile phones. That model of phone was the Nokia 8800 specially adapted for use in north America. Consequently, it could not be used in the UK or Europe so that the Commissioners questioned why it should be the subject of deals in either the UK or Europe. Triton purchased the phones from Com 2K Ltd paying it £646,250. Com 2K purchased the phones from The Wireless Warehouse and paid it £645,075. That company in turn paid £644,487.50 to the defaulting trader West 1 Facilities Management Ltd. West 1 proceeded to pay Full Moon Holdings Ltd of Cyprus £643,687, that sum including the VAT for which West 1 was liable to account to the Commissioners. Full Moon then made a payment of £597,500 to Globaini Partner Zagreb of Croatia, and Globaini immediately passed the same sum on to Sodagar BV. Sodagar then paid £596,000 to Kavico Aps, Triton's customer which had earlier the same day paid Triton £594,000.

93. In her statement, Mrs Camm came to the following conclusion on the Triton deals (3-722):

> "106. As can be seen from this statement and flowcharts, I was able to identify circularity of payment in all of the 13 Triton deals that I examined. For deals 1 to 6 and 11, it appears that the funds commenced with Worldcall LDA in Portugal, continued through the same 6 accounts and then returned to Worldcall. The funds received by Worldcall in respect of deal 1 were then used to fund payment for deal 2. Furthermore, in each instance the defaulter RS Sales Agency paid the majority of funds received from Highbeam to Worldcall in Portugal, meaning that the VAT was paid overseas and that they were never in a position to pay the VAT due to HMRC.
>
> 107. For deals 7 to 10, 12 and 13 it appears that the funds travelled from Kavico Aps in Denmark, continued through the same 8 accounts, and returned to Kavico. In certain circumstances the funds are re-circulated through the same transaction chain

(deal 8) or used to fund the subsequent deal (deals 9 and 10, and deals 12 and 13). Once again in each instance the funds, which are inclusive of VAT, are paid overseas of Full Moon Holdings by either the defaulting trader or the third party (Yasar Ahmed). This means that neither West1 Facilities nor Heathrow Business Solutions were ever in a position to pay the VAT due to HMRC."

94. We agree with that conclusion.

95. The gross profit made by Kasbyte in period 02/06 and by the appellant traders in period 06/06 totalled £1,073,375.50 and, after deduction of costs (save in relation to Triton deals 12 and 13 and the Kasbyte deals, where information was not available), the net profit was £1,015,194.50.

96. On being informed in September 2006 that the appellant traders' input tax repayment claims for period 06/06 had been subjected to extended verification its deals having been allegedly involved in fraud, they ceased trading in mobile phones and CPUs.

Submissions

97. Mr Wells made the closing submissions for both Micromedia and Triton. His written submissions ran to 75 pages. Many of those pages were taken up by citations from the transcripts of evidence, and particularly from that of Mr Younas. In essence, Mr Wells submitted that the appeals should be allowed in their entirety as neither Mr Younas nor Triton was a fraudster: he was an honest trader; he had built up his businesses in what he believed to be a vibrant legitimate wholesale market, and neither their growth nor turnover was extraordinary. Further, he had developed a good relationship with the Commissioners and had co-operated with them and acted on their instructions throughout his business life. Whilst accepting that the appellant traders were aware of fraud in the mobile phone and computer product markets at the relevant times, and took precautions to avoid becoming involved in it, Mr Wells maintained that neither they, nor on the basis of the evidence, the Commissioners, had knowledge of contra-trading until early 2006, so that Mr Younas could not have known of it. In those circumstances Mr Younas would not have been aware of the contra-trading involved in Micromedia deals 4-7. With hindsight, the appellant traders accepted that their 06/06 deals were linked with fraudulent tax losses, and that the transactions chains in which they were involved in that period were contrived. However, they knew nothing of the defaults by traders listed by the Commissioners, and never traded with any traders found to have been defaulters; and errors by others should not be attributed to them.

98. Mr Younas acknowledged that in June 2006 he was aware of the risks in the mobile phone and computer market place but, Mr Wells maintained, the information provided by the Commissioners, particularly in their letters, did not mention specific risks that he and the appellant traders might face; the standard nature of the letters was acknowledged in evidence by Mrs Brierley. Mr Younas was given further comfort in his business practices by the fact

that the Commissioners never enforced the additional control procedures that might be applied to businesses of concern for which Notice 726 made provision. The extent of the risks faced by the appellant traders was unknown to them until after the disputed transactions took place and after the results of the extended verification by the Commissioners; it was reasonable for the appellant traders to believe that they were not involved in chains of transactions corrupted by MTIC fraud. The moment they realised that there was something wrong with the entire industry, including the deals in which they were taking part, they immediately decided to cease trading in that market. But it was not until September 2006 that the appellant traders had information that led them to that conclusion. The Commissioners did not properly distinguish between those who were unwittingly caught up in a tainted chain, and those who had contrived the chain to commit fraud. In part, that was due to the Commissioners failing properly to take account of a legitimate constraint of the business model described by Mr Younas, namely that the appellant traders knew only their supplier and customer in any one transaction.

99. Mr Wells observed that the appellant traders also accepted that each deal chain must have begun with a manufacturer, but contended that there was no evidence as to whether the deal chains involved authorised distributors, retailers or end users; in any event, it was beyond the power of the appellant traders to obtain such evidence. Their business model was such that they could have known only their suppliers and customers; only the Commissioners had the resources to go behind the appellant traders' counterparties. There was clear evidence that the goods traded by them existed, but none to show circularity of goods, or of a "phone mountain" building on the continent. Their checks gave them sufficient confidence to conduct transactions believing them to be legitimate.

100. Mr Wells maintained that the appellant traders carried out proper due diligence on suppliers and customers, and received no negative indicators which would have led them to discover a connection with fraud. Where they had been provided with negative indicators, they had refused to deal with the traders concerned. Among the steps taken by Mr Younas were the making of Europa checks, as opposed to those of Redhill, the latter being considered by him to be inadequate. He also received documents from companies such as introductory letters and details of their VAT registrations. Further, he relied on freight forwarders to view, inspect and report on stock, understanding that they were being run under Customs supervision. (Only in September 2006 did a Customs officer explain to Mr Younas that he was mistaking the operations of freight forwarders with those of bonded warehouse operators). Finally, Mr Younas claimed to rely on his own experience.

101. Mr Wells also made the following submissions:

a) The goods in which the appellant traders dealt were easily transportable and of high value, facts which made their market place a target for fraudulent traders. They had no means of knowing that the EU companies with which they dealt were involved in fraud.

Further, they were not aware of a significant danger of fraudulent trading by European customers.

b) The appellant traders relied on the efficiency of their freight forwarders stock tracking systems for control of goods until they were purchased by customers, whereupon, following inspection, the goods were the customers' concerns. They also requested them to carry out an inspection of 10 per cent of the goods traded, regarding that as good practice to ensure the genuine nature of their deals. Had the appellant traders been advised by freight forwarders of the discovery of damaged stock they would not have continued with the relevant deal, but since manufacturers' packaging was of high quality, damage was unlikely.

c) The mobile phones identified by the Commissioners as having been exported more than once constituted but 0.15 per cent of those identified by their IMEI numbers as having been supplied by the appellant traders. Mr Wells submitted that the appellant traders would not buy any stock that had previously been exported as identified by a Customs stamp. Without access to the Commissioners' Nemesis system, which all traders were denied, the appellant trader could obtain little useful information from the collection of IMEI numbers.

d) There was nothing inherently wrong in back-to-back deals, nor in the fact that the appellant traders generated a range of mark-ups, all of which were reasonable for a competitive business, and all arose from genuine negotiations.

e) Goods traded were often insured by the freight forwarders and/or customers. If so not insured, the appellant traders took a commercial decision not to insure them as it was difficult to obtain cover, the cost was high, and the probability of harm low.

f) The loan of £1.3 million from DRA Corporation obtained on behalf of Micromedia was applied for what Mr Younas considered commercial operations, as was the loan from Voltek.

g) Prior to the appellant traders last deals in June 2006 they did not suspect that the use of FCIB accounts played any part in the frauds alleged by the Commissioners; and the FCIB reference numbers were not reliable as a measure of time.

h) Mr Younas, as Micromedia, had no knowledge of the third party payments to Yasar Ahmed in Micromedia deals 1-3.

i) The appellant traders received £500,000 from Yayha as a deposit on a deal that did not proceed. With hindsight, Mr Younas accepted that Yayha was a fraudster.

j) No visiting officer ever criticised the appellant traders' due diligence, or brought any defects in it to Mr Younas's attention.

k) The appellant traders acknowledged having sold mobile phones within the UK that were of European specification; the only difference between the two specifications was the charger, which could easily be changed.

102. Although some of the appellant traders' transactions were subjected to extended verification, Mr Wells contended that they were never definitively informed of missing traders in their transaction chains prior to period 06/06. In so far as Triton's return for period 06/04 was concerned, the repayment claim was met in full. Prior to period 06/06 all the repayment claims made by the appellant traders were met in full. Since September 2006 the appellant traders had not dealt in mobile phones and CPUs – a decision Mr Younas made following information given to him by the Commissioners. He further denied fraudulently conspiring with others to defraud the revenue: he was innocent of any fraud.

103. In conclusion, Mr Wells observed that, after years of approving the appellant traders' deals, their input tax repayment claims for period 06/06 were rejected on the basis that Mr Younas either knew, or should have known, that their deals were connected with fraud. He submitted that the Commissioners had not established that the only way such fraud could have worked was with Mr Younas's active knowledge and co-operation. He had explained his businesses, and had fully set out the reasons for his decisions at the time: the unrealistic coincidences which the Commissioners relied upon only really made sense if they existed to fool the appellant traders. The Commissioners had repeated time and again that the appellant traders were made aware of "the prevalence of fraud" within their industry. However, nowhere in any letters to them, or in any of the notes made at meetings with them, was that set out. In reality, there was no evidence that the appellant traders believed or should have believed that the inherent probability that their deals would be connected with fraud was as high as the Commissioners claimed. In all the circumstances and without the benefit of hindsight, Mr Wells submitted that it could not be said that the appellant traders knew of the fraud or ought to have known that the only reasonable explanation for the circumstances in which the transactions in question were undertaken was that they were connected with fraud.

Conclusion

104. Although we have dealt with Mr Wells' submissions at length, we find it unnecessary to deal with those of Mr Cannan in the same way, for they are taken into account in our findings of fact and this conclusion.

105. At the outset, we remind ourselves of the only question we are required to answer in relation to every deal carried out by the appellant traders. It is: did the appellant traders know that their transactions were connected to the fraudulent loss of VAT elsewhere in their transaction chains or should they have known that they were so connected?

106. The law we must apply in answering that question is to be found in the ECJ decision in *Kittel*, and in the decision of the Court of Appeal in *Mobilx*. In *Kittel*, the ECJ refused a claim by the appellant company to repayment at the end of an accounting period of the excess of its input over output tax. The questions in that case posited "a recipient of a supply of goods who has entered into a contract in good faith without knowledge of a fraud committed by the seller". The referring Belgian court also wished to know if the answer of the ECJ would have been different had the taxable person known or should have known that by his purchase he was participating in a transaction connected with the fraudulent evasion of VAT. Having reiterated that a trader's right to deduct in respect of a transaction was unaffected by other transactions, whether previous or subsequent, the ECJ confirmed at paragraph 51 that "traders who take every precaution which could reasonably be required of them to ensure that their transactions are connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without risk of losing their right to deduct the input VAT…" The ECJ then dealt with the converse case stating, inter alia:

a) where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (para 55);
b) in the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with the fraudulent evasion of VAT, must be regarded as a participant in that fraud (para 56) that is because in such a situation the taxable aids the perpetrators of the fraud (para 57).

107. The ECJ concluded by determining that "…where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct" (para 61).

108. In *Mobilx*, the Court of Appeal considered the *Kittel* judgment in some detail and, from the leading judgment of Moses LJ, the questions we must ask in reaching our conclusion emerge as:

1) whether Mr Younas, as proprietor of Micromedia and director of Triton, exercised due diligence, or did enough to protect them; and
2) "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" (see [74] and [75] of the judgment).

109. At [111] of his judgment in *Red 12 Trading Ltd v HMRC* [2009] EWHC 2563 (Ch) Christopher Clarke J explained that:

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

110. Direct evidence of knowledge or means of knowledge is not to be expected, rather we must rely on inferences drawn from primary facts – see for example, *Dadourian Group International Ltd v Simms* [2009] EWCA 169 (Ch) where, at [89], the Court of Appeal dealt with a submission to the contrary:

> "At times [counsel] came close to suggesting that fraud can only be established where there is direct evidence. If that were the case, few allegations of fraud would ever come to trial. Fraudsters rarely sit down and reduce their dishonest agreement to writing. Frauds are commonly proved on the basis of inviting the fact-finder to draw proper inferences from the primary facts."

111. Lewison J observed at [85] of his judgment in *HMRC v Livewire Telecom Ltd* [2009] STC 643, in *Kittel* the ECJ "was at pains to stress that the test was not one of dishonesty".

112. We observe that whilst in the letters denying the appellant traders the input tax they sought to recover, the Commissioners alleged that they were involved in an overall scheme to defraud the revenue, that allegation was not repeated in the Statement of Case. In our judgment, the Commissioners did not need to show that there was such a scheme; they were required only to prove that by Mr Younas the appellant traders knew or had the means of knowing that their transactions were connected with the fraudulent evasion of VAT. As Moses LJ observed at [41] of *Mobilx*, traders who do not meet the objective criteria determining the scope of the right to deduct input tax are to be treated as participants in VAT fraud.

113. A substantial number of the submissions of Mr Wells were focused on a claim that Mr Younas was a careful and honest trader. In our judgment, those submissions were ill founded for it is plain from our findings of fact that the appellant traders took little, if any, care in their choice of counterparties in their deals and, as will appear from the later part of our conclusion, their actions on the Commissioners' recommendations as to how they should avoid the risk of being drawn into VAT fraud were for appearance's sake rather than genuine.

114. It is plain from the number of visits officers made to the appellant traders and Kasbyte, and from the large volume of correspondence associated therewith, that Mr Younas was made fully aware of the Commissioners' concerns and the risks involved in trading in the wholesale mobile phone and CPU markets. He could have been in no doubt that MTIC fraud was rife in the period with which we are concerned, and unless the appellant traders took the precautionary steps suggested by the Commissioners in relation to every deal, they could well become ensnared in fraudulent transactions. Mr Younas's claim that the Commissioners

failed to advise him of the extent of MTIC fraud and of the risks he was taking is totally without foundation. Although not himself a fraudster, we are satisfied that Mr Younas took advantage of opportunities offered to him by fraudsters.

115. We did not find Mr Younas an honest and credible witness. As our findings of fact indicate, a number of his explanations of matters lacked logic and indicated that, he simply ignored obvious indicators of fraud. He must have been aware that traders with as little capital as those of the appellant traders could not legally have developed their businesses as rapidly and successfully as they apparently did. As an example, we might repeat the turnover details of Micromedia in 2001 and 2002. It will be recalled that in the former year turnover was a mere £221,741, whereas in the following year it exceeded £91 million. Such an exponential increase in turnover in the two years following Micromedia's establishment was apparently achieved with little capital and minimal effort. As the Commissioners observed in their letter of 30 October 2007: "It is impossible to believe that, in a legitimate market, small traders can achieve turnover figures of which most legitimate traders, with years of business behind them, can only dream, by quickly identifying sources of huge numbers of goods which they can as quickly sell to another trader who is willing to pay more, even if little more, than the cost of acquisition". The seizure by the Dutch authorities of the mobile phones exported by Micromedia in June 2006 is an example of an indicator of fraud being ignored. It seemingly did nothing to indicate to Mr Younas that the market in which he was dealing was not commercial, and one that he should have avoided.

116. There is then the DRA loan to Micromedia. It will be recalled that Mr Younas was invited by that company to draft the loan agreement. It is unheard of in commercial circles for a borrower to draft a loan agreement, a fact that should have made plain to Mr Younas that the loan was anything but commercial. That the invitation was made in connection with a loan of no less than £1.3 million, in our judgment provided a clear indication to Mr Younas that Micromedia was dealing with fraudsters. A fortiori, we might add that no ordinary commercial lender would have entertained as part security for a loan goods seized by a revenue authority as having been the subject of a fraudulent transaction, as did DRA.

117. It is common ground that there was in 2006 a genuine grey wholesale export market in mobile phones and CPUs, but we are satisfied that the appellant traders' disputed deals were not part of it. In our judgment, the fact that all the appellant traders' deals were back-to-back, they were never left with surplus stock following a deal, and the transactions were carried out with unexplained and unnecessary haste, must, at least in combination, have indicated that they were not dealing in the legitimate wholesale market. Those facts clearly show that the deals were orchestrated, pre-arranged and contrived.

118. Further indications that the appellant traders were not trading in an ordinary commercial market were that they allowed customers a length of time of their own choosing to pay for goods they purchased, despite their customers having entered into no credit arrangements, and at least in some cases never having had their credit worthiness checked. Additionally,

the appellant traders themselves never paid for phones and CPUs before supplying them to foreign customers. Whether they claimed to own them despite not having paid for them, or to have permission of the goods true owners to export them, was not made clear. Whichever was the case, in our judgment, it was indicative that the transactions were not commercial, as Mr Younas must have known. In making payment for supplies as they did, the appellant traders took no commercial risk. In our judgment the facts rehearsed in this paragraph constitute compelling evidence that the appellant traders were, and by Mr Younas knew they were, engaged in fraudulent trading.

119. Not only were all the deals the subject of the appeal completed in the course of a single day, whilst the phones and CPUs were in the UK they remained in the possession of a single freight forwarder. As we have said, no reason for the haste in completing the deals was offered, Mr Younas implicitly claiming that it was an agreed term of trade. That haste alone would, in our judgment, have put any legitimate trader on notice that his deals were not ordinary commercial transactions and, when coupled with the delay in payment, would clearly have indicated that they were contrived and pre-arranged.

120. The appellant traders failed to make a number of necessary contemporaneous checks on their customers, and ignored obvious indicators of their high failure risk. In our judgment, in failing to make those checks and ignoring the indicators, they clearly demonstrated that the checks they did in fact make were superficial and designed mainly to give the impression that they were taking proper precautions; they were mere "window dressing". We consider the matters referred to in this and the last preceding paragraph further clearly to indicate that the appellant traders became knowingly drawn into VAT fraud.

121. Ignoring the goods seized by the Dutch authorities, and one deal carried out by Triton shortly after it commenced trading, every company involved in every chain of transactions, as constructed from the invoices, made a profit on its own deals. The Commissioners rely on that fact as proof of the appellant traders' knowledge of their transactions being connected with fraud. We accept Mr Younas's claim that there was no reason why the traders would have known the profits achieved by other traders in the various chains, and propose to treat the matter as a neutral factor.

122. In our judgment, the chains of transactions concerned, as revealed by the invoices, were pre-arranged and orchestrated. We do not accept that the deals were negotiated and carried through as Mr Younas claimed, for the time available, taking account of the business checks required, including ascertaining the authenticity of the goods, having them inspected by the freight forwarders, and preparing the paperwork associated with the export of the goods, was simply insufficient for the purpose. The whole of the evidence relating to the various deals in the chains yet again indicated to us that the transactions were not commercial, but rather were another example of "window dressing". Mr Younas must have been aware that the paperwork for the appellant traders' own part in the chains was at least indicative of the pre-arrangement of their deals.

123. No legitimate trader with the knowledge that Mr Younas had of the computer and mobile phone industries, and the wholesale markets in both products, would have used the trading model he described. He provided no explanation for the model used, which we consider to have been devoid of commercial reality. Had he carefully considered the transactions in which the appellant traders were involved, he would have found it impossible to conclude that the deals were other than contrived and connected with fraud. We so find for a variety of reasons, none of which involves our looking at matters with hindsight.

124. First, any trader operating in a legitimate market in goods worth hundreds of thousands, and in some cases millions, of pounds would not have dealt with other traders without first satisfying himself that his suppliers could supply what they had contracted to supply, and his customers could purchase what they had contracted to buy. Whilst the appellant traders may have derived some comfort from Mr Younas's previous knowledge of some of those with whom they traded, in the absence of checks on customers that extended little beyond basic registration details, Mr Younas had no information to satisfy himself or the appellant traders that the customers could pay for goods ordered. He was altogether too eager to place purchase orders with suppliers without having any assurance that the appellant traders would themselves be paid for goods ordered, or without obtaining any payment guarantee. We infer from all the evidence adduced that the appellant traders knew that their suppliers and their counterparties would not let them down, for all the transactions had been pre-arranged and were part of a contrived scheme.

125. There is then the evidence adduced as to how title to phones and CPUs passed from one trader to another in a chain of transactions. Mr Younas glossed over the matter, inviting us implicitly to accept that, although the indications were that each trader in a chain only obtained title to goods when he paid for them in full, nevertheless on the documentary evidence indicating that a transaction was complete but the goods had not been paid for, he then either obtained title to the goods concerned or could at least trade them to his own customers. It defies both logic and commercial reality that each trader in a chain, having claimed by means unsupported by evidence to have either acquired a title of some sort to extremely valuable goods, or been authorised to export them prior to payment, both released possession of them, and did so without obtaining any security to assure payment. No independent evidence of the transfer of title prior to payment or of the grant of export permission was adduced, nor was any reason for the granting of such permission. We regard the matters referred to in this paragraph as compelling evidence that Mr Younas, and hence the appellant traders, knew that the transactions into which they entered were connected with fraud.

126. Nor would any legitimate trader have provided goods worth hundreds of thousands of pounds to another trader knowing that he would be paid only if each trader in the chain, each link, made payment. It is impossible to believe that such a show of trust would have existed between legitimate traders where locating the goods abroad after they had passed along a

chain of transactions of unknown length, and if necessary attempting to recover them, would have been virtually impossible.

127. The position of the appellant traders' customers at the other end of the chain is equally unbelievable; they unilaterally decided to pay their supplier. No evidence was adduced as to why they would have taken such a risk. Further, Mr Younas invited us to accept that the customers made payment despite the fact that the appellant traders, almost if not certainly to their knowledge, had no title to the mobile phones and CPUs, and would never obtain title unless and until payments made their way through an unknown number of traders. No motive for such largesse was adduced and, in an industry rife with fraudsters, any trader in the chain could have prevented title being transferred. In our judgment, the matters referred to in this and the last preceding paragraph also provides compelling evidence of Mr Younas knowing that the traders' transactions were connected with fraud.

128. The lack of written contracts, or even oral contracts made on defined terms, with the appellant trader and their suppliers, customers and freight forwarders in a market in very high value goods must also have indicated to Mr Younas the uncommercial nature of the transactions into which they were entering. Again, we infer that the evidence indicates pre-arrangement.

129. Of a claim by Mr Younas that the appellant traders were unable to carry out checks on any of the other traders in the chain other than their immediate suppliers and customers, we observe that it was plain from the evidence that beyond obtaining basic registration documents of their own counterparties, the appellant traders made no attempt whatsoever to obtain any information about other traders or transactions in their transaction chains. They could, for instance, have asked the freight forwarders holding goods for them how long the goods had been in the UK, or asked their suppliers whether they owned the phones and CPUs they were supplying; and, if they did not, whether they had authority to transfer possession of them to third parties based abroad. In neither case would the freight forwarders or suppliers have been required to break a confidence. Such checks as Mr Younas did carry out were casually undertaken and negative indicators were ignored because, in truth, they were unnecessary. He knew perfectly well that the appellant traders' suppliers and customers would not fail in their obligations, for the transactions were pre-arranged and contrived.

130. We should have expected Mr Younas to have queried why the appellant traders' suppliers made such attractive offers of credit to them: any trader in the ordinary commercial market would have anticipated questions to be put to him to ensure that he was a suitable trader to whom to offer credit. The absence of appropriate questions should itself have been yet another indicator to Mr Younas that the appellant traders were not dealing in the ordinary commercial market. In itself, that indicates to us pre-arrangement and contrivance. But when one additionally takes account of the circumstances in which the appellant traders obtained the Voltek and DRA loans, in our judgment, Mr Younas must have known that the appellant traders and Kasbyte were involved in VAT fraud.

131. Mr Younas accepted having received Notice 726, and his accountants confirmed to the Commissioners that he had been "fully briefed" on its contents. The Notice describes MTIC fraud as a "systematic criminal attack on the VAT system"; and Floyd J in *Mobilx Ltd (in administration) v Revenue and Customs Commissioners* at first instance [2009] STC 1107, having agreed with counsel that observation of its recommendations was "equally applicable to the avoiding of challenges to repayment of VAT", see [10] of his judgment, noted that it contained "chilling warnings about the prevalence of MTIC fraud" in the mobile phone and CPU markets. He continued, "In several places the document [Notice 726] makes it clear that the obligation on the trader is to ensure the integrity of his supply chain"; and at [87], "…the company has to exercise independent judgment, not delegate its judgment to HMRC." Thus, Mr Younas could not rely on the Commissioners' judgment as to the integrity of the appellant traders' transactions, but rather had to make his own judgment as to each one. In our judgment, Mr Younas took little, if any, notice of and made no attempt to act upon the recommendations contained in Notice 726. And the fact that the Commissioners met all the appellant traders' input tax repayment claims before period 06/06 in our judgment avails them not at all.

132. We accept that the appellant traders almost certainly did not know the identities of the individual defaulters in invoice chains but, in all the circumstances, and particularly the back-to-back nature of the chains, and the apparent ease and speed with which the transactions came about, in our judgment, from his general knowledge of MTIC fraud Mr Younas was likely to have known that there was a missing trader in each chain.

133. The evidence relating to all the Micromedia and Triton deals indicated circularity of payments. As we earlier observed, that clearly pointed to their orchestration. In order for the money to circulate as the banking evidence showed, the fraudsters would have needed to ensure that the appellant traders purchased goods from a particular supplier. We accept that Mr Younas and the appellant traders may not have been aware of those matters. However, in our further judgment, it was beyond coincidence that traders always purchased from a small number of suppliers and sold to a very small pool of customers. As a result, we are satisfied that Mr Younas was aware of the contrived nature of the trading, and also of pre-arrangement of the deals.

134. We accept that the appellant traders never dealt with a defaulter but, since they made few checks on their suppliers (and customers), we can only assume that that was clearly planned by those responsible for the frauds.

135. We agree with a submission by Mr Cannan that no reasonable businessman would have utilised £1.5 million of a VAT reclaim in carrying out further transactions through Triton when he had already had the Micromedia goods seized by the Dutch Customs as part of a potential fraud as did Mr Younas. There was no evidence that his checks on suppliers and customers improved at all after early June 2006 when the goods were seized.

136. Our overall conclusion, based on what we find to have been the appellant traders' knowledge of the prevalence of fraud, the deficiencies we have identified in their due diligence, and their failure to take the necessary precautions in dealing with their suppliers and customers, is that Mr Younas did not take every reasonable precaution required of him to ensure that the appellant traders' transactions did not involve them in participation in VAT evasion. Applying [61] of *Kittel*, that finding is justification for our holding that he "…knew that by his [the appellant traders'] purchases, he was taking part in a transaction connected with the fraudulent evasion of VAT". The high standard required of a trader meant that the appellant traders were under a positive duty to take precautions, including the carrying out of due diligence and other checks when indications of risk were presented to them. The Commissioners have proved that the appellant traders' state of knowledge was such that their purchases were outside the scope of the right to deduct input tax (see [81] of the judgment in *Mobilx*). We therefore dismiss the appeals of the appellant traders. In so doing, we have taken account of all Mr Wells' submissions, and find it unnecessary to refer to those to which we have not made specific reference in our conclusion.

137. Apart from his claim that neither Mr Younas nor the Commissioners were aware of centre-trading until early 2006, Mr Wells did not make separate submissions on the contra-trading deals of Micromedia. However, since there appears to be at least some conflict amongst the High Court judiciary as to what the Commissioners are required to prove in such cases, we propose separately to make a number of observations on Micromedia's contra-trading transactions.

138. In both *Blue Sphere Global Ltd v Commissioners of Revenue and Customs* [2009] EWHC 1150 Ch and *Commissioners of Revenue and Customs v Brayfal Ltd* [2011] FTC/53/2010 the judges concerned took the view that, in a contra-trading case, for the Commissioners to succeed, it was necessary for them to prove that the trader concerned was a co-conspirator with the fraudsters. In *Blue Sphere*, the Chancellor, Sir Andrew Morritt, said

> "55. In my view, it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E [the exporter in the clean chain] it must be in a position to prove that C [the contra-trader] was party to a conspiracy also involving A [the defaulting trader]. Although the fact that C is party to both the clean chain with E and dirty chain with 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 dirty chain inevitable in the sense of being pre-planned."

139. However, in the *Megtian Ltd v Commissioners of Revenue and Customs*, Briggs J stated plainly that *Kittel* does not require knowledge that the contra-trader was a fraudster.

140. In *Mobilx*, the Court of Appeal considered three disparate types of case: actual knowledge, means of knowledge and, specifically in relation to *Blue Sphere*, the additional

considerations that arise in contra-trading cases. At [68] to [76], Moses LJ dealt with *Blue Sphere*. He observed at [74] that whether the company, by its director, had exercised due diligence or done "enough to protect himself" was not the only question to be answered. He continued,

> "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.
>
> 141. We might add that it matters "not one jot" whether Fusion's transactions in the clean chain preceded or followed 4A Developments transactions in the dirty chain (see [62] of the judgment in *Mobilx*)."

142. We infer that Mr Younas, as Micromedia, did know what was taking place in Micromedia deals 7-10, and are satisfied that he must have known that the only reasonable explanation for the circumstances in which the deals took place were that they were connected with the fraudulent evasion of VAT. It follows that we confirm our conclusion at [136] in relation to Micromedia deals 4-7.

143. In the event of the appeal being dismissed, Mr Cannan made application for the Commissioners' costs thereof. We grant the application, and direct that the appellant traders do pay the Respondents' costs of an incidental to and consequent upon the appellant traders' appeal such costs to be calculated on the standard basis and in the event of their not being agreed be assessed by a costs judge of the High Court.

144. 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.

DAVID DEMACK
TRIBUNAL JUDGE

Release Date: 23 January 2012

THE SCHEDULE

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