TC07741

VAT - denial of input tax – missing trader intra community fraud - Kittel – trading in soft drinks and confectionery - knowledge or means of knowledge of connection to fraudulent evasion of VAT

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/07165

BETWEEN

CAVENDISH SHIPS STORES LIMITED **Appellants**

-and-

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

TRIBUNAL: JUDGE ALEKSANDER
GILL HUNTER

Sitting in public at Taylor House, London EC1 on 5 to 8, 11 and 13 November 2020

Timothy Brown, counsel, for the Appellants

James Jackson, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

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INTRODUCTION

1. The appeal concerns the denial of a deduction for input tax incurred by the appellant, Cavendish Ships Stores Limited ("Cavendish"), in respect of 200 transactions which took place in the periods 09/15 to 04/16. The total amount of tax at issue is £2,662,334.52, with these 200 transactions being traced back to tax losses as a result of nine defaulting traders. Cavendish were notified in a decision letter dated 13 September 2017 that they had been denied the right to deduct input tax in relation to these transactions on the basis that these transactions were connected with the fraudulent evasion of VAT and that Cavendish knew or should have known of this fact. The alleged fraudulent evasion is missing trader intra-community ("MTIC") fraud.

2. The periods under appeal and the amounts involved are as follows:

Date of Decision	**Period**	**Number of transactions**	**Total net value**	**Total input tax denied**
13/09/17	9/15	28	£1,611,868.96	£322,373.79
13/09/17	10/15	9	£531,348.48	£106,269.70
13/09/17	11/15	11	£583,539.05	£116,707.81
13/09/17	12/15	21	£1,182,721.80	£236,544.36
13/09/17	1/16	14	£823,672.20	£164,734.44
13/09/17	2/16	30	£1,897,044.24	£379,408.85
13/09/17	3/16	40	£2,957,319.48	£591,463.89
13/09/17	4/16	47	£3,724,158.40	£744,831.68
Total		**200**	**£13,311,372.61**	**£2,662,334.52**

3. In each of the 200 deals under appeal, Cavendish purchased the goods from Whitmount Limited ("Whitmount").

4. 170 of the 200 deal chains can be traced directly to a fraudulent tax loss occasioned by one of the following fraudulent defaulting traders earlier in the supply chain, namely Tread Plus Ltd, Kool Brands Ltd, Impact Traders Ltd, MMG Northwest Ltd, Oldbury Ltd, WSB Agencies Ltd, persons purporting to be Jay's Foods Ltd, and persons purporting to be Food & Drink Hub (Scotland) Ltd. The defaulting trader sold the goods to another trader ("the first buffer"), charging VAT output tax on the invoice, for which it then failed to account. The goods were then sold directly to, or through a chain of buffers ending with, Whitmount, who sold the goods to Cavendish ("the broker"), who in turn dispatched them from the UK in a sale to a trader in another European Union Member State. Cavendish's sales were zero-rated for VAT and they sought to reclaim the input tax paid on their purchases. Cavendish accept, and do not dispute, that these 170 deals can be traced to a fraudulent defaulting trader.

5. In the case of the remaining 30 deal chains, HMRC were not able to trace the deal chain beyond the "blocker" trader, AV Traders Limited ("AV Traders"), but based on its pattern of trading, HMRC assert that, on the balance of probabilities, these transactions are traced to a fraudulent tax loss occasioned by a fraudulent defaulting trader. Cavendish do not accept, in relation to these 30 deal chains, that there is a tax loss attributable to the fraudulent evasion of VAT.

6. The issue in this appeal is whether Cavendish knew, or in the alternative should have known, that the 200 transactions in respect of which input tax has been denied were connected with the fraudulent evasion of VAT. It is not in dispute in relation to 170 of these transactions that the transactions were connected with the fraudulent evasion of VAT. The issue in dispute in relation to these deal chains is solely whether Cavendish knew or should have known of this

(knowledge or means of knowledge). In relation to the remaining 30 transactions that can be traced back to AV Traders (and no further), an additional issue arises as to whether those trades were connected with the fraudulent evasion of tax.

7. At the hearing, Mr Brown represented Cavendish, and Mr Jackson represented HMRC.

THE LAW

The right to deduct and *Kittel*

8. Articles 167 and 168 of the Principal VAT Directive and sections 24 to 26 of the Value Added Tax Act 1994 ("VATA") provide for the right to deduct input VAT. If a taxable person has incurred input tax that is properly allowable, they are entitled to set it against their output tax liability and, if the input tax credit due to them exceeds the output tax liability, receive a payment.

9. However, the Court of Justice of the European Union ("the ECJ"), in the joined cases of *Axel Kittel v Belgium* and *Belgium v Recolta Recycling SPRL* (C-439/04 & 440/04) ("*Kittel*") has confirmed that taxable persons who "knew or should have known" that the purchases in which input tax was incurred were connected with fraudulent evasion of VAT will not be entitled to deduct that input.

10. At [56] of *Kittel*, the ECJ stated:

> […] a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.

11. Conversely, the ECJ had stated at [51]:

> […] traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud…must be able to rely on the legality of these transactions.

12. The rationale for the above approach was set out by the ECJ at [57-58]:

> That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice. [57];

and

> In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them. [58].

13. At [59], the ECJ therefore concluded:

> [..] it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that **the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT**, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of "supply of goods effected by a taxable person acting as such" and "economic activity". [**emphasis added**]

14. At [61], the ECJ reiterated:

> […] 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.

15. In *Mobilx Limited (in Liquidation) v HMRC* [2010] EWCA Civ 517, the Court of Appeal considered *Kittel*. At [52], Moses LJ said:

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

16. At [59], Moses LJ went on to state in relation to the "should have known" aspect of the test:

> The test in *Kittel* is simple and should not be over-refined, it embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances, which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraudulent evasion of VAT then he should have known of that fact […]

17. At [64] of *Mobilx*, Moses LJ then said:

> If it is established that a trader should have known that by his purchase there was no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud then such a trader was directly and knowingly involved in fraudulent evasion of VAT.

18. Before, at [82], warning:

> […] Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected with fraudulent evasion of VAT […].

Knowledge or means of knowledge

19. The burden of proving knowledge or means of knowledge rests upon HMRC: see *Mobilx* at [81].

20. In terms of what HMRC must prove:

(1) The threshold they must cross is high: see *Davis & Dann Ltd and another v HMRC* [2016] STC 1236, at [4];

(2) They must demonstrate either:

(a) that the taxpayer actually knew that it was participating in a transaction connected with fraudulent evasion of VAT; or

(b) that the taxpayer had the means at its disposal of knowing that it was participating in such a transaction: see *Mobilx*, at [52]. This requires HMRC to show that the taxpayer ought to have known that the only reasonable explanation for the transactions was that they were connected to a VAT fraud: see *Mobilx* at [59] and [75], and *Davis & Dann* at [4];

(3) It not sufficient for HMRC to show that the taxpayer knew or should have known that it was running the risk that by its purchase it *might* be taking part in a transaction connected with fraudulent evasion of VAT: see *Mobilx* at [56];

(4) Nor is it sufficient for HMRC to show that a taxpayer knew or should have known that such transactions might be connected with fraudulent evasion, or even that it was more likely than not (in other words, probable) that its transaction was so connected: see *Mobilx* at [56] and [60];

(5) It follows that the Tribunal must focus only on what the taxpayer *actually knew* at the time of the relevant transaction and/or the means of knowledge it had at its disposal at that time. Whilst that can include obvious inferences from the facts and circumstances in which it has been trading (see *Mobilx* at [61]), it cannot, by definition, include information not known to it if it had no means at its disposal of knowing during the relevant period or matters known only with the benefit of hindsight: see *Aria Technology Ltd v HMRC* [2016] UKFTT 98 (TC) at [13];

(6) Nor is it sufficient for HMRC to show that a reasonable explanation for the relevant transaction was that it was connected with fraudulent evasion of VAT, it must be the *only* reasonable explanation (see *Mobilx* at [75]);

(7) The test is an objective one, so a naïve taxpayer will *not* have satisfied the objective criteria entitling it to a deduction, if it failed to deploy means of knowledge available to it (see *Mobilx* at [52]).

Attribution of knowledge to a corporate appellant

21. A company as a legal person requires natural persons to act for it as its officers and agents. By a combination of the general common law of agency and the company law rules of attribution, the acts of a company's officers and employees will (with exceptions, not relevant to this appeal) count as an act of the company.

22. HMRC's case is that from all the evidence in the case the Tribunal both can, and should, conclude that at least one of Cavendish's directors or employees who undertook or authorised the transactions for Cavendish, had the relevant state of knowledge to engage the principle in *Kittel*.

EVIDENCE

23. The Tribunal received 27 lever arch files of evidence, including witness statements and exhibits. Further documents were admitted during the course of the hearing.

24. Witness statements were received from the following witnesses on behalf of the Cavendish:

(1) Stuart Burden

(2) Leslie Shingleton

(3) Debbie Crompton.

25. All of these witnesses gave oral evidence under oath and were each cross examined during the hearing.

26. Witness statements on behalf of HMRC were received from the following witnesses (all being employees or Officers of HMRC):

(1) Susan Williams

(2) Carmelina Mankad

(3) Matthew Elms

(4) Lisa Wilkinson

(5) Anthony Mullarkey

(6) Bernadette O'Neill

(7) Debbie Thompson

(8) Olubamidele Airen

(9) Gerald Dixon

(10) Hawa Patel

(11) Joanne Bannerman

(12) Sabina Solkar

(13) Shaikh Malique

(14) Stefan Tosta.

27. The Tribunal heard oral evidence under oath from only HMRC Officers Carmelina Mankad, Lisa Wilkinson, and Matthew Elms, who were each cross examined during the hearing.

28. Susan Williams was the HMRC decision maker in respect of the denial of input tax deductions for Cavendish. She retired from HMRC prior to the hearing. In June 2019 Officer Mankad (who had not previously had any involvement with Cavendish) took over responsibility for this case, and she adopted the contents of Officer Williams' witness statements as her evidence, subject to some additional points set out in her witness statement and oral evidence.

29. The statements of the other HMRC witnesses were read as agreed.

30. The Tribunal has considered all the evidence placed before it, even when it has not been referred to within the body of this decision. Given the volume of evidence it is impossible to refer to it all, even in a lengthy decision such as this. That does not mean that the Tribunal has not given it due consideration.

31. Where the Tribunal has made no comment upon evidence (whether witness evidence or documentary evidence), it has found that evidence to be reliable and credible and accepted it on the balance of probabilities. Where it has found evidence to be unreliable or unreasonable, the Tribunal makes findings that it rejects that evidence together with reasons in support.

32. The Tribunal has found all facts on the balance of probabilities, in particular indicating its reasons where there is a conflict in the evidence or where it finds a witness's evidence to be inconsistent, unbelievable or otherwise unsatisfactory.

BACKGROUND FACTS

Cavendish

33. Cavendish were incorporated in England and Wales on 28 June 1979 and at all material times had four directors; Stuart Burden appointed on 1 April 2000, John Davey, appointed on 13 June 2007, Trevor Hussey, appointed on 14 March 1997, and David Kennedy-Sloane, appointed on 1 April 2009.

34. Cavendish have been supplying ambient, chilled, and frozen foodstuffs, and soft and alcoholic beverages to the cruise, ferry, and "travel retail" industry since 1979. They are a

subsidiary of the Burden Group Limited, and their sister company, James Burden Limited, is the largest wholesaler of meat at Smithfield Market.

35. As Cavendish's supplies are mainly to business customers outside the UK, it files VAT returns on a monthly basis, on which it claims repayments of VAT.

36. Cavendish are both the longest serving and the largest supplier to UK cruise liners in the fleets of P&O Cruises, Cunard, Saga, and Fred. Olsen. They are the largest UK supplier to US cruise companies such as Royal Caribbean Cruise Lines and Princess Cruises. They operate a bonded warehouse for food, a general storage and distribution warehouse for excise alcohol and tobacco, have a WOWGR licence, and used to handle CAP goods. Cavendish do not sell to the general public. HMRC do not contend that Cavendish's business is illegitimate, outside of the 200 transactions in question in this appeal.

37. The majority of sales to cruise liners are conducted through annual tenders, normally quoted in January for the following April to March season. These are substantial contracts, involving supplying the relevant cruise liners each time they are in port. Mr Burden gave as an example a contract to supply bacon to P&O Cruises, which could be for 200 tonnes of bacon over the course of the year at an aggregate price of about £1.5 million.

38. Because the cruise line contracts are annual tenders, the results of the business for any year are highly dependent on Cavendish's success in winning tenders at the start of the year. Mr Burden's evidence was that to counteract this risk, Cavendish built up an export trading department which, since 2004, had overseas wholesalers and traders as its customers. Cavendish's customers include Igan in Spain, Schumacher in Germany, and Top Line in Italy.

39. The export trading department comprised Stuart Burden and Debbie Crompton.

40. Mr Burden joined Cavendish in 1997, became a director of Cavendish in 2001, and managing director in 2003. Prior to joining Cavendish, Mr Burden had 12 years' experience working in the City of London. Mr Burden's experience includes sales and purchasing for Cavendish's cruise and export trading business, and sourcing suppliers and customers for Cavendish's export trading business.

41. Ms Crompton joined Cavendish in 2000, and, since around June 2016, she has held the position of export controller, having previously had roles in credit control and purchase ledger accounting. Ms Crompton handled the day-to-day orders.

42. Lesley Shingleton has been an accounts manager within Cavendish's finance department since 2004. She was HMRC's initial contact within the company for matters relating to VAT and other duties.

43. David Kennedy-Sloane was the group finance director.

44. Many food manufacturers, producers, breweries, and other suppliers classify the supply of goods to cruise liners and "travel retail" as "exports", and Cavendish therefore have accounts and contacts with the export departments of various suppliers. Some of these would allow Cavendish to use the prices they have negotiated for their cruise liner business to be used for onward sales to overseas wholesalers. An example of this was UK craft beer and gin companies, who have little export experience, and sell to Cavendish under bond for supply both to cruise liners and to overseas wholesalers.

45. Initially, the bulk of the export business was the sale of excise goods, namely alcohol under bond, but Cavendish also sold "fast moving consumer goods" ("FMCGs") such as soft drinks and confectionery.

46. Mr Burden's evidence was that for some FMCGs, Cavendish could get better pricing by going to various wholesale traders rather than going directly to the producer or UK distributor. He gave Coca Cola as an example, which would only open an account with Cavendish on the back of guaranteed high volumes, regular full truck loads as minimum orders, agreed stock-holding levels, and agreement to participate in promotions – and these requirements were not feasible for Cavendish. In addition, outside the cruise tenders, Cavendish only purchased stock to fulfil export trade orders, and would not hold stock. As Cavendish would not agree to hold stock for which they did not have a committed purchaser, they would not open a direct account with Coca Cola – and instead found it easier and more convenient to buy from a wholesaler who already had a trading relationship with Coca Cola. And, as that wholesaler would be dealing in substantial volumes with Coca Cola, its pricing would be better than Cavendish could achieve by dealing directly with Coca Cola.

47. Mr Burden's evidence was that the best prices were achieved by buying full lorry loads (sometimes referred to as a full container load, or a full load), and paying up-front or same day for the stock purchased, before the stock was delivered. A full lorry load comprised 26 UK sized pallets or 33 Euro pallets (the Euro pallets are smaller than the UK pallets – so the quantity supplied overall is the same).

48. As Cavendish received an increasing number of enquiries from export customers for soft drinks and confectionery, Mr Burden explored the FMCG market. At that time, Cavendish were (for the reasons explained above) sourcing some soft drinks from wholesalers such as Millennium Wholesale and Ruby Trading. Mr Burden looked at other potential suppliers – obtaining prices from various traders that had previously approached Cavendish, Whitmount being one of them.

Whitmount

49. Whitmount were incorporated in May 2011 and applied for VAT registration in July 2012. The application was signed by Paul Hagerty (accountant) and described Whitmount's business activities as "agents involved in the sale of a variety of goods". They were VAT registered with effect from 31 July 2012. The sole director and shareholder was Caolan McArdle (who was appointed on 25 July 2012), and Philip Kelly was an employee. Mr Kelly was made bankrupt on 23 April 2008 and was not discharged until 26 February 2014, and could not be a director or take part in the management of a company whilst bankrupt. On 2 June 2015, the Northern Ireland Department of Enterprise, Trade, and Investment accepted a director's disqualification undertaking from Mr Kelly that ran for a period of nine years from 23 June 2015 until 22 June 2024. During this time, he cannot be a director of a company nor (amongst various other things) take part the management of a company without the permission of the High Court. Some of the reasons for the disqualification undertaking were because Mr Kelly acted as a director of Husky Ireland Limited whilst he was an undischarged bankrupt, he caused and permitted the repayment of a director's loan account in preference to other creditors, and he caused and permitted Husky Ireland Limited to fail to pay to HMRC approx. £47,000 in PAYE, NICs and VAT.

50. Officer Wilkinson's evidence was Mr Kelly's status as a bankrupt and subject to a disqualification undertaking was in the public domain, so anyone undertaking a Google search would be aware of this, indeed she had done such a search, and "one of the first things that comes up" is his bankruptcy and his disqualification from being a director.

51. Bank statements produced to Officer Wilkinson by Mr McArdle (and included in the bundles) showed "dividends" being paid to Mr Kelly by Whitmount in December 2015 totalling £4000, even though he was not a shareholder. We note that these "dividends" are larger than the dividends paid to Mr McArdle (£1000).

52. Mr McArdle and Mr Kelly were also involved in two other companies: EJK Global Limited ("EJK") and PKC Wholesale Limited ("PKC"). Officer Wilkinson visited EJK in February 2012 – Mr McArdle was the director and Mr Kelly was the manager. EJK supplied refrigeration units, shop fittings and wine. Officer Wilkinson discussed MTIC fraud with Mr McArdle and Mr Kelly when she visited EJK in February 2012, and issued them with a copy of Public Notice 726 ("PN726" - Joint and several liability for unpaid VAT). PKC were established in 2012 the Republic of Ireland. Mr McArdle was a director for one month, and Mr Kelly's mother and wife were directors from June 2012 until September 2014 (when they were sold). The staff that worked for PKC transferred to Whitmount in 2015, including Mr Kelly's wife (who was employed by Whitmount from 6 January 2015). A Standing Committee on Administrative Cooperation ("SCAC") report on PKC, provided by the Irish Revenue to HMRC, describes Mr Kelly as the manager of PKC.

53. Whitmount's office and warehouse were located at "Crilly's Yard", an industrial estate in Warrenpoint in Northern Ireland. Warrenpoint is a small town, a few miles south of Newry, at the head of the Carlingford Lough and very close to the border with the Republic of Ireland. Officer Wilkinson's evidence was that Whitmount occupied two units on the estate, she described premises as being a small office with some storage space, and only able to store one "full load" of about 26 pallets (for the reasons given below, we have found that the warehouse was somewhat larger, and could probably store just over two full loads). The estate was owned by John Crilly Transport, a firm of hauliers also based at the same estate and who were Whitmount's landlords. Whitmount used John Crilly Transport to transport some of their goods.

54. Tom Lumsden was a salesman employed by North West Wholesale, an independent trader based in Merseyside engaged by Whitmount on a commission basis. At some point, Whitmount dispensed with Mr Lumsden's services, as Whitmount found that he was "doing deals on the side".

55. Whitmount gave an address and telephone number in Liverpool (in addition to their Warrenpoint details) in the signature block in their emails, but Officer Wilkinson was told by Whitmount that this was in fact a "virtual" address, used to give them credibility in England when approaching new suppliers and customers, and all calls to the Liverpool number were automatically redirected to their Warrenpoint office. They did not store goods at the "virtual" Liverpool premises, but they did use haulage and storage facilities elsewhere in England.

56. HMRC's first MTIC related visit to Whitmount was in July 2013, when Officers McMahon and Arnold met Mr Kelly and Mr McArdle. The visit report records that MTIC fraud and due diligence obligations were explained to Mr Kelly and Mr McArdle, and both Mr McArdle and Mr Kelly confirmed that they were already aware of these requirements (we note that they were told about these on the visit Officer Wilkinson made to EJK in February 2012). The officers were shown due diligence packs that were prepared for Whitmount by a company called "The Due Diligence Exchange" (at a cost, apparently, of £450 to £500 each). The officers asked what would happen if a negative report was received, and were told that this had not happened to date. The officers were told that on receipt of a positive report, Whitmount would set up a meeting at the supplier's premises, and would only make a decision whether to trade with the supplier at that point. The officers were also told that Whitmount would routinely check all suppliers' and customers' VAT numbers on a weekly basis.

57. In consequence of that visit, Whitmount were selected for HMRC's monitoring project on MTIC fraud, and were subject to extended verification of their transactions and increased monitoring generally.

58. Officer Wilkinson carried out her first MTIC monitoring visit on 27 September 2013, accompanied by Officer Arnold. They met both Mr McArdle and Mr Kelly. They noted that Whitmount had received veto letters (notifying Whitmount of the deregistration of a transaction counterparty) in relation to four companies that they had dealings with.

59. Officer Wilkinson carried out another six visits on 29 January 2014, 18 June 2014, 12 November 2014, 22 April 2015, 30 September 2015, and 26 April 2016. In addition, she maintained contact with Whitmount by email and telephone between visits. On each visit she met both Mr McArdle and Mr Kelly.

60. The following points can be drawn from Officer Wilkinson's evidence arising from her visits and communications with Whitmount, and her other investigations:

(1) Whitmount had no written contracts with any of their customers or suppliers.

(2) As at 18 June 2014, Whitmount were using the Due Diligence Exchange to undertake due diligence on suppliers only, and not on customers. Whitmount obtained basic due diligence themselves in relation to customers and some local suppliers. Whitmount were not checking VAT registrations of either customers or suppliers with the facility available through HMRC's Wigan or Bolton offices. As at 30 September 2015, Whitmount told Officer Wilkinson that they were meeting their customers and suppliers in person, and that their customers are all well established businesses (and they would not trade with anyone who was only in business for, say, a week), and that customer and supplier VAT numbers are checked weekly on the EU's Europa web site. Officer Wilkinson reviewed Whitmount's due diligence files, and drafted a report of her findings. She found many discrepancies in the reports provided by the Due Diligence Exchange, and although a bulky lever arch file that was provided by the Due Diligence Exchange for each report, the material within it was often very basic, and was insufficient to inform any decision to trade with the counterparty. The first page of the report usually stated that the Due Diligence Exchange could not provide any financial assessment of the person as they were awaiting references which would be provided in due course, but there was no record of such references ever having been received by Whitmount. The report usually contained many pages of standard generic information about HMRC procedures and copies of HMRC publications – but nothing in this specifically related to the particular trader being diligenced. The material specifically relating to the trader might include: a letter of introduction, the VAT registration certificate, copies of print-outs from documents filed at Companies House, print outs from Google and other internet searches, a photograph of the premises (often just a photograph of a house or a block of flats, as many of the suppliers did business from their home addresses) and some basic ID documents (such as a copy of a utility bill and a driving licence). Officer Wilkinson described these as being nothing of any substance – notwithstanding that these were items listed in PN726 as things that ought to be obtained when undertaking due diligence enquiries. Officer Wilkinson's evidence was that if a trader was buying goods from a company, and the due diligence showed a photograph of a block of flats, why did Whitmount not follow this up to verify if the supplier had a warehouse, and enquire where they stored their goods?

(3) In some cases, Whitmount started trading with a supplier before, or very shortly after it received the due diligence report from the Due Diligence Exchange, even though references were awaited, or the report revealed issues that a reasonable trader would want to follow-up. In the case of the supplier Sha Bros Ltd, for example, the report was received on 27 March 2015 and Whitmount started trading with them on that same date, even though the report flagged that they were still awaiting references, and the

photograph of the business premises was of a travel agency ("Cheap Flights Travel Agent"). Although Whitmount said that they were undertaking credit reference checks on suppliers and customers, copies of these (if ever made) were not included in their due diligence files. Although Mr Kelly and Mr McArdle had told Officer Wilkinson that the VAT details of some of these counterparties had been verified with HMRC, when Officer Wilkinson checked this, in many cases there was no record of Whitmount having undertaken such verification.

(4) In many cases, as Officer Wilkinson notes in her report, there was insufficient information included in Whitmount's due diligence files that would form a basis for a decision whether or not to trade with a supplier – as the files lacked financial information about the supplier, and lacked evidence that the supplier occupied premises suitable for trading in goods. In Officer Wilkinson's view, Whitmount were not concerned with undertaking a meaningful risk assessment - the checks were done only in an attempt to convince HMRC that they were meeting the due diligence requirements set out in PN726.

(5) In the period from April 2014 to December 2015, Whitmount purchased stock from 31 suppliers. Of these, 15 were either an immediate fraudulent defaulter, or were part of a tax loss supply chain. There were six suppliers who were based outside the UK, in the EU, and were not part of a supply chain that gave rise to tax losses in the UK, and there were two suppliers who supplied zero-rated goods. The remaining eight suppliers made only a small number of supplies (the largest of these supplied Whitmount on only 11 occasions). In the period from January 2016 to December 2016, Whitmount purchased stock from 28 suppliers. Of these, 12 were either an immediate fraudulent defaulter, or were part of a tax loss supply chain. There were seven suppliers who were based outside the UK, in the EU, and were not part of a supply chain that gave rise to tax losses in the UK, and there were three suppliers who supplied zero-rated goods. One supplier was being investigated by the police, so no civil action could be taken in respect of that entity. The remaining five suppliers made only a small number of supplies.

(6) In the period from October 2012 to September 2017, Whitmount received 22 deregistration veto letters in respect of traders with whom they had dealt.

(7) Eight tax loss letters had been sent to Whitmount in the period July 2014 to January 2017, with the tax losses totalling £15,489,971. For the quarterly VAT periods 06/14 to 12/16 the percentage of input tax denied (as a percentage of input tax claimed) ranged between 87.1% and 98.9% (Officer Wilkinson's evidence that 95.3% of all input tax claimed by Whitmount in this period was connected to the fraudulent evasion of VAT by businesses in its supply chains). The total input tax denied on *Kittel* principles was £15,489,971.84. This amount was written-off by HMRC when Whitmount were struck-off.

(8) Whitmount were deregistered under the abuse principle with effect from 3 July 2017, and were compulsorily struck-off by the Registrar of Companies on 28 July 2017.

61. Mr Brown referred Officer Wilkinson to HMRC's letter of 23 June 2016 which notified Whitmount of the decision to deny an input tax deduction for the period 06/14 – and asked why it took HMRC two years to reach a decision to deny the deduction. Officer Wilkinson's response was that it took a considerable period to prepare HMRC's case that Whitmount knew or ought to have known about the tax loss in the deal chain. We asked Officer Wilkinson the difference between the process of issuing a tax loss letter and the decision to deny an input tax deduction. Her evidence was:

> It has been established that there has been a tax loss in the supply chain. That does not necessarily mean that we can deny that input tax because in order to

> deny the input tax we have to establish a number of other things around the business and that is what takes the time and building up that case over may be a period of time. Now, it is possibly -- in those earlier years, in 2012, 2013, 2014, even 2015, these things probably did take longer than they take now and also from my point of view this was not the only case that I had. […] So, once I establish that there has been a tax loss there then I would go ahead […] and send out the tax loss [letter]. In order to make the denial decision, that has to go through a number of levels. So, we would have technical teams. We have policy. We have to possibly go through our Dispute Resolution Board. So, there are a number of levels that we have to go to before we would get the final say that we can actually deny the input tax and that takes time.

And

> Whilst […], the tax losses were established [in], 2014, 2015, I have to then establish [how did Mr Kelly and Mr McArdle] ensure the integrity of their supply chain, how did they go about doing it? They did not, they just went from one defaulter to the next, even though I was coming out regularly to them. And it was a frustration for me that they were continuing to trade. […] But it just took that two year period to get it to a stage where we could ultimately deny [the input tax] and it has to go through our policy section, so they have to be absolutely happy that or satisfied, rather, that there is enough evidence there to show that the trader knew or should have known.

62. Officer Wilkinson's evidence was that because there was (at least in the earlier periods) a proportion of Whitmount's business that could not be traced to a tax loss, it took a long time before HMRC had a case on which to base a decision to deregister Whitmount. She also acknowledged that she had other cases to deal with as well as Whitmount.

Cavendish's relationship with Whitmount

63. Mr Burden's evidence was that he first came into contact with Whitmount in 2013 or 2014, he recalls meeting them at a trade fair, and having received emails from them and calls from a Tom Lumsden.

64. Mr Burden observed that Whitmount had a substantive website and printed catalogue, and had been in business for a while. Mr Lumsden explained to Mr Burden that Whitmount supplied companies such as Bestway and Premier Export, both well-known and established traders in FMCGs. Whitmount apparently traded in substantial volumes in products such as Red Bull and confectionery, and had good prices.

65. Mr Burden's evidence was that Mr Lumsden was a member of Whitmount's sales team based in Liverpool, where Whitmount had a warehouse, but that Whitmount's head office and main warehouse was in Warrenpoint in Northern Ireland. Mr Burden's evidence was that Whitmount also held stock at a small number of other warehouses in the UK.

66. Mr Burden's evidence was that Cavendish's major concern as a purchaser, having paid for the goods before delivery, was whether they would receive genuine stock on time. Whitmount appeared to Mr Burden to be reliable and efficient.

67. As Cavendish had found in Whitmount a reliable supplier of FMCGs with good pricing, they started to build up their export business. Mr Burden's evidence was that some of their customers had existing relationships with Cavendish for the purchase of bonded alcohol, others were found through mail-shots and cold calls, through trade exhibitions, or introduced by other customers.

68. Cavendish placed their first order with Whitmount in October 2014. This was for a full load of UK Red Bull, which was sold to EM Trade in Portugal.

69. Cavendish's export division then grew rapidly: their audited annual accounts for the year ended 31 January 2016 show that the sales for this division tripled when compared with the year ended 31 January 2015.

70. Cavendish's margins on their export trade were much narrower than for their cruise liner business. For the cruise business, the customers typically paid 60 days after being invoiced, and Cavendish may have had to hold significant stock for significant periods. In contrast, for the export business, Cavendish was paid by their customer when the order was placed, and would not have to hold any stock, as the stock was only purchased to meet orders placed with them. Cavendish did not have a price list or set margins for the export business – they sought to achieve the best margin that they could negotiate for any particular trade.

71. The typical process was that a customer would contact Cavendish (typically Debbie Crompton) by email with a request for goods – such as, for example, a full load of UK Red Bull or of "Masterfoods" (Mars confectionery, such as Mars or Snickers bars). Ms Crompton would then email Whitmount requesting current availability of the requested items. Whitmount would reply with price, product availability, the split of products (e.g. 50:50 Mars/Snickers) and the date on which they would be available for dispatch. She would then email the customer with these details and a price to the customer – adding on Cavendish's margin. There was some limited evidence included within the bundles of emails to-ing and fro-ing between the customer and Cavendish on the one hand, and between Cavendish and Whitmount on the other, before pricing could be agreed, and a few examples of email negotiations with customers where no agreement was ultimately reached.

72. As Cavendish's business relationship with Whitmount grew, Whitmount would contact Ms Crompton with details of items that were available for sale (either in stock, or coming into stock), and Ms Crompton would then offer the items to Cavendish's customers – who would then send a purchase order to Cavendish if they wanted to go ahead with the purchase.

73. Once a purchase order was received from a customer, Ms Crompton would send Cavendish's corresponding purchase order to Whitmount. When the order was ready for dispatch, Whitmount would send Cavendish a pro-forma invoice. Ms Crompton would then advise the customer, who would make payment, with funds usually arriving into Cavendish's account within two working days. Once the funds had cleared, Cavendish would remit a same-day payment to Whitmount, and request release of the goods.

74. Whitmount would arrange shipping to the customer, and advise Cavendish of the dispatch date. Cavendish would then issue the customer with a final invoice. Once delivered, Whitmount would issue a final invoice to Cavendish, and a CMR would follow, after receipt by Whitmount from the shipping company. "CMRs" are a reference to the consignment notes that are used in international freight transport, three copies of which travel with the goods being shipped. The CMRs are signed by the consignee on delivery, and the consignee retains one copy. One copy is retained by the haulier, and the other copy is returned to the shipper. In the case of goods sold by Cavendish, they were named as the shipper on the CMR, even though the shipping was actually arranged by Whitmount. The CMRs were returned by the haulier to Whitmount, who then forwarded the CMRs to Cavendish (in some cases, only after some prompting).

75. Cavendish always agreed with Whitmount a price which was inclusive of the cost of transportation of the goods to the customers' addresses, and the transportation was always arranged by Whitmount.

76. Later in the trading relationship, Whitmount provided Cavendish with a table of the various FMCGs that they supplied, showing inclusive prices for delivery to UK, Ireland, and to continental EU destinations. We note from the tables included in the bundles that the same

price applied irrespective of the destination within the EU (irrespective of whether the destination was, say, Bulgaria or Belgium).

77. We found it surprising that Cavendish were prepared to have Whitmount arrange the transportation directly to the customer – as this meant that Whitmount became aware of the names and other contact details of Cavendish's customers, and there was then a risk that the customers would become aware that Whitmount were supplying Cavendish – and the possibility that one or the other (or both) might seek to cut Cavendish out of future trades. Mr Burden's evidence was that he had received oral assurances from Whitmount (from both Tom Lumsden and Philip Kelly) that they would not approach any of Cavendish's customers directly – Mr Burden asked them why, and they explained that if a substantial volume of their business went on export, the amount of VAT refunds that they would need to claim from HMRC would clog up their cashflow – although they did some export business, they preferred to sell to UK businesses (who might in turn export). Officer Wilkinson's evidence was that since August 2013, Whitmount were aware that they were being monitored by HMRC and that VAT repayments would be withheld until it was established whether there were any tax losses in their supply chains – and that this was probably the real reason why they did not want to get into a repayment position.

HMRC investigations into Cavendish

78. HMRC (and its predecessor agencies) had made VAT compliance visits to Cavendish on many occasions between 1996 and 2015. The first visit relating to MTIC issues was on 12 March 2012 when HMRC officers Mark Thomas and Marc Thrower met Mr Burden and Ms Shingleton at Cavendish's then premises in Dover. According to the visit report, the officers discussed due diligence checks and Mr Burden stated that he would obtain an introductory letter from the company, a utility bill and a passport, but there was no set format for doing this. The officers issued Mr Burden with a copy of PN726, and drew Mr Burden's attention to the section on due diligence, particularly the importance of knowing customers' and suppliers' history in the trade before carrying out transactions.

79. HMRC made an unannounced visit on 23 May 2013 by Officers Lee Mitchell and Neil McKay. The visit was made to Cavendish's then principal place of business at Faulkners Farmhouse, Hadlow, Kent. The visit report states that the officers met Mr Burden and discussed MTIC fraud, and Mr Burden reported that Cavendish had due diligence procedures in place and that their "due diligence" was good. A copy of PN726 was given to Mr Burden, and he was asked specifically to read Section 6 on due diligence checks to be made on customers and suppliers. A copy of the "How to spot a missing trader fraud" leaflet was also given to Mr Burden. Mr Burden's evidence is that Cavendish were first presented with a copy of PN726 at this meeting, although HMRC's meeting notes indicate that a copy was presented at the previous visit in March 2012. The visit report concludes with a statement that the officers did not consider Cavendish to be involved with MTIC activities.

80. Mr Burden's evidence was that in 2013, Cavendish's due diligence procedures amounted to the completion of a basic form, asking for company information, and five due diligence documents (VAT certificate, recent utility bill, letter of introduction on letterhead, certificate of incorporation, and copy of owner/director's passport). Mr Burden says that following the May 2013 meeting, Cavendish enhanced their due diligence procedures – although it is not clear to us the extent of the enhancements that were made. Mr Burden refers in his evidence to undertaking due diligence checks on both suppliers and customers, and making sure they had complete documentary proof of export – but the documentary proof of export would be required in any event to substantiate the zero-rating status of the export.

81. Another visit occurred on 15 May 2015, on this occasion by Officers McKay and Sarah Templeman. Officer McKay wanted to establish the position on some Red Bull supplies, as there had been an unusually large repayment claim submitted for the 4/15 period. The officers met Mr Burden and Ms Shingleton. Mr Burden reported that the consignments of Red Bull had all been sourced from Whitmount, and that they had been sold to Dipway Ltd, Swift Valley Trading Ltd (both based in the Irish Republic), and EM Trade Solutions Ltd (based in Madeira, Portugal). Mr Burden was asked whether he recalled being given PN726 at the meeting in May 2013, and Mr Burden confirmed that he recalled the meeting. He was given another copy of PN726 and also another copy of the "How to spot missing trader fraud" leaflet. Officer McKay said that although he could not tell Mr Burden who to trade with, and who not to trade with, Cavendish should take steps to ensure the integrity of his supply chain as it appeared that they were involved in trade that could potentially lead to tax losses for HMRC – and did Mr Burden know, for example, what due diligence Whitmount carried out on their own suppliers? Mr Burden said that he did not know. Officer McKay referred Mr Burden to Part 6 of PN726 and the recommended checks. Officer McKay recorded that Mr Burden appeared to be genuinely concerned about the possibility of Cavendish being connected to MTIC fraud.

82. The visit report states that the Red Bull supplied by Whitmount had been acquired from Impala Trading between February and April 2015, and that Impala had been deregistered by HMRC, and was going to be assessed.

83. Following the meeting, Mr Burden telephoned and emailed Whitmount to enquire about the due diligence that Whitmount undertook on its own suppliers. Mr Burden received oral assurances from Whitmount, and a follow-up email:

> We can confirm that any suppliers that we currently or have bought from in the past are vetted and checked for full due diligence by a third-party verification company "The Due Diligence Exchange". We employ this company to carry out a fully comprehensive check on the company, directors etc. and full background checks. Please feel free to contact them to verify this if you wish.
>
> Unless the suppliers pass the above process, we will not carry out any business with them. We furthermore carry out weekly Wigan checks and weekly VIES VAT verifications on all suppliers whether we currently buy from them or not.

The references to Wigan and VEIS are to the VAT registration checking service run by HMRC, and to the EU's online VAT registration checking portal, respectively.

84. The visit note also records that Mr Burden telephoned Officer McKay, after his return to the office, to report that he had been in contact with Whitmount about their due diligence, and that he was told they used the Due Diligence Exchange. Mr Burden forwarded to Officer McKay a copy of the email he had received from Whitmount. Mr Burden told Officer McKay that "it all seems professional", and that he would like to continue to trade with Whitmount, but what would HMRC like Cavendish to do? Officer McKay's response as recorded in the visit report was that he could not tell Cavendish who to trade with or not to trade with, but he suggested that Mr Burden should ask himself "whether he would be happy to rely on a third party's due diligence before doing business". Mr Burden recalls that Officer McKay would not give an answer to the question of whether Cavendish would continue trading, but that HMRC would inform Cavendish if they definitely wanted them to stop – although this latter comment was not recorded in Officer McKay's notes.

85. That evening says Mr Burden, he considered the telephone call with Officer McKay, and emailed Whitmount saying that he was putting Cavendish's business on hold until they could

get more information. He also asked Whitmount for more information about the due diligence checks that Whitmount undertook. He notified Whitmount that Cavendish

> Can make no further payments or orders until this is resolved.

86. On 18 May 2015, Mr Kelly emailed Cavendish saying that Whitmount regularly met their suppliers and knew them well, and that they were going to re-send to Cavendish completely up to date due diligence information about Whitmount.

87. On 20 May 2015 HMRC sent Cavendish an MTIC awareness letter, and on 26 May 2015 Cavendish applied to HMRC to accept validation of VAT registrations by email.

88. Mr Burden arranged to travel to Northern Ireland and the Irish Republic at the beginning of June 2015 to visit Whitmount and some of Cavendish's customers. Mr Burden arrived in Belfast on 1 June 2015, and drove to Whitmount's premises in Warrenpoint. He saw Whitmount's premises and met Mr Kelly, Mr McArdle, and Mr Lumsden (and took some photographs which were included in the bundles). In his witness statement Mr Burden said that he looked at some of the files that the Due Diligence Exchange had prepared in respect of Whitmount's suppliers and customers (although Officer William's evidence is that Whitmount only used the Due Diligence Exchange to undertake due diligence on suppliers and not on customers).

89. Mr Burden then met Crilly Transport, who were located in the same industrial estate as Whitmount, and he took photographs of some of Crilly's trailers and of Mr Graeme Crilly, the owner.

90. Mr Burden's note of the visit to Whitmount and Crilly's was included in the bundles, the main body of the note states as follows:

> Met with Philip Kelly (director), Caolan McArdle (director) and Tom Lumsden (salesman).
>
> Philip does the buying, Tom the selling, and Caolan the admin & accounts.
>
> Whitmount Ltd have been trading for 5-6 years. Turnover has steadily grown, and they expect this year to be £20 million.
>
> They trade in soft drinks, confectionery, household products, toiletries & retail food items. All are VAT items.
>
> They conduct due diligence by a 3rd party verification company called "Due Diligence Exchange" which has been set up by ex-HMRC and VAT employees. I saw the file they has (sic) which included reports on suppliers and customers. (Each report costs £350).
>
> They also do weekly Wigan HMRC (now Bootle HMRC) verifications on all suppliers and customers as well as weekly VIES VAT verifications.
>
> They also have visited all suppliers they buy from and know them well.
>
> Whitmount have good tidy offices and warehouse.
>
> Across the yard from them is John Crilly Transport. They handle the transport for Whitmount. Met Graeme Crilly, saw warehouse & trucks. Discussed with Graeme the premises of our customers that we supply to and whether all "OK" in terms of legit business. Which he confirmed.
>
> Happy that Whitmount are proper company dealing correctly. They seem to be doing everything within their power to make sure things are conducted properly.

91. But when cross-examined, Mr Burden said that although he saw that Whitmount had due diligence files, he did not actually look inside any of them:

> … they had a few of them laid out of the boardroom table, but I did not pick them up and study them. I could see that they had due diligence on there. I did not take any notice of customer names or suppliers names.

92. We also note that Whitmount were incorporated in May 2011, and were only VAT registered from July 2012, which would be known to Cavendish, as these documents were included in their due diligence file, and were supplied to them by Whitmount (at the very latest) at the time of the visit in June 2015. So, Mr Burden ought to have been aware that Whitmount had only been trading for three years, and not the 5-6 years as recorded in his note.

93. Mr Burden's photographs include interior shots of Whitmount's warehouse, with pallets of goods stacked up on racking. Officer Wilkinson's evidence was that the warehouse could accommodate one full load, but Mr Burden's evidence was that it could accommodate more than one full load. We can see that there are around 60 pallets of goods visible in the photograph, and we therefore agree with Mr Burden that the warehouse could accommodate more than one full load – certainly two – but probably not much more.

94. Later that same day, Mr Burden travelled to the premises of some of Cavendish's customers in the Irish Republic, namely Swift Valley, MAK Logistics, and Dipway. His evidence was that he took photographs of their premises and that copies were included in the Cavendish's due diligence files for those companies. However, when cross-examined, Mr Burden acknowledged that he did not take photographs everywhere, and that in particular he did not take any photographs of MAK Logistics' warehouse.

95. On 2 June 2015 Officer McKay wrote a "tax loss letter" to Cavendish advising that nine of the transactions with Whitmount in the periods 2/15 and 3/15 had been traced to defaulting traders, with the tax losses exceeding £97,000. The email to which this letter was attached was received by Mr Burden as he was travelling back from Northern Ireland. He copied the email to Mr Lumsden.

96. On 4 June 2015, after prompting from several emails and telephone calls, Whitmount responded saying that they no longer traded with the supplier concerned. Whitmount also said that they "go over and above the required checks … and do our utmost to make sure that any supplier we procure stocks from are 100% legitimate and above board".

97. At some point Whitmount must have told Mr Burden that they were being monitored by HMRC (indeed, as stated earlier, Whitmount's desire to avoid getting into a position where they were claiming repayment from HMRC, was one of the reasons why Mr Burden trusted Whitmount not to cut Cavendish out of deals). Bizarrely, the fact that Whitmount were giving HMRC details of all of their purchases and sales provided comfort to Mr Burden:

> Q. Just pause there. So, you say [Whitmount] were giving full details of all of their sales [to HMRC]. Are you aware, or were you made aware by Whitmount that that was in fact because they were under extended verification?
>
> A. No.
>
> Q. Did you wonder why they were giving -- why they had to give HMRC full details?
>
> A. No, I'll put my hands up and say that in my naivety. I thought it was a really good thing, I thought there surely couldn't be anything untoward.
>
> Q. Well again, you thought it was a good thing, but did you ask [Whitmount] why they were doing that?

A., I asked them about the £97,000[1] one, yes.

Q. You asked them about the £97,000, what did they say?

A. Again, it's in here, I'd have to refer to it.

Q. So you asked them about that, but in terms of giving HMRC full details, again I think I'm repeating the question, but did you ask why they were doing that, why they were having to do that? That's not normal, is it, to have to do that? You don't do that do you?

A. Well the last three years we've had to, unfortunately, we've been through the grill.

Q. But before that?

A. No, hindsight's a wonderful thing, I didn't know that at the time

98. Around 8 June 2015, Mr Burden shared his report of his trip with the other Cavendish directors and with Ms Crompton and Ms Shingleton. It was also discussed at a Group Board meeting of Burden Group. Mr Burden and his colleagues were satisfied that Cavendish had now done everything that was "reasonably practical" to ensure the integrity of their supply chain, having visited Whitmount's premises, and received assurances and additional information from them. Mr Burden therefore decided to resume purchasing from Whitmount.

99. Between 2 June 2015 and 26 April 2016, the only contact between HMRC and Cavendish related to changes to their WOWGR approval and upgrading their Fareham warehouse from a "Trade Facility" to a "General Storage and Distribution Warehouse".

100. In April 2016, HMRC received a SCAC request from the Dutch tax authorities, which sought information on supplies made by Cavendish in the period January to March 2016 to Handelspost Centrale BV ("Handelspost"), as the Dutch tax authorities had cancelled Handelspost's VAT registration because of suspected VAT fraud.

101. On 27 April 2016, Officers Susan Williams and Judith Clifford visited Cavendish and met Ms Shingleton. They wanted to discuss the supplies made to Handelspost, and review the repayment claim made by Cavendish in its period 3/16 VAT return. This had been submitted on 5 April 2016, and the repayment claimed was £653,695.93. This was substantially greater than the repayment claimed in the 2/16 return (£391,067.89).

102. The visit report records that Ms Shingleton reported that Mr Burden was responsible for the purchases from Whitmount and the onward sales – "she said it was 'his baby'". Ms Shingleton told the HMRC officers that Cavendish were aware that Whitmount had been involved in tax loss chains, but that these supplies were not to Cavendish.

103. The HMRC officers discussed the sales made by Cavendish, and the visit notes address the following issues in particular:

(1) Sale of Cadbury's Crème Eggs – These were sold for delivery to Poland in the two weeks before Easter on 8 and 10 March 2016. Ms Shingleton was asked why crème eggs were being sold to a Dutch company, and delivered to Poland - unlike Mars and Snickers bars, these were a specialist UK product. Ms Shingleton said that Cavendish used to arrange transport for Handelspost purchases to Beers & Wines Supply BV (a Dutch warehouse), but since April 2016 the goods were sent to Gold Haus sp Zoo in Oborniki, Poland. Also why were the items being supplied only two weeks before Easter? Ms Shingleton said that she knew that as soon as Easter was over, shops sold Easter products (including crème eggs) at much reduced prices.

[1] This is a reference to the transactions mentioned in the tax loss letter.

(2) The Officers asked Ms Shingleton about the labelling of products sent to Poland etc. How did they deal with labelling products to warn, for example, of allergen risks? Officer Williams noted that UK "pound shops" sell products with overseas origins, but they usually had added labels giving information in English. Ms Shingleton replied that she was not sure what the position was.

(3) Ms Shingleton had noted that the due diligence information for Handelspost showed that its director did not live in the UK. This had been queried by Cavendish, and Cavendish had established that he operates the business from the Netherlands. The due diligence pack included a photograph of the director. Ms Shingleton said that Mr Burden had met the director in the UK, and planned to visit the company in the Netherlands.

(4) Officer Williams told Ms Shingleton that she was aware that PN726 had been given to Cavendish at their visit in September 2015. Ms Shingleton was advised that Cavendish should refer to the recommended checks in Part 6, and that although Cavendish may not need to be registered under the Alcohol Warehousing Registration Scheme, there were also due diligence checks in the notices under that Scheme. Ms Shingleton mentioned FITTED (an acronym for risk checks required in relation to excise duties - F =Financial Health, I =Identity, T=Terms of contract, T=Transport, E=Existence of goods, and D=Deal). The officers confirmed to Ms Shingleton that due diligence needed to be meaningful, and not just a box ticking exercise. The officers stressed that the main risk for Cavendish was in respect of suppliers who purchased from missing or defaulting traders, and that if HMRC found tax losses in their supply chains, Cavendish could be held jointly and severally liable for those losses. The officers said that although they had no information that Whitmount were again involved in tax loss transactions, they suggested to Ms Shingleton that Cavendish should ask what due diligence Whitmount now carried out on its suppliers. The officers suggested that someone needed to take a step back and look at the transactions being made to see if they made sense, rather than just commercial sense.

(5) Bank statements provided by Ms Shingleton showed that payments in respect of Handelspost invoices were made by Delcom SP Zoo. The visit notes state that a subsequent internet search undertaken by Officer Williams showed that Delcom were a Polish internet and telephone company. Further checks by HMRC showed that Whitmount had supplied Delcom with goods, and that Delcom had registered for VAT in December 2015 as a business in a "non-specialised wholesale trade", based in Warsaw.

(6) A subsequent internet search by Officer Williams showed that Gold Haus sp Zoo were involved in sawmill products relating to wood, and were not a confectionery or wholesale food company.

The carriers name shown on the CMRs for sales to Handelspost was Vincor Logistika sro. Subsequent searches undertaken by Officer Williams showed that there was a company named Vincor Logistics sro (“Vincor”) registered in Bratislava in 2012 as "other retail sale none specialised", and Sidney Corry of Rhyl, Wales, was the director. A SCAC reply in 2014 from the Slovakian authorities stated that the company had never filed any tax returns, that they were a "virtual seat", that the Slovakian authorities had never had any dealings with them, that Mr Corry was shown as managing director, and that he was not resident in Slovakia. They advised that the "company appears to be risky" and that "it has not met its obligations resulting from VAT registration".

104. Following the meeting, Ms Crompton contacted Whitmount and requested that they supply Cavendish with all transport information relating to all sales, CMRs, a step-by-step

guide from collection to delivery (including details of the ports used and the countries crossed), and Whitmount promised to provide this information.

105. Mr Burden's evidence was that the officers hinted to Ms Shingleton that she should verify Handelspost's VAT number. On 28 April 2016, Ms Shingleton checked the VAT registration details of Handelspost, and found that it was invalid. She told Mr Burden about this, and Mr Burden instructed Ms Crompton to immediately stop all Whitmount related orders going to export customers. One Handelspost order was already en-route to Poland, and was delivered before it could be stopped (however the original invoice was cancelled, and another issued with VAT applied).

106. On 29 April 2016, Whitmount provided further information to Cavendish. However, Mr Burden had, he says, already decided that Cavendish would cease to do business with Whitmount until "this issue was resolved". A further email confirming this was sent to Whitmount by Ms Crompton on 3 May 2016, and there were telephone calls between Mr Burden and Mr Kelly.

107. On 3 May 2016, Officer Williams telephoned Mr Burden, Mr Kennedy-Sloane, and Ms Shingleton in response to a message they had left on 29 April. They told Officer Williams that they had checked the VAT number of Handelspost and established that it was not valid. They had spoken to Mr Dixey, the director of Handelspost, who had explained that there was a problem with the company's accounts, and that the number would be reinstated. Officer Williams discussed with them the concern that HMRC had about the market for crème eggs in Poland, and also about the reference to Delcom SP on the bank statements, and the possibility that these payments in respect of Handelspost invoices were third-party payments, which were often seen in MTIC fraud cases.

108. Curiously, even though Mr Burden says that he had decided to cease trading with Whitmount on 29 April, this was not mentioned on the call with Officer Williams. It is clear from her note of the conversation that Cavendish were intending to continue to trade, as they say that they are going to be checking VAT numbers for each transaction in future, and Officer Williams suggested Cavendish could use FITTED checks, even where the supplies did not include alcohol.

109. In the week following HMRC's visit, Mr Burden and Mr Kennedy-Sloan visited Handelspost in the Netherlands. They described the visit to Officer Williams in a telephone call on 20 May 2016, and again on 6 June 2016, when Officer Williams next visited Cavendish. Mr Burden described Handelspost's premises as being near Amsterdam Airport, possibly at a serviced office - Mr Burden could not recall seeing the company's name anywhere at the premises. Although they did not meet any staff, the receptionist immediately knew of the company when they arrived. Handelspost did not have a warehouse. Mr Burden and Mr Kennedy-Sloane met Mr Dixey and "Edwin", who was Dutch and was described as the new accountant, as the previous one had been sacked. They understood that Mr Dixey had a Dutch girlfriend and lives in the Netherlands most of the time.

110. Mr Burden and Mr Kennedy-Sloane were advised that Handelspost's VAT registration had been cancelled because of (a) the late submission of a VAT return and the omission of acquisitions from the 2015 third quarter return; and (b) problems with the transfer of shares in the company to Mr Dixey by his father-in-law. Edwin told Mr Burden that Handelspost had now fully complied with the requests from the Dutch tax authorities and were waiting to hear whether the VAT number had been reinstated. Mr Burden and Mr Kennedy-Sloane asked Mr Dixey about the payments from Delcom and were told that because of problems with the share transfer, Mr Dixey had been unable to "get his hands on the money", and so asked his customer (Delcom) to pay direct to Cavendish on his behalf.

111. Because of concerns regarding purchases from Whitmount, and the deregistration of Handelspost, HMRC made Cavendish subject to an extended verification process ("EVP"). Cavendish were notified of this by a letter dated 12 May 2016. As a result of the EVP, visits were made to the companies that had supplied Whitmount with the goods that they had sold to Cavendish. Initially the EVP was for the periods 3/16 and 4/16 only, but as HMRC became aware of the extent of the tax losses, it extended EVP to all of the supply chains through Whitmount (as regards not only sales to Cavendish, but also other Whitmount customers) going back to October 2014.

112. On 20 May 2016, Officer Williams was telephoned by Mr Burden and by Mr Kennedy-Sloane about a requirement for security mentioned in the 12 May 2016 letter. During the course of the call, Mr Burden said that he and Mr Kennedy-Sloane had visited Handelspost in the Netherlands, and that Mr Dixey had advised them that he was confident that Handelspost's VAT number would be reinstated, and that they had changed their accountants as a result of these problems. Mr Kennedy-Sloane said that they found Handelspost to be open and honest, and if they had been involved in fraud, it was because they were naïve or stupid. Mr Burden and Mr Kennedy-Sloane did not mention to Officer Williams their discussion with Mr Dixey about the Delcom payments.

113. Cavendish were visited again by Officers Williams and Clifford on 6 June 2016, and met Ms Shingleton, Mr Burden and Mr Kennedy-Sloane. The visit report records the following:

(1) Whitmount – Mr Burden was unable to confirm how he had first heard of Whitmount, he said that Whitmount had extremely good prices, especially on Red Bull. Mr Burden said that Whitmount were based in Northern Ireland and also had an office in Liverpool, and that he had met the director and owner of the company, Philip Kelly. Mr Burden said that they had done full "dd" (due diligence) on the company and they seemed fine. They were a "normal decent company". However, since Officer Williams' first visit, they had stopped doing business with Whitmount until the matter was resolved. He knew that Whitmount were having regular visits from HMRC officers, and asked if HMRC could confirm the position regarding Whitmount.

(2) Mr Burden was asked if he knew whom Whitmount purchased from. He said wholesalers and manufacturers, and that Whitmount had a good relationship with Unilever and Masterfoods (Mars).

(3) Mr Burden confirmed that Whitmount did not reference the cost of transport on their invoices, and confirmed that the price did not increase when the goods sold to Handelspost were delivered to Poland instead of the Netherlands. Officer Williams notes that Mr Kennedy-Sloane appeared to be surprised at this, and apparently did not know that Whitmount were not making any additional charge despite the additional hundreds of miles that the goods were being sent. The officers discussed the route taken, and questioned the use of Vincor to deliver goods to the Netherlands and then to Poland. The officers comment that Mr Burden seemed to be unaware that a Slovakian company had been engaged.

(4) As regards Handelspost, Mr Burden could not remember how he first met the director of Handelspost. Mr Burden confirmed that Ms Crompton handled the first order. After HMRC's previous visit, Mr Burden and Mr Kennedy-Sloane had visited Handelspost (and the visit was reported to Officer Williams as described above). Mr Burden was asked what research he had done into Delcom, and he said that he had done an Experian check which had come up mid-low risk. He also said that they had only 18 months of trading. He had Googled them, and the address matched the information they had. Mr Burden told Officer Williams that he had not previously known that Delcom

were Handelspost's customer, and were only told about Delcom when they queried the third-party payment.

(5) Officer Williams asked Cavendish about sales to Best Distribution in Romania, and queried the fact that the items requested were Coke of Danish, Irish, UK and German origin, and Red Bull of any origin, for delivery to Germany and Poland. Mr Burden said that Danish Coke is the cheapest and is commonly seen in London takeaway shops. It was not clear why a Romanian company would want a mix of Coke from different countries if Danish was the cheapest.

114. There are extensive calls and emails between Cavendish and Whitmount between June 2016 and October 2016, as Cavendish request information about Whitmount's supply chains. Eventually on 8 November 2016, Whitmount tell Cavendish that they are not prepared to supply this information as it is not in their interests to do so, and that it does not make commercial sense.

115. Between 17 October 2014 and 29 April 2016 there were 347 invoices recorded in Whitmount's accounting records as having been issued to Cavendish. However, not all of the input tax shown on these invoices had been reclaimed by Cavendish, and it may be that some had either been cancelled or amended by credit notes. Of these invoices, 183 have been traced to tax losses.

116. Between 2 June 2015 and 6 July 2017, HMRC wrote 11 tax loss letters or emails to Cavendish, notifying Cavendish of the purchase invoices that had been traced to defaulting traders, and reminding them of the requirement to undertake appropriate due diligence checks. The tax loss letters are summarised in the following table:

Date of Tax Loss Letter or Email	**Period**	**Supplier**	**Tax loss (from supplier chain)**	**Customer**	**Tax loss (from onward supply chain)**
2 Jun 15	Feb-Mar 15	Whitmount	£97,000		
8 Jul 16	Mar-Apr 16	Whitmount	£626,000		
27 Sep 16	Mar-Apr 16	Whitmount	£490,000		
22 Nov 16	May 14	Whitmount		Interbev UK	£18,000
30 Nov 16	Apr 15-Feb 16	Whitmount	£720,000		
9 Dec 16	Apr-Jun 15	Whitmount	£297,000		
17 Jan 17	Feb-Apr 16	Whitmount	£210,000		
28 Feb 17	Oct 15-Feb 16	Whitmount	£510,000		
24 Mar 17	Mar–Apr 16	Whitmount		MAK Logistics	£134,821
5 Jun 17	Jan–Apr 16	Whitmount		MAK Logistics	£124,450
6 Jul 17	Apr 16	Whitmount	£50,000		
		Totals	**£3,000,000**		**£227,271**

117. On 13 September 2017 Officer Williams wrote to Cavendish notifying them of HMRC's decision to refuse entitlement to deduct input tax. The figures were subsequently amended, and an assessment for £1,326,035 was issued on 29 September 2017 covering all periods within the two-year time limit from September 2015 to February 2016. In addition, input tax was disallowed on all Whitmount invoices for March 2016 (£591,463.89) and for April 2016 (£744,823.64).

The deal chains

118. 170 of the 200 deal chains that are the subject of this appeal can be traced directly to a fraudulent tax loss occasioned by one of the following fraudulent defaulting traders, namely Tread Plus Limited, Kool Brands Limited, Impact Traders Limited, MMG Northwest Limited, Oldbury Limited, WSB Agencies Limited, traders purporting to be Jay's Foods Limited, and traders purporting to be Food & Drink Hub (Scotland) Limited. The last two, namely Jay's Foods Limited and Food & Drink Hub (Scotland) Limited are "hijacked" companies.

119. In the case of the remaining 30 deal chains, HMRC were not able to trace the deal chain beyond the "blocker" trader, AV Traders Limited.

AV Traders Limited ("AV Traders")

120. There are 30 tax loss deals that were assessed. They followed the following transaction chain:

AV Traders > *Whitmount* > *Cavendish*

121. HMRC were not able to trace the deal chain beyond AV Traders. Cavendish does not accept that these 30 deals are attributable to the fraudulent evasion of VAT.

122. We heard evidence from HMRC Officer Mathew Elms, who was responsible for HMRC's relationship with AV Traders from October 2015. Officer Elms also produced in evidence reports of visits by other HMRC officers going back to 2012.

123. AV Traders were incorporated on 19 August 2010 as "C Media Systems Limited" and applied to register for VAT in January 2011 with the business of "reproduction of computer media". Their original registered address was in Hatton Garden, London EC1, and they were VAT registered with effect from 31 October 2010.

124. On 14 February 2012, the registered office address was changed to a residential address in Chigwell, Essex, and on 16 February their name was changed to AV Traders. Mr Aaron Sanghera was appointed as the sole director with effect from 3 February 2012.

125. Two HMRC officers visited Mr Sanghera, at the registered office in Chigwell (which was Mr Sanghera's family home, where he lived with his parents) on 4 April 2012. As no one was there, the officers left a "seven-day warning letter" (this is a letter that states that if the trader does not contact HMRC within seven days, action will be taken). A further visit took place on 17 April 2012. The visit report makes the following points:

(1) Mr Sanghera had bought the company nine months previously for £300 with a friend and his uncle. The company traded in beer under bond. Their only supplier was Superior Import/Export Limited, and he found purchasers through "Ali Baba".

(2) There were no records of how relevant duties and taxes were paid, and Mr Sanghera was unable to provide any explanation. The officers explained due diligence checks to Mr Sanghera and told him about Public Notices 725 and 726.

(3) The officers concluded that Mr Sanghera did not seem to know much about the business, no adequate checks were being made on suppliers and customers, and invoices and bank statements did not match. The visit report states that the officers would request that the VAT registration be cancelled, as no supplies were being made in the UK.

126. The VAT registration was not cancelled, and on 2 May 2012 HMRC sent AV Traders an MTIC awareness letter.

127. On 26 February 2013, an HMRC officer visited AV Traders at the address of their accountant, Inger & Co. No one from AV Traders was present, as Mr Sanghera was unwell.

The HMRC officer in his visit notes records that AV Traders lacked credibility as they did not appear to be a viable business venture.

128. On 5 December 2013, the registered office address of AV Traders was changed to 5 Harbour Exchange Square, London E14. On 30 December 2013, Inger & Co emailed HMRC, attaching a copy of a letter from Metro Bank dated 22 August 2013 giving seven days' notice of the closure of Mr Sanghera/AV Traders bank account and the termination of the banking relationship. Whilst the letter gives no reasons for the account's closure, it does state that the bank will not provide any status reports to third parties about the account, and that it will not provide any new banking services to Mr Sanghera.

129. On 25 March 2014, HMRC officers visited AV Traders at their accountant's address. Present for AV Traders was Mrs Sandy Kaur (also known as Sandy Sanghera), who identified herself as Mr Sanghera's mother, and the person responsible for the administration of AV Traders. The officers discussed MTIC fraud and provided Mrs Kaur with copies of various HMRC notices, including PN726. They also uplifted copies of accounting records.

130. On 6 May 2014 HMRC sent a fraud awareness letter to AV Traders. On 5 September 2014, an HMRC officer telephoned Mrs Kaur to request documents and seek clarification of AV Traders' trading addresses, and the requested documents were provided by Mrs Kaur by email later that month.

131. On 30 October 2014, HMRC officers visited AV Traders at Mr Sanghera's family home in Chigwell, and met both Mr Sanghera and Mrs Kaur. The visit report states that the officers issued copies of various HMRC notices about alcohol and MTIC fraud. The visit report conclusions state that the HMRC officer believes that the director (Mr Sanghera) does not know what is going on in the business, and that the person actually running the business is Mrs Kaur. He also states that he believes that the trader knows that their deals may be linked to fraud (although no evidence is provided for this statement). The visit report also states there is evidence that they have been dealing with missing traders, and, on 20 November 2014, HMRC sent AV Traders a tax loss letter covering the VAT periods 02/14, 05/14 and 08/14 with the total tax losses being £728,950. On 6 March 2015, HMRC sent AV Traders a denial of input tax ("Kittel") letter for these periods, with the input tax denied being £728,950.

132. AV Traders were visited by HMRC officers with Mr Sanghera representing AV Traders. It is not disputed that this visit took place, nor is there any dispute about the accuracy of the substance of the report. However, the visit report itself is not dated. Mr Elms in his witness statement says that the visit took place on 6 March 2015 (which is the date the report was captured on HMRC's computer system). The report records that the visit took place on 8 October 2014 (with the appointment for the visit made on 30 September 2014) – but the section of the report "Conclusions and comments on credibility" refers to the Kittel letter sent on 6 March 2015 and to "policy's support dated 11/02/15". So, either the visit took place on 8 October 2014, but the report was subsequently updated to refer to the Kittel letter, or the visit must have taken place on or after 6 March 2015. We consider that the former is more likely, and so find. The visit report records that the officers reviewed AV Traders' due diligence checks, but notes that although standard checks were undertaken, the company did not go any further to ascertain, for example, the financial stability of their customers. The officers noted that no financial health checks are conducted, no credit insurance obtained, credit limits are not capped in any way (although customers generally have only one order on credit outstanding at any one time). The officers were surprised that AV Traders' suppliers also acted in a similar way and no supplier had asked for any form of director's guarantee for the credit offered. The officers expressed concern to Mr Sanghera about AV Traders' lack of safeguarding about the risk of non-payment by customers.

133. On 28 March 2015, HMRC issued a VAT assessment against AV Traders for £324,557 plus interest of £1333.79 (this appears to correspond to the input VAT denied for the 08/14 period mentioned above).

134. On 2 October 2015 AV Traders were visited by HMRC officers at the accountants' address, and Mrs Kaur represented AV Traders. The visit note records that the visit was prompted by a SCAC request from Poland in connection with sales to WCB Trading Spolka Z Ograniczona ("WCB"). The officers discussed the need for due diligence checks to test the integrity of the whole transaction chain. As regards trading with WCB, Mrs Kaur stated that AV Traders ceased trading with WCB in 2014 because WCB took too long to pay for deals. Mrs Kaur said that there were no written agreements between AV Traders and WCB, as all the trades were concluded verbally. The visit report conclusions were that the lack of inspections and terms and conditions for supplies between WCB and AV Traders indicated artificiality to the deals that seems less than credible.

135. On 22 October 2015, Officer Elms emailed Mr Sanghera to introduce himself, and on 27 October 2015 sent an email requesting various documents.

136. There was email correspondence between Officer Elms and AV Traders (and their accountants) about various trades between October and December 2015. On 24 November 2015, Officer Elms emailed AV Traders to arrange a visit, but received no reply.

137. Mr Sanghera resigned as the director of AV Traders on 2 November 2015, and Mr John Williamson was appointed in his place. On 4 December, the company's registered office address was changed to an address in Derby.

138. On 2 December 2015, Officer Elms issued a tax loss letter for six deals in VAT period 08/15, the total tax loss was £12,612.40. On 4 December 2015, he issued a further tax loss letter for 97 deals in periods 08/14, 11/14 and 02/15, the total tax loss being £344,949.30.

139. On 7 December 2015, AV Traders appointed a new agent, Tristan Thornton at TT Tax. The authorisation notice was signed by Mr Williamson.

140. On 21 December 2015, Mrs Kaur emailed Officer Elms asking whether he had received the documents he had previously requested. Officer Elms replied on 22 December that he had not, and asked to arrange a meeting.

141. On 24 December 2015, HMRC received a notice from AV Traders changing its principal place of business to the registered office address in Derby.

142. On 4 January 2016, Officer Elms received a response to his 22 December email from "John" (assumed to be Mr Williamson), and follow-up emails on 5 January.

143. On 8 January 2016, Officer Elms spoke to Mr Williamson on the telephone about AV Traders' records, and sent a follow up email later that day requesting further business records.

144. On 21 January 2016 HMRC issued a letter to AV Traders about the unpaid VAT debt (of £397,610.64) and giving AV Traders seven days to pay. On 10 February 2016, Mr Williamson emailed Officer Elms informing him that Tristan Thornton had been instructed to appeal against the denial of input tax, and asking whether Officer Elms wanted to visit Mr Williamson at his home address in Derby. Officer Elms responded that it would not be possible for him to visit Derby.

145. On 11 February 2016, Officer Elms issued a FACET assessment letter to AV Traders for £12,312 – this is an assessment in relation to undeclared transactions with an EU entity, which was made based on Officer Elms' best judgment.

146. On 14 March 2016, Officer Elms issued a tax loss letter for 27 transactions in the VAT period 11/15, the amount of the tax loss was £120,482.47.

147. On 17 March 2016 Robert Dixey was appointed a director of AV Traders. Mr Dixey was the director of Handelspost (although we also note that Cavendish would not necessarily have been aware that Mr Dixey was a director of AV Traders). On 18 April Ms V Patel was appointed as company secretary. On 21 April 2016 Mr Williamson resigned as a director and Ms Patel resigned as company secretary.

148. On 20 April 2016, Mr Williamson emailed Officer Elms with a spreadsheet of transactions in the 2/16 VAT period. Mr Williamson confirmed that AV Traders' supplier for all these transactions was Tread Plus Limited. On 22 April, Officer Elms emailed Mr Williamson stating that

> All 02/16 purchases go back to UK tax losses – same as VAT periods 08/15 & 11/15.

149. On 18 April 2016 the registered office address of AV Traders was changed to an address in Stoke-on-Trent, and, on 21 April, AV Traders notified HMRC that the principal place of business was now at the new registered office address. The notice was dated 18 February 2016 and was signed by "Mrs V M Patel (Company Secretary)". On 4 May 2016 Officer Elms emailed Mr Williamson to ask about the notice and about Mrs Patel. He did not receive a response.

150. On 22 March 2016 and 22 April 2016, HMRC issued veto warning letters to AV Traders confirming that the VAT registrations of Slough Scrap Metals Limited, Hamar Food Limited, and Tread Plus Limited had been cancelled.

151. On 13 May 2016, Officer Elms issued a tax loss letter to AV Traders in respect to the 115 transactions with Tread Plus Limited in the tax period 02/16. On 23 May 2016 Officer Elms issued a compulsory VAT de-registration letter to AV Traders, and their VAT registration was cancelled with effect from 19 May 2016.

152. A copy of the letter was emailed to Mr Williamson on 23 May 2016, and Officer Elms received an email in response from Robert Dixey stating that he was the sole director of AV Traders. Officer Elms had a telephone conversation with Mr Dixey that day, when Mr Dixey explained that he was now the sole director of the company. When asked about Mrs VM Patel, he said that he did not know her.

153. On 24 May 2016, Officer Elms issued AV Traders with two denial of input tax (Kittel) letters. One was for the periods 08/15 and 11/15, the total amount denied was £133,094, the other was for the period 02/16, the total amount denied was £733,353.

154. On 30 June 2016, Officer Elms issued a VAT assessment letter to AV Traders. This was for the final period of trading for £638,906.27. This was a "99/99 final period" assessment, which relates to the final period of trading from 1 March 2016 up to the date of deregistration (19 May 2016). Normally a trader would prepare and file a return for this period, but it did not happen in this case. Instead Officer Elms issued an assessment based on a spreadsheet provided to him by another HMRC officer, Officer Mendes, which listed purchases and sales made by Whitmount. Officer Elms extracted from this spreadsheet the sales made to Whitmount by AV Traders in the final period, and assessed AV Traders to VAT in respect of those sales. No deduction was made in respect of input tax on purchases made in the final period, because the records for those purchases were not available. Officer Elms' evidence is that the absence of any records is also the reason why HMRC were not able to trace these transaction chains to a specific defaulting trader. Officer Elms' evidence was that if he had been able to trace the deal

chains to a fraudulent defaulting trader, he would have blocked AV Traders' claim for any input tax deduction on *Kittel* principles, but he did not need to block input tax recovery

> because there was no input tax to deny, because we do not have a VAT return.

155. Officer Elms' evidence was that he had no "deal sheets" for the final period. For the immediately preceding period (02/16) AV Traders had only one supplier, which was Tread Plus Limited. It is not disputed that Tread Plus Limited are a missing/defaulting trader.

156. According to Officer Elms' evidence, the last known director of AV Trading was Robert Dixey, who was convicted and imprisoned for money laundering in Jersey (a copy of an article in the Jersey Evening Post was produced in evidence in support of this statement).

157. AV Traders were compulsorily struck-off and dissolved in August 2018 owing approximately £2.2 million of VAT to HMRC.

158. Mrs Kaur incorporated Monarch Trade Solutions Limited ("Monarch"), which had, according to Officer Elms, the same London business address and mode of trading as AV Traders. We note that Monarch were a buffer in a different defaulting deal chain

> Oldbury > Monarch > Whitmount > Cavendish

which is discussed below. The VAT registration of Monarch was cancelled and their input tax disallowed by HMRC. Officer Elms visited Monarch with Monarch's allocated MTIC officer, Officer Patel, on 12 January 2017. Officer Elms had been trying to meet Mr Sanghera and Mrs Kaur ever since he had been allocated responsibility for AV Traders, but had not managed to do so, and "piggy-backing" on the meeting Officer Patel had arranged with Monarch gave him the opportunity to meet Mrs Kaur. At the start of the meeting, Officer Patel introduced Officer Elms to Mrs Kaur. Officer Elms' evidence was that Mrs Kaur's response was that "Oh, if I knew he was here, I would not have arranged this appointment". After he was introduced, Officer Elms said to Mrs Kaur that he had some questions about AV Traders. This appeared to upset Mrs Kaur, and she refused to answer his questions.

159. Officer Elms' evidence was that both Mr Sanghera and Mrs Kaur were convicted and sentenced for conspiracy to defraud and money laundering, with the "laundered" criminal proceeds having been paid through AV Traders' bank account. Officer Elms attended the hearing at the Central Criminal Court on 21 December 2018 to observe the sentencing. The court heard that Mrs Kaur had previous convictions for money laundering offences. She was sentenced to 4 years' imprisonment, and Mr Sanghera was sentenced to 2 years and 9 months,

160. AV Traders' appeal against HMRC's decision to deny input tax relief was eventually dropped, probably as a consequence of the imprisonment of Mrs Kaur and Mr Sanghera.

161. HMRC acknowledge that they have to prove (on the balance of probabilities) either dishonesty on the part of AV Traders themselves, or that the 30 transactions can be traced to a fraudulent defaulting trader earlier in the deal chain. An allegation of dishonesty on the part of AV Traders has the effect of:

> Significantly […] raising the bar, in terms of what [HMRC] must prove to deny the respondents' claims and the cogency of the evidence called (per Hallett LJ: *HMRC v Citibank and another* [2017] EWCA Civ 1416 at [106])

162. We need to determine whether AV Trader's behaviour is dishonest according to normally accepted standards of behaviour (see *N'Diaye v HMRC* [2015] UKFTT 380 (TC) at [49]), and what AV Traders knew at the time,

163. As regards the 30 sales to Whitmount (which were on-sold to Cavendish), the directors of AV Traders at the time were Mr Williamson (who was a director from 2 November 2015 to

21 April 2016) and Mr Dixey (who was a director from 17 March 2016 until it was dissolved). As directors, their actions and knowledge are attributed to AV Traders.

164. Mr Brown submits that the 30 sales by AV Traders to Whitmount are not attributable to the fraudulent evasion of VAT for the following reasons:

(1) Mr Brown submits that HMRC have not traced the 30 transactions back to a defaulting trader. We agree that this is true, in the sense that the underlying paperwork was not made available to HMRC by AV Traders to enable HMRC to trace the deal chains. However, we note that AV Traders has a history of purchasing stock in deal chains which include missing or defaulting traders. We note that in the immediately preceding VAT quarter, AV Traders only purchased stock from Tread Plus, and that Tread Plus was the defaulting trader that supplied the stock to AV Traders in the six deal chains that were traced through AV Traders to an earlier defaulting trader in the deal chain. We consider that it is more likely than not that the stock purchased in the final VAT period (and sold to Whitmount and then sold on to Cavendish), would have been purchased from Tread Plus, and we so find. We therefore find that the stock sold by AV Traders to Whitmount was purchased from a fraudulent defaulting trader.

(2) Mr Brown submits that there is no evidence that Mr Williamson (the sole director of Whitmount from 2 November 2015 to 17 March 2016) was dishonest. Mr Brown notes that Mr Williamson co-operated with Officer Elms in providing details of company transactions to HMRC. Mr Brown acknowledges that Mr Williamson was responsible for the 02/16 VAT return (which had input tax denied on *Kittel* grounds on 24 May 2016), but which is not otherwise alleged by HMRC to be incorrect. But we note that Mr Dixey became a director on 17 March, and that he was subsequently convicted of, and imprisoned for, money laundering offences. AV Traders failed to supply Officer Elms with any details about the transactions undertaken in the final accounting period (which covered the 30 deals). We consider that it is instructive that Mr Williamson purchased the shares in AV Traders from Mr Sanghera, and sold the company some four and a half months later to Mr Dixey – both convicted money launderers. We had unchallenged evidence from Officer Williams' witness statement (as adopted by Officer Mankad) that Mr Williamson was also a director (with Mr Sanghera and Mrs Kaur) of Monarch for one day on 2 November 2015, and was a director of SDS Environmental between 1 July 2014 and 2 February 2015 (as discussed below, "SDS Cash & Carry" located at the same address as SDS Environmental was given on a CMR as the delivery address used by Handelspost in one of their deals). In the case of Mr Sanghera, he and his mother were convicted of using AV Traders' bank account to launder money. When Mr Williamson acquired the company, AV Traders were deeply involved in money laundering and had received a number of tax loss letters. We consider that it is more likely than not that Mr Williamson would have been aware of these matters at the time he acquired the company. Whilst the company was under his control, they purchased stock from Tread Plus, a fraudulent defaulting trader. Although there is no "smoking gun" demonstrating Mr Williamson's fraudulent intentions, the circumstances in which he bought, managed, and then sold AV Traders, and was a director of companies which were involved in other deal chains connected with fraudulent defaults, strongly suggests (and we so find) that he was knowingly involved with the frauds in which AV Traders participated (even if Cavendish were not aware of his involvement). We find that Mr Williamson (and therefore AV Traders, whilst it was under his control) was dishonest.

(3) Mr Brown submits that Mr Dixey's involvement with AV Traders occurred after the last sale of stock to Whitmount on 29 March 2016 (at least the stock that was subsequently sold to Cavendish). This was on the basis that Mr Elms' first contact with

Mr Dixey was on 23 May 2016. But the Companies House records show that Mr Dixey became a director of AV Traders on 17 March, and so there was a period when both Mr Williamson and Mr Dixey were directors. Mr Dixey is a convicted money launderer. He took over AV Traders on the day after Handelspost were deregistered (and we believe that it is unlikely that this is a mere coincidence). His involvement with AV Traders provides further evidence that AV Traders were at all material times a dishonest trader.

(4) Mr Brown submits that the tax loss is based on a schedule produced by Officer Mendes, who has not given a witness statement, and as a result there is a question as to the weight to be given to the schedule. Further, the assessment raised on AV Traders does not make any allowance for input tax, and (based on the margins made on AV Traders previous VAT returns) their VAT liability would have been around £2000. Mr Brown submits that the failure of AV Traders to pay a £600,000 assessment when the correct liability might only be £2000 is not evidence of dishonesty, but just of a lack of funds. Mr Brown criticised the evidential value of the schedule in his submissions. But it was exhibited to Officer Elms' witness statement, and it was open to Mr Brown to challenge its accuracy when he cross-examined Officer Elms, but he did not do so. We therefore find that it is accurate. Mr Brown's submission that AV Traders should have been allowed a deduction for the input tax incurred on these purchases does not hold much water in our opinion. If Officer Elms could have traced the deal chains (which, we have found, would have led to a fraudulent defaulting trader), he would have blocked the ability for AV Traders to claim an input tax deduction on *Kittel* principles – so AV Traders would not have been allowed a deduction for input tax. We therefore find that his decision to assess the output tax was reasonable. Whether Cavendish are liable for this tax on the joint and several liability principles depends on whether Cavendish should have been aware that these deal chains were tainted, which we address below.

165. We find that:

(1) AV Traders had themselves defaulted in paying VAT assessed on the supply of goods to Whitmount in those 30 deal chains;

(2) The stock sold to Cavendish in those 30 deal chains can be traced back to an earlier fraudulent defaulting trader in those chains; and

(3) AV Traders were a knowing participant in VAT frauds and other crimes, not only prior to the 30 transactions, but also in relation to these transactions. We find that they were at all material times themselves a fraudulent trader.

Tread Plus Limited ("Tread Plus")

166. There are 6 tax loss deals that were assessed. They followed the following transaction chain:

Tread Plus > AV Traders > Whitmount > Cavendish

167. These deals all took place in February 2016. Cavendish accept, and do not dispute, that these deals can be traced to a fraudulent defaulting trader, and we so find.

Kool Brands Limited ("Kool Brands")

168. There are 20 tax loss deals that were assessed. They followed the following transaction chain:

Kool Brands > Whitmount > Cavendish

169. These deals took place between 4 February 2016 and 23 April 2016. Cavendish accept, and do not dispute, that these deals can be traced to a fraudulent defaulting trader, and we so find.

Impact Traders Ltd ("Impact Traders")

170. There are 74 tax loss deals that were assessed. They followed the following transaction chain:

Impact Traders > Sha Bros > Whitmount > Cavendish

171. These deals took place between 10 December 2015 and 27 April 2016. In the case of one of the deal chains, there is no documentary evidence to confirm that Sha Bros bought the goods from Impact. HMRC submit that in the case of this one chain, on the balance of probabilities, Sha Bros would have purchased from Impact Traders, given that all the other deals at this time involved purchases from Impact Traders. Cavendish accept, and do not dispute, that all of these deals can be traced to a fraudulent defaulting trader, and we so find.

MMG Northwest Limited ("MMG")

172. There are 23 tax loss deals that were assessed. They followed the following transaction chain:

MMG > Whitmount > Cavendish

173. The assessed deals took place between 28 August 2015 and 4 December 2015, although HMRC Officer Williams' evidence (adopted by Officer Mankad) was that Whitmount had been buying from MMG and supplying goods from them to Cavendish since 24 February 2015. Cavendish accept, and do not dispute, that all of the assessed deals can be traced to a fraudulent defaulting trader, and we so find.

Oldbury Limited ("Oldbury")

174. There are 4 tax loss deals that were assessed. They followed the following transaction chain:

Oldbury > Monarch Trade Solutions Ltd > Whitmount > Cavendish

175. These deals took place between 19 and 27 April 2016. Cavendish accept, and do not dispute, that all of these deals can be traced to a fraudulent defaulting trader, and we so find.

WSB Agencies Limited ("WSB")

176. There are 4 tax loss deals that were assessed. They followed the following transaction chain:

WSB > Shawty Trading > Whitmount > Cavendish

177. These deals took place between 18 January and 5 February 2016. In the case of one of the deal chains, there is no documentary evidence to confirm that Shawty Trading bought the goods from WSB. HMRC submit that in the case of this one chain, on the balance of probabilities, Shawty Trading would have purchased from WSB. Cavendish accept, and do not dispute, that all of these deals can be traced to a fraudulent defaulting trader, and we so find.

Jay's Foods Limited (Jay's) (hijacked)

178. There are 20 tax loss deals that were assessed. They followed the following transaction chain:

Persons purporting to be Jay's > Sha Bros > Whitmount > Cavendish

179. These deals took place in September 2015. Cavendish accept, and do not dispute, that all of these deals can be traced to a fraudulent defaulting trader, and we so find.

Food and Drink Hub (Scotland) Limited ("FDH") (hijacked)

180. There are 19 tax loss deals that were assessed. They followed the following transaction chain:

Persons purporting to be FDH > Impact Traders > Sha Bros > Whitmount > Cavendish

181. These deals took place between 9 October and 26 November 2015. Cavendish accept, and do not dispute, that all of these deals can be traced to a fraudulent defaulting trader, and we so find.

Other transactions

182. Officer Wilkinson's witness statement gives details of another 118 deals between Whitmount and Cavendish, where input tax was not denied. All but 24 of these deals involved companies identified above as defaulters, but HMRC were out of time to raise assessments against Cavendish. In the remaining 24 deal chains, either no defaulting trader had been identified in the deal chain, or the transactions were now too old and any assessment by HMRC would be out of time.

HMRC'S SUBMISSIONS

183. HMRC submit the following as indications by which the Tribunal can determine that Cavendish knew, or should have known, that the 200 deals were connected with the fraudulent evasion of tax.

Large increase in profits

184. Cavendish's audited financial statements for the period ended 31 January 2016 show that sales increased to £37.8m, a 66% increase compared to the prior year. Despite the gross profit percentage margin declining from 7.4% to 5.9%, pre-tax profits increased to £700,000 (an increase of 333%). The financial statements note that the sales of the shipping division (supplying cruise ships) had grown by 29% to £21.9m, but the sales of the trading division (which is the subject of this appeal) had tripled to over £15m.

185. Even though the profit margins on the sales made by the trading division were lower than those made by the shipping division, profits before tax had doubled, compared with the previous period. Nothing is noted in the financial statements as to how or why these huge increases in trade or profits had been achieved.

Deliveries

186. Cavendish did not arrange the delivery of goods to their customers, all deliveries were arranged by Whitmount. HMRC submit that a genuine commercial trader would not allow its supplier to arrange deliveries for two reasons.

187. The first is that Cavendish was the trader claiming zero-rating of the supply of goods to EU businesses, but it was Whitmount who were arranging the physical delivery of the goods from the UK to Cavendish's EU customer. If there was any problem evidencing the EU delivery in order to support a claim for a zero-rated export, it would be Cavendish taking the risk on the resulting VAT liability, and not Whitmount.

188. Secondly, as Whitmount were arranging the delivery of the goods, they knew the identity of Cavendish's customers and they could cut Cavendish out of the deals. But Mr Burden's evidence was that there was an element of trust in this business, and that it would be bad for Whitmount's business if it was known that they started supplying end-customers directly. Mr Burden said was that initially he was concerned about this risk, but became more confident over time as Whitmount did not cut Cavendish out - Whitmount had told him that if they exported directly to the Irish Republic, the amount of VAT repayments they would be waiting for would clog up their cashflow. We know, in retrospect, that the real reason why Whitmount did not cut Cavendish out of deals was probably not that they were worried about losing the trust of their customers, but because they were being monitored by HMRC - and that repayment claims would be blocked unless and until HMRC had checked that there were no defaulting

traders in the supply chain. And that Whitmount would therefore want to make only VATable supplies to UK customers (so that someone else was taking the risk on claiming repayment of input tax).

189. But even if Mr Burden were right to "trust" Whitmount not to approach Cavendish's customers, this does not explain why Cavendish would trust their customers not to approach Whitmount. The evidence is that Cavendish's customers would have cut Cavendish out of the deal if they knew where to source goods more cheaply – we refer below to a statement Mr McCreesh (of MAK Logistics) made to Irish Revenue officers in August 2016, when he said that he would bypass Cavendish if he knew whom their supplier was.

190. We consider and find that Mr Burden's apparent trust in Whitmount not to cut Cavendish out of deals (if it is to be believed) is at best naïve and misplaced. There is no evidence to suggest that the market in FMCGs is one in which "gentlemanly" conduct is valued – quite the reverse as Mr McCreesh told officers from the Irish Revenue that they would have cut Cavendish out. We know from Officer Wilkinson's evidence (although we recognise that Cavendish did not) that Whitmount in fact supplied Swift Valley directly, as well as Swift Valley buying via Cavendish. We find that a reasonable trader would have been very concerned about the risk of being cut out of deals by its supplier, and would have sought to protect its trading position, either by arranging transport itself (thus ensuring that its supplier did not know the names of its customers, or by entering into a contract with the supplier which included confidentiality and non-compete provisions.

191. But we do not consider that Mr Burden is naïve. We consider, and find, that he deliberately chose to turn a blind-eye to the risk that Whitmount might cut Cavendish out of deals, and that his evidence about trust is just "window dressing".

Non-credible transport and warehousing

192. HMRC submit that the identity of some of the transportation companies and destinations for the goods sold by Cavendish are inconsistent with genuine commercial transactions.

193. The transport of goods to Handelspost in the Netherlands was undertaken by Vincor, a Slovakian company. Initially the goods were delivered to a warehouse in the Netherlands (Beers and Wines BV), but in subsequent deals, the deliveries were to Gold Haus Sp Zoo ("Gold Haus") in Oborniki, Poland. An online search undertaken by Officer Williams (against what appears to be the Polish corporate registry) indicates that Gold Haus were registered as doing business as a sawmill.

194. Sales to Best Distribution in Romania were delivered to Almax West, also located in Oborniki in Poland. An online search by Officer Williams shows that Almax West are engaged in carpentry, car rentals, cleaning services and the supply of car parts.

195. An online search of corporate registers by Officer Williams shows that Norbert Nowak Stanislaw is a director of both Gold Haus and Almax West.

196. A similar search by Officer Williams against Vincor in a Slovakian register shows the sole director as being Kelvin Corry, with an address in Rhyl, Wales. The registry search lists various business activities (ranging from brokerage to data processing – but also including freight transport), but a VIES search gives their trade class as being retail sale, and not freight transport. As a result of a SCAT enquiry, HMRC were advised by the Slovakian authorities that Vincor had never filed tax returns, were based at a virtual office, and could not be contacted by the Slovakian authorities. Their Slovakian VAT registration was cancelled in November 2017.

197. When cross-examined about the internet searches, Officer Mankad said that she had not herself checked them, as she had no reason to do so, but the accuracy and reliability of the

searches was not challenged by Mr Brown, and we find them not only to have been reliable, but also would have been available at the time to Cavendish had they undertaken internet searches against the names of Gold Haus, Almax West, and Vincor.

198. Cavendish were aware that the ultimate destination of goods supplied to Handelspost (at least after April 2016 was Gold Haus, and that Vincor were being used to transport those goods. This was apparent from the delivery address provided to Cavendish by Handelspost, and from the CMRs which were eventually provided to them by Whitmount. We find that if Cavendish had conducted due diligence on these businesses, they would have ascertained that Gold Haus were a saw mill, that Vincor were a retail business in Slovakia with a director living in Rhyl, and that Almax West were engaged in the business of carpentry, cleaning, car rental and car parts. These are inconsistent with genuine commercial trading relationships, and would have put Cavendish on notice that their transaction chains were connected with tax fraud.

199. In her evidence, Ms Crompton confirmed that when Handelspost first specified Gold Haus for deliveries, she had undertaken a Google search against Gold Haus's address, to double-check the delivery address, but that she "wouldn't have looked into it" to check what was located at the address..

200. When Cavendish were subject to extended monitoring, Officer Wilkinson requested copies of documentation relating to Cavendish's deals (including copies of CMRs) She cross-checked some of the CMRs with the Trade Access Systems Ferry Information System ("TASFIS") and a spreadsheet of the results of her checks was produced in evidence. TASFIS is a database of vehicles that have crossed the Channel between the UK and continental Europe on either ferries or Eurotunnel. The data provided by the ferry companies and Eurotunnel differs in some respects (for example, vehicle weights are not provided in the case of Eurotunnel). As TASFIS only retains data for 18 months, Officer Wilkinson's search was limited in time, and Officer Mankad was not able to re-check it. We also note that some of the searches were defective, as for some of the consignments she searched on the number of John Crilly's trailer, rather than the registration number of the tractor unit pulling it (we could see this from the evidence of photographs taken by Mr Burden when he visited Whitmount, which included some pictures of John Crilly's trailers showing the trailer numbers). Having excluded the line items which specified a John Crilly trailer number, out of the remaining 31 cross-Channel deliveries made in March 2016 shown on her spreadsheet, only six deals are matched to vehicles crossing the Channel. Of these, three matched vehicles declared to be travelling empty, although they were meant to have been conveying Cadbury chocolates to Beer & Wines in the Netherlands, and one could only be matched to a return journey into the UK carrying a cargo of paper. Of the 33 remaining (non-John Crilly) cross-Channel deliveries in April 2016, only two are matched, one was a vehicle declared to be empty, and the other was declared as carrying non-hazardous chemicals, although both were meant to have been carrying Mars bars to Beer & Wines in the Netherlands or to Gold Haus in Poland.

201. The checks against the TASFIS database corroborate HMRC's case that the deals that are subject to this appeal are linked to fraud. But the TASFIS database is not publicly accessible, and its contents could not be known to Cavendish.

Delivery costs

202. In the overwhelming majority of trades, Whitmount do not separately itemise a delivery charge on their invoice. Nor do Cavendish show any additional delivery charge on the invoices to their customers.

203. In the case of deliveries to Handelspost, the initial sales were delivered to the Beer & Wines warehouse in the Netherlands. However in early April 2016 Handelspost asked Cavendish to confirm prices for delivery to Gold Haus in Poland, and Whitmount confirmed

that the same prices would apply, even though the delivery address was 950km (590 miles) further away (as the crow flies). This can also be seen in relation to Deal 162 on 8 April 2016 where a consignment of Mars and Snickers bars was sold at a unit cost of £13.95 by Whitmount to Cavendish, and at a unit cost of £14.35 by Cavendish to Handelspost, in each case for delivery to Beers and Wines in the Netherlands. This can be compared with Deal 167 (also for a consignment of Mars and Snickers bars) sold at the same unit costs on 12 April 2016, for delivery to Gold Haus in Poland.

204. HMRC submit that the absence of any increase in delivery cost, notwithstanding the significant additional costs that would have been incurred by a haulier (for example in fuel and time) is an indication that these trades are not genuine and commercial.

205. The fact that the price did not change did not raise any concern at Cavendish. Mr Burden agreed during the course of cross-examination that Whitmount's prices included delivery, and that some deliveries appeared to be travelling further for the same price. In June/July 2016, in response to queries raised by Officer Williams, Mr Burden said that it was not his concern that Whitmount were charging a single price for delivery throughout Europe.

206. Ms Crompton was asked during cross-examination about the same price being charged for goods transported to Holland and goods being transferred to Poland, and her response was that

> "If Whitmount were being charged extra by their freight forwarder and chose to keep our price the same, then that is not for me to argue.".

207. As an expert tribunal, we are aware that some hauliers are prepared to transport "backloads" at a cheaper rate, rather than return to their base empty – and that there are a number of websites that link hauliers to customers for the carriage of backloads. Indeed, an email from Mr Kelly to Ms Crompton on around 11 April 2016 refers to "a Polish transport company that requires back loads on a steady basis". But the haulier regularly used to transport goods to Gold Haus was not a Polish company, it was Vincor – and Cavendish would have been aware of this fact from the CMRs. Vincor was a Slovakian business and not a Polish one (although one without any substance).

208. Even if back loads were available to Whitmount to reduce transport costs to Poland, this does not explain why Whitmount was able to provide Cavendish with a pricing table showing a single price for deliveries anywhere in the continental EU member states. Whilst "a Polish transport company" may have capacity for transporting back loads to Poland, it would not be providing transport at that price to anywhere in continental Europe. Nor could it necessarily commit always to have capacity to take a back load. We find that the fact that Whitmount were apparently prepared to arrange delivery of goods anywhere in Europe for the same price is an indication that they were not undertaking a genuine commercial business, and that their trading must have been connected to tax fraud. We find that Cavendish's indifference to this indicates that they were (at the very least) deliberately turning a blind eye to an indication of fraud in their supply chain.

Temperature controlled transport

209. Officer Williams noted that chocolate was not transported in temperature-controlled trailers. Mr Burden's evidence on this point was that it was up to Whitmount how they transported the goods, and that Cavendish would not normally query the supplier about how they were going to deliver it – if it arrived at the wrong temperature, it would be rejected:

> Q. Did you query again with Whitmount the position in relation to the lorries, whether they had to be temperature controlled? Did you ask any of those questions?

A. No, it is up to them how they do it. Obviously if we had ordered a lorry load of milk from someone and it turned up in an ambient lorry, we would have massive complaints against them. But, no, if you order a lorry load of Red Bull and, but you would expect it to be in an ambient lorry. Remember again though that is up to them. We have always --

Q. Again Mr -- sorry, I will let you finish the answer. Is it your answer that that was up to them as far as you are concerned?

A. It is not something that we -- if we order something for delivery we would not normally question the supplier and anything about their haulage or how they were going to deliver it with and so on. If it had come in the wrong temperature it would be rejected.

Q. So, it is another question that you did not ask basically. You just said, "well it is really their -- it is up to their haulier, it is not our responsibility as the supplier to our customer"?

A. Yes, exactly, it is their responsibility.

Q. So, if your customer had had a problem with the goods upon delivery, they would not have come to you to complain about it?

A. Well, they would have come in and complained about it and we would have had to have done something about it, but what I am saying is it is not standard practice to query the temperature of incoming delivery. You would hope that people have the common sense to deliver frozen meat in a frozen lorry and chilled cheese in a chilled lorry and an ambient product in an ambient lorry. That is just common sense.

Q. Right. You would hope that, but obviously you did not query with Cavendish, did you -- with Whitmount, sorry, did you, what steps they were taking in that regard to ensure that the perishable -- you just assumed effectively that they would deal with that themselves, is that right?

23 A. Yeah, but that is a loaded question because I mean I cannot remember them asking about it, no.

210. He amplified these answers on re-examination:

Q. Can I just ask you now a few questions about chocolate and ambient temperatures and how perishable everything is? In terms of chocolate, Red Bull, and soft drinks, how would you have expected those goods to have travelled?

A. Ambient.

Q. And why is that?

A. Just experience, really, I mean all soft drinks come in an ambient lorry. The only one that you could query, I suppose, would be maybe chocolates. We've always supplied chocolate -- we've always stored our chocolate at ambient and supplied at ambient, the one exception being when we put chocolates on some of the cruise containers we do, because we send containers out to meet ships. So we might send a container of food out to meet a ship in Australia, and if you know it's going to go across the equator, you don't put the chocolates in the ambient container, you put it in the chilled one. But that's the only exception, apart from that, if we order -- if we ordered chocolate in the normal way, it comes in ambient.

211. In any event, the sales in question appeared to all have taken place between September 2015 and April 2016, and it was unlikely that temperature would have been an issue for the

transport of chocolate at that time. We therefore consider that the failure to use temperature controlled vehicles (or for Cavendish to fail to specify or check on the use of temperature controlled vehicles) was not an indication of VAT fraud in the deal chains.

Pricing

212. HMRC analysed the price paid by Cavendish to Whitmount for "full loads" (3744 units) of Red Bull during the course of September 2015, and noted that the unit price varied between £14.50, £14.70, and £15.00 per unit case. In October 2015 Whitmount charged £14.60 per case, and in November and December they charged £13.55 per case. The price subsequently returned to £14.60 per case.

213. HMRC note that in the report of the visit on 15 May 2015, Mr Burden told the visiting officers that Cavendish used to buy Red Bull in larger volumes directly from the manufacturers, but were now buying per pallet, as it was cheaper due to exchange rates.

214. Officer Williams in her witness statement notes that in September 2014 (when Cavendish were buying directly from the manufacturer), they paid either £16.80 or £15.10 per case. Which indicates that Whitmount were charging Cavendish between £1.70 and £1.90 less per case than the manufacturer. Officer Mankad describes this as demonstrating that Whitmount's pricing was "too good to be true", and was therefore an indicator of MTIC fraud.

215. Officer Williams also notes that Mr Burden's statement about purchasing by the pallet was not credible, as Cavendish were purchasing full container loads from Whitmount, and not just a few pallets.

216. We find that these submissions on pricing are not necessarily indications of MTIC fraud in the context of Cavendish's pattern of trading. The variations in the pricing given by Whitmount could reflect variations in the availability of Red Bull in the secondary market. And as regards the discrepancy between the manufacturer's price and Whitmount's, Mr Burden's evidence was that manufacturers required very substantial and regular purchases of their products, and the pricing on the secondary market could be cheaper because other buyers had greater purchasing power than Cavendish. Further, Mr Burden explained that buying products directly from the manufacturer also involved volume rebates, and the supply of marketing materials (such as branded refrigerators). So, comparing the purchase of Red Bull on the secondary market with Red Bull bought directly from the manufacturer was not a like-for-like comparison.

Mark-ups

217. HMRC note that the mark-ups made by Cavendish on the deals under appeal are low, particularly when compared with the mark-ups achieved on the cruise side of the business. The mark-up over Whitmount's pricing varied between 2.09% to 6.34%. In the majority of deals the mark-up was less than 3%, and the average mark-up was 3.14%. By comparison, the mark-up achieved on the cruise side was between 7% and 20%.

218. But there was some variation in the margins made by Cavendish in their export business, depending upon the customer and the date of the trade – so although the margin may have averaged out at around 3%, there were variations.

219. The differences in the mark-ups between the cruise and the export business was explained by Mr Burden in his evidence, and reflected the very different natures of these two lines of business, and the risks being taken by Cavendish.

220. We therefore find that the amount of the mark-up taken by Cavendish was not an indication that it was participating in MTIC fraud.

Market for the product

221. Both Officer Williams in her witness statement, and Officer Mankad in her oral evidence, pointed out that Cavendish supplied Cadbury's Crème Eggs to Handelspost for delivery to Gold Haus in Poland on 8 and 10 March 2016, two weeks before Easter. Given that this is a specifically Easter product, there would be an expectation that the product would need to be supplied considerably earlier, if it was to get to retailers in time for the Easter holidays (and the risk that the product would have to be heavily discounted if it arrived too late to be sold before Easter). In addition, Crème Eggs were a peculiarly British product, and it was odd that they were being supplied to Poland. This point was raised at HMRC's visit to Cavendish on 27 April 2016.

222. Ms Shingleton's response at the April 2016 visit was that Easter goods were sold at a discount once Easter was over – although there was nothing in the documentary evidence to suggest that the Crème Eggs were being supplied at a discount to their normal price to reflect the fact that they would only be retailed after the Easter holidays.

223. Mr Burden in his evidence said that Mondelez (the parent company of Cadbury's) moved production of Crème Eggs from the UK to Poland some years ago – following the April 2016 visit, he undertook a Google search and was surprised to find that Mondelez had moved production to Poland. Mr Burden was asked, given that production of Crème Eggs had been transferred to Poland, why would there be loads of Crème Eggs going from the UK or Ireland to Poland – and Mr Burden said that he didn't know:

> I mean, it is not a normal thing that you would question on a day-to-day basis. You've got an order from a customer. I don't know how much relevance. If you have to query every single order you ever get from a customer and say "phone them up and say you have just ordered some Marmite, why are you ordering some Marmite?" I just -- it is not realistic.

224. Mr Burden also said that Crème Eggs were produced throughout the year, and not just at Easter, and he produced in his evidence an example of an advertisement for the delivery of "GB Crème Eggs" in January 2016. However, also included in the bundles was a print out from a BBC News interview with Cadburys, in which Cadburys say that they do not sell Crème Eggs all year round as they stop being "special" – they had attempted year-round sales twenty years ago, but it "didn't work". Other prints of news stories included in the bundle are consistent in saying that Crème Eggs are available only between January and Easter. We find that Crème Eggs are only sold by Cadburys for a season between New Year and Easter.

225. Mr Burden also said that the formulation of the chocolate used in the UK and in continental Europe was different – and that the UK version was more popular, which is why there was a demand for the UK version of Crème Eggs in continental Europe. However he did not produce any evidence to support this statement that there is a different formulation for the chocolate shell for continental European Eggs, or indeed that Crème Eggs are consumed at all in Central or Eastern Europe.

226. We find that the sale of Crème Eggs to Poland is sufficiently unusual, that it ought to have given rise to concerns at Cavendish that the transaction might potentially be connected with fraud, and that further enquiries ought to be made. Something that Cavendish did not do.

227. We also note that some of the soft drinks sold by Cavendish were labelled for specific markets – we can see for example that Best Distribution in Romania requested cans of Coke of Danish, Irish, UK and German origin, and Red Bull of any origin for delivery to Poland and Germany, and that MAK Logistics and Dipway (both located in the Irish Republic) bought cans of Red Bull which were price-marked for the UK market (in other words a recommended retail price in British pounds and pence was printed on the can).

228. Ms Crompton was cross-examined on this:

> Q. So, can you assist with why they would have wanted Red Bull marked with pounds sterling in the Republic of Ireland?
>
> A. I believe they were selling it into British shops.
>
> Q. So, they were selling it back into the UK?
>
> A. No, into British shops. All countries have British shops.
>
> Q. So when you say you believe they were selling it into British shops?
>
> A. That was my understanding, yes.
>
> Q. Is it your evidence that there were, effectively, shops in the Republic of Ireland selling goods in pounds sterling?
>
> A. I'm not saying they sold them in pounds sterling, it would have had the pounds sterling equivalent on the can.

229. We understand her reference to "British shops" to be to shops which specialised in selling British goods, and that she assumed that these goods were destined for those kinds of shops. Whilst we can appreciate that this might be true for a particularly British line of products – such as Cadbury Crème Eggs - we find it to be an unlikely justification for international products, such as Red Bull or Coke, which have no British heritage. And Cavendish did not just sell British labelled products to Eastern and Central Europe – included in the deal chains were products labelled for the Danish, Irish and German markets that were also sold into Eastern and Central Europe.

230. Nor does Ms Crompton's response address the sale of price-marked Red Bull to customers in the Irish Republic. Not only is Red Bull not a speciality "British" product, but the sale of price-marked goods into the Irish Republic would flag the risk that the goods would be sold back into the UK – which is an indication of MTIC fraud identified in PN726.

231. During the 27 April 2016 visit, Ms Shingleton was also asked about the product labelling, and whether English language ingredients labels on products identified for sale in the UK would satisfy regulatory requirements elsewhere in Europe, where English was not the local language – for example in relation to the risk warnings for possible allergic reactions. Ms Shingleton said did not know.

232. But the answers of Ms Crompton and Ms Shingleton miss the point. At issue here is whether sending "British" labelled goods to customers located in Eastern Europe made commercial sense. The fact that this does not make sense should have put Cavendish on notice that there was something odd about the deal, which would require further investigation. Something Cavendish failed to do.

233. In all of these cases, there is something that is commercially "unsatisfactory" about the transactions that would put a genuine commercial trader on notice that they ought to make further enquiries. The fact that Cavendish failed to do so is an indication that Cavendish were (at best) deliberately turning a blind eye to the possibility of these transactions being connected with tax fraud.

Tax loss letters and due diligence

234. On 2 June 2015, Cavendish received a tax loss letter from HMRC warning them that some of their purchases from Whitmount in the period February to March 2015 had been traced to defaulting traders, and that there was a risk that similar transactions could trace to tax losses. Given the knowledge that past transactions had been traced to tax losses, and the warning that future transactions could also lead to tax losses, HMRC submit that Cavendish would have

been aware that continuing to trade with Whitmount posed huge risks - nonetheless, Cavendish continued to trade, regardless of HMRC's warnings.

235. However, we note that all of the other tax loss letters were received after Cavendish ceased trading with Whitmount.

236. Mr Burden's evidence was that when Cavendish received the first tax loss letter, they suspended their business with Whitmount, pending further investigation, and Mr Burden then visited Whitmount (and some of Cavendish's customers in the Irish Republic), and undertook further diligence. This is not strictly correct. Trading with Whitmount was suspended by Mr Burden following HMRC's visit on 15 May 2015, when Officers McKay and Templeman warned Mr Burden about MTIC fraud and ensuring the integrity of the supply chain. Mr Burden visited Whitmount on 1 June 2015.

237. The first tax loss letter was received on 2 June 2015, on the day after his visit.

238. Mr Burden says that he had verified that Whitmount itself undertook due diligence on its suppliers, and obtained confirmation that they had ceased trading with the fraudulent supplier identified in the tax loss letter. Cavendish submit that they had done all that could be reasonably expected to ensure the integrity of their supply chain. They note that all the tax loss letters relating to the 200 deal chains under appeal arrived after Cavendish had ceased trading with Whitmount. They also note that they have not been assessed in respect of the tax losses identified in the 2 June 2015 letter.

239. We agree that the assessments under appeal all relate to tax losses identified in letters received by Cavendish after they ceased trading with Whitmount.

240. But we question whether the diligence undertaken by Cavendish was adequate – especially in the light of the 2 June 2015 letter.

241. Cavendish received various visits and telephone calls from HMRC during which due diligence in relation to supply chains was discussed. They received their first copy of PN726 at the visit on 12 March 2012, and then were given another copy on 23 May 2013. During the visit on 15 May 2015, Mr Burden was asked whether he recalled being given PN726 in May 2013, which he confirmed, and was given another copy.

242. PN726 explains how traders can become jointly and severally liable for unpaid VAT of another business. Section 6 of PN726 is entitled "Dealing with other businesses – how to ensure the integrity of your supply chain". Section 6 is as follows:

> **6. Dealing with other businesses, how to make sure the integrity of your supply chain**
>
> **6.1 Checks to undertake to help make sure the integrity of your supply chain**
>
> The following are examples of indicators that could alert you to the risk that VAT would go unpaid:
>
> 1) Legitimacy of customers or suppliers. For example:
>
> - what is your customer's/supplier's history in the trade?
> - has a buyer and seller contacted you within a short space of time with offers to buy/sell goods of same specifications and quantity?
> - has your supplier referred you to a customer who is willing to buy goods of the same quantity and specifications being offered by the supplier?

- does your supplier offer deals that carry no commercial risk for you , for example, no requirement to pay for goods until payment received from customer?
- do deals with your customer/supplier involve consistent or predetermined profit margins, irrespective of the date, quantities or specifications of the specified goods traded?
- does your supplier (or another business in the transaction chain) require you to make 3rd party payments or payments to an offshore bank account?
- are the goods adequately insured?
- are they high value deals offered with no formal contractual arrangements?
- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc.?
- can a brand new business obtain specified goods cheaper than a long established one?
- has HMRC specifically notified you that previous deals involving your supplier had been traced to a VAT loss and/or had involved carousel movements of goods?
- has HMRC specifically notified you that HMRC date stamps have been present on goods offered for sale by your supplier, or that there is evidence of HMRC date stamps being removed from packaging, this would strongly suggest that the goods had been subject to carousel movement, which should alert you to a significant risk that the transactions entered into with that supplier may be connected with the non-payment of VAT
- has HMRC specifically notified you that other MTIC VAT fraud characteristics (such as third-party payments) have occurred in transaction chains involving your supplier?

2) Commercial viability of the transaction. For example:

- is there a market for this type of goods - such as superseded or outdated mobile phone models or non-UK specific models?
- what research have you done to test whether these goods are available as described and in the quantities being offered?
- is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- have normal commercial practices been adopted in negotiating prices?
- is there a commercial reason for any third-party payments?
- are normal commercial arrangements in place for the financing of the goods?

3) Viability of the goods as described by your supplier.

For example:

- do the goods exist?
- have they been previously supplied to you?

- are they in good condition and not damaged?
- do the quantities of the goods concerned appear credible?
- do the goods have UK specifications yet are to be exported?
- is your supplier unwilling to provide IMEI or other serial numbers?
- what recourse is there if the goods are not as described?

Make sure that sufficient checks are carried out in each of the above categories to make sure that you are not caught in a fraudulent supply chain.

6.2 Checks carried out by existing businesses

The following are examples of specific checks carried out by businesses that took part in the consultation exercise in 2003 when these rules were introduced. These may also help you to decide what checks you should carry out, but this list is not exhaustive and you should decide what checks you need to carry out before dealing with a supplier or customer:

- obtain copies of certificates of incorporation and VAT registration certificates
- verify VAT registration details with HMRC
- obtain signed letters of introduction on headed paper
- obtain some form of written and signed trade references
- obtain credit checks or other background checks from an independent third party
- insist on personal contact with a senior officer of the prospective supplier, making an initial visit to their premises whenever possible
- obtain the prospective supplier's bank details, to check whether:
    (a) payments would be made to a third party
    (b) in the case of an import, the supplier and their bank shared the same country of residence
- check details provided against other sources, for example website, letterheads, BT landline records

Paperwork in addition to invoices may be received in relation to the supplies you buy and sell. This documentation should be kept to support your view of a transaction's legitimacy. The following are examples of additional paperwork that some businesses retain:

- purchase orders
- pro-forma invoices
- delivery notes
- Convention Merchandises Routiers (CMRs) or airway bills
- allocation notification
- inspection reports

This is not an exhaustive list, but does show some of the more common subsidiary documentation.

6.3 What HMRC looks out for when considering the extent of your checks

> In each case, HMRC will be seeking to identify what actions or precautions you took in response to any indicators of risk. This will focus on the due diligence checks you undertook and, most importantly, the actions taken by you in response to the results of those checks. In each case, HMRC will consider:
>
> - what due diligence checks were performed? This includes any checks designed to address the specific risks of a specific case
> - to what extent were your checks appropriate, adequate and timely in relation to addressing the risks identified?
> - what the results of the checks indicated?
> - did you take appropriate action in response to the results of the checks?
>
> If you have genuinely done everything you can to check the integrity of the supply chain, can demonstrate you have done so, have taken heed of any indications that VAT may go unpaid and have no other reason to suspect VAT would go unpaid, the joint and several liability rules will not be applied.

243. In addition to PN726, Cavendish were also provided on several occasions with HMRC's "How to spot a missing trader fraud" leaflet. This states that traders should be suspicious of various things, including entities trading from residential or short-term lease accommodation and serviced offices. It goes on to say

> **How can you protect you or your business**
>
> Take care that
>
> - You know your business, suppliers and your customers
> - You satisfy yourself that a deal looks and feels genuine, and
> - You know the provenance of the goods or services you are being offered.
>
> Check that
>
> - The goods you buy exist and are as described
> - The integrity of your customers and suppliers
> - The commercial viability of the transactions, and
> - That the payment arrangements are realistic.

244. Mr Burden's evidence was that following the May 2015 meeting, Cavendish upgraded its due diligence procedures.

245. We can see the nature of the "upgraded" procedures in relation to the due diligence files for Handelspost and for MAK Logistics which were included in the evidence bundles.

246. Mr Burden's evidence is that he visited MAK Logistics following his meeting with Whitmount on 1 June 2015. Yet it is only on 22 July 2015 that MAK Logistics email the account opening form and due diligence information to Cavendish – so his visit predated any trading contact with MAK Logistics, and it is unclear why Mr Burden would have visited them. On 7 August 2015, MAK Logistics emailed Cavendish with photographs of their warehouse, and Mr Burden described these as part of the due diligence information provided to Cavendish before they started trading. These photographs show a reasonably substantial warehouse, but it is largely empty – with only a few pallets of cans on the floor in one corner. There was no racking in the warehouse. The warehouse appeared to be large enough to take at least one full

load. However, Mr Burden's evidence was that when he visited MAK Logistics, he did not take any photographs of his own. He did not enter any of the warehouses, and did not see the warehouse whose interior was included in the photographs. He did see one of the units from the outside (with its roller-shutter up), and although he did not walk in, he said that from the exterior "it looked quite sizeable". But other than this comment, Mr Burden was unable to verify whether these photographs were accurate, and represented warehouses genuinely occupied by MAK Logistics.

247. Included in the evidence bundles was a SCAC report given by the Irish Revenue to HMRC on 8 August 2016 relating to MAK Logistics, it records a visit by officers of the Irish Revenue with Mr McCreesh (director) and Mr McConville (accountant). Mr McCreesh told the officers that Cavendish transported the goods directly to MAK. They did not know who was supplying Cavendish, and "if he knew this, he wouldn't need Cavendish". The Irish Revenue officers record that MAK Logistics rented a lock-up unit which was approximately 15ft by 10ft with a 5ft door, and Mr McCreesh had agreed that "at a push" it may hold 8 pallets. This unit is not the warehouse shown in the photographs sent to Mr Burden. Mr McCreesh said that his landlord would be accommodating if he needed additional storage for extra pallets. MAK also told the officers that they have their customer (in Northern Ireland) lined up before they place their order, so the fact that the goods bought from Cavendish had a Sterling price mark was not a problem.

248. Cavendish's due diligence file for MAK Logistics comprised:

(1) A VIES VAT number validation dated 24 July 2015

(2) A "New Export Customer Account Form" sent under cover of an email dated 22 July 2015. The form requests copies of the following documents: (a) certificate of incorporation; (b) VAT registration certificate; (c) letter of introduction (on headed paper); (d) copy of owner/director passport; (e) copy of utility bill (within last 3 months), of which only the Certificate of incorporation, then letter of introduction and the copy passport are marked "yes". The box labelled "length of trading" is not completed. Kevin and Amanda McCreesh are named as the directors, and Mr McCreesh signed the form. The signature block includes the following statement

> We/I hereby acknowledge that we/I have read and understand the attached Trading Terms and Conditions governing our/my purchases with Cavendish Ships Stores Ltd and agree to unconditionally abide with them.

No copies of Cavendish's trading terms with either suppliers or customers were provided in evidence.

(3) An Experian company report dated 24 July 2015. This states that the MAK Logistics was incorporated on 10 December 2014 and notes that it is less than one year old. It recommends a credit limit of €0. The report states that no financial information is yet available.

(4) A copy of the details page from Mr McCreesh's passport.

(5) A copy of MAK Logistics' certificate of incorporation.

(6) A letter from Ulster Bank addressed to Mr McCreesh dated 27 January 2015 stating that his Anytime Banking Security Card Reader is enclosed.

(7) A letter dated 1 May 2015 from the Irish Company Registration Office reminding MAK Logistics to file their annual return.

(8) A "Tax Clearance Certificate" issued by the Irish Revenue dated 26 March 2015 confirming that MAK Logistics' tax affairs are in order.

(9) A page with MAK Logistics' bank account details set out.

(10) Although not included in the file as exhibited, we assume that the photographs sent to Cavendish in August 2015 were also included.

249. Mr Burden was cross-examined about the MAK Logistics due diligence file, and asked about the absence of any financial information.

> Q. So, in relation to MAK Logistics, I think you didn't seek any further accounting documents in relation to the company, did you?
>
> A. Not after the initial set up, no.
>
> Q. You didn't seek any documents by way of, for example, a financial health check on MAK Logistics, did you?
>
> A. No, but, as I said, the important thing with these people was that it was money up front, so the financial check at that stage was okay if they paid up front.
>
> Q. And the fact that they hadn't provided any bank account and that their Experian credit limit was zero didn't concern you at that stage, did it?
>
> A. You're using 2019 due diligence to judge what we were doing in 2014.
>
> Q. So, in summary, it didn't concern you at that time, did it, I think is what you're saying?
>
> A. What I'm saying is we were following best practices as at that time.

250. Cavendish's sales to Handelspost, for the limited period that it was trading with them, amounted to approximately £1.2 million. The Handelspost file comprised:

(1) A VIES VAT number validation dated 27 January 2016

(2) A "New Export Customer Account Form" which was scanned and sent under cover of an email dated 26 January 2016. The form requests copies of the following documents: (a) certificate of incorporation; (b) VAT registration certificate; (c) letter of introduction (on headed paper); (d) copy of owner/director passport; (e) copy of utility bill (within last 3 months) . The form states that their bank account is with a branch of HSBC in Hong Kong, and that Handelspost had been trading for three years. Robert Dixey is named as the sole director, and he signed the form. The signature block includes the following statement

> We/I hereby acknowledge that we/I have read and understand the attached Trading Terms and Conditions governing our/my purchases with Cavendish Ships Stores Ltd and agree to unconditionally abide with them.

No copies of Cavendish's trading terms with either suppliers or customers were provided in evidence.

(3) An Experian company report dated 27 January 2016. This states that the Handelspost were incorporated on 22 October 2013, have a share capital of "2", recommends a credit limit of €2000, that they have one employee, that in relation to "Business development" there is "insufficient information", and in relation to "Payment experience", these are "not yet available due to new establishment". The report states that no financial information is available (we note that elsewhere in the bundles is a credit report for Handelspost dated 29 April 2016 which recommends a credit limit of €1000 –

so the opinion of the credit reference agency was that Handelspost's credit status declined between January and April).

(4) A screenshot of a web page at http:/www.handelspostcentrale.com/home.html dated 27 January 2016, on which there is a large generic photograph of hands apparently signing documents, and below it three smaller generic photographs headed "Soft Drinks" (soft drink bottles and cans), "F-M-C-G" (a supermarket aisle), and "Confectionery" (various confectionery items). There is a short paragraph under each of these items. To give one example, the Soft Drinks paragraph reads "Whether you are after a refreshing brand of cola, or an old fashioned lemonade, Handelspost Centrale has a wide range of refreshing soft drinks".

(5) A copy of the details page from Mr Dixey's passport.

(6) A copy of a Metro Bank Personal Current Account Statement for Mr Dixey, giving his address as being in Fulham, London SW6, and showing a balance of £168.81.

(7) A letter in Dutch dated 24 October 2013 from Belastingdienst (the Dutch tax authority) to Handelspost at an address in Eindhoven, Netherlands. By using Google Translate, the letter appears to be confirmation that Handelspost have been registered for VAT with the Dutch tax authority.

(8) A page headed "Uittreksel Handelsregister Kamer van Koophandel" setting out various corporate details for Handelspost. This appears to be an extract from the Chamber of Commerce register confirming the incorporation of Handelspost.

(9) A short (8 lines) undated letter of introduction signed by Robert Dixey. The letterhead has the appearance of being generated in a word processing application, as it is very simple just a globe with the name of the company beneath it, and the company's address and other details in a "footer".

(10) A photograph of Robert Dixey with a glass of beer.

251. Mr Burden was cross-examined about this file:

> Q. Bearing in mind the financial amount that Handelspost are purchasing, the question is would it not have been reasonable to say; hang on, this is just a personal current account statement with £168 balance, I would like to see some business accounts and business records that demonstrate your financial viability?
>
> A. And you said it earlier this week, was that there is no definitive list of due diligence, and there is lots of different suggestions, and you also say it is not a box ticking exercise. So, if you've got one -- if you're after four or five different bits of information and you've got four of them, you know, it is not really the end of the world. Plus, also remember this is done before you started trading.
>
> Q. Did you seek to revisit any of this or follow any of this up once you've started trading with Handelspost?
>
> A. I think if it carried on, we may have done but we only dealt with them for two months.
>
> Q. Because you have said a couple of things there that might be worth just breaking down slightly. You say we have got several documents here, but the other documents you have are, okay, there is a validation and a sort of what looks like the first page of a brochure. But you go over the page and there is a letter in Dutch.

A. Yeah.

Q. And then over the page again there is a letter from Mr Dixey. […] Three short paragraphs. Again, he does not go into any real detail, he mentions the kind of goods he trades but he does not really go into any real detail in relation to the company, does he?

A. No, not really.

Q. He says he has been in the confectionery business since October 2013. So, by 2016 that's a few years. Do you consider that a long time or not? Long enough for you to not ask any further questions of the company, bearing in mind the large number or the large turnover?

A. Well, I remember this was before the event as well.

Q. Yes, but my question, just so you understand it, is even if this was before the event, when you did start dealing with them, you don't appear to have revisited this to ask any further question of the company, do you?

A. I think you have to also remember, you know, the most important thing when you had -- and, again, I am going back in time, unfortunately -- the most important thing was that you had a customer that was going to pay you. That was the most important thing in those days. It was not so much, you know, the chances of VAT fraud. That doesn't really enter your head. Again, hindsight is a wonderful thing, but all we wanted to do at the time, we were following the rules of what due diligence was, we were going to control the integrity of our part of the supply chain. So we were, you know -- the supplier, the customer, the due diligence, the freight in between and so on, which was the requirement and, again, the public notice 726, it says if you could control the integrity of your part, not the entire part, your part of the supply chain then you fulfilled your thing. So, it keeps on going about doing what is reasonable and the fact that HMRC will not expect you to do anything that is unreasonable. So then four, five years later we can't go back retrospectively and say: well, you did not do this and you didn't do that and this is missing a signature and why did you not notice this thing and why did you not notice that?

Q. Mr Burden, I think also in relation to this you said, well, your primary concern, obviously, was getting paid. Obviously Handelspost were not paying you directly, were they?

A. We went through this yesterday.

Q. Yes, we did. So, I am not going to go through it in detail again, but they were not paying you directly, were they? So even when you get these documents just before you start trading with them in the 2015 and 2016 period, you don't know, do you, really anything about the financial health of this company?

A. There are two answers to that. The first one is the most important thing was that we got paid in those dates, which is why we insisted on money up-front. Obviously, that takes away our company risk of, you know, being in a bad trade.

Q. Just pause there, please. Sorry, I don't want to interrupt you. Just pause there. Is your position therefore that effectively you didn't really mind that much, because they always paid up-front and you knew you were going to get paid no matter what?

A. I think if you saw our due diligence now, I mean, it is so unbelievably comprehensive most people don't even get passed it. It is very, very

comprehensive. It is not -- we keep on going back about things that happened a few years ago. We know tons more now, and so does the rest of the market, not just us, but I think HMRC have obviously been driving this due diligence thing very aggressively now over the past five years. It was a concern that we stayed above the law and did everything in our power, and at that time, like I mentioned with the public notice 726, we were doing what was required as far as we were concerned.

[…]

Q. […] the picture of Mr Dixey, he appears to be in a pub, or at least he has a drink.

A. I took that.

Q. Again, in terms of what you said before, you know, you were trying to create an overall picture with several documents. Unlike, for example, what you had with some of the photos in relation to Whitmount, no photos of his stock loading area, or loading bays or anything?

A. No, I met him in London.

[…]

Q. Did you ask him for any photographs of where he kept his stock, his warehouse in Holland, anything like that?

A. I can't recall everything we discussed at the time, but we would have had a general chat about most things, but, no, I would not have asked to see pictures.

Q. Did you, again, in relation to Mr Dixey, […] did you ever Google him, did you ever look online for information about his companies that he had been involved in?

A. No, because it was not a requirement. I know about him now, what with this and so on and everything else, but not at the time, no.

Q. [If you look at] the Experian report and if you look at the credit limit for Handelspost Centrale in the credit summary –

A. Yes.

Q. 2000 euros. Again, did that raise any concerns given the volume of trade they were doing?

A. Well, at the time, as long as they pay up-front, no; obviously now in hindsight with our vision now we would not entertain customers like this.

Q. At the time you did not ask: how are they managing to pay up-front if that is their credit limit?

A. No, but remember in this type of trading everyone pays up-front, so I presume that they would obviously have to get money from someone else to pay us, would they not?

Q. So not a matter of concern as far as you were concerned?

A. I don't know how to answer that.

Q. So, if I phrase it this way: it did not worry you that they seemed to have a low credit limit?

A. The most important thing at the time was that we got paid.

252. Judge Aleksander asked Mr Burden what Cavendish did with the due diligence information once it had been received from a prospective customer. His reply was:

A. We filed it away and, yes, it was looked at. It wasn't much more than that. I mean, the actual big difference then was that it was due diligence to open up an account with somebody, and once that was successfully done, you would put it away.

JUDGE ALEKSANDER: I appreciate once it's successfully done, but I'm trying to understand what the threshold for success was. So, you get the bits of paper. Is it the mere fact that you have the bit of paper, check, you've done that, or do you actually look at what it says?

A. To be perfectly honest, in 2012, and those sorts of times, it was getting pieces of paper

[…]

JUDGE ALEKSANDER: You didn't read them?

A. Oh, we read them, yes --

JUDGE ALEKSANDER: So, you have a long letter from the Dutch tax authorities --

A. Oh, I see what you mean. No, we -- and again, I don't want to say it was in every instance, because it may not have been, but we certainly put it through Google, you know, and do the Google Translate, that sort of thing. Whether we did it for every single one that we got back in those days, I don't know.

JUDGE ALEKSANDER: Because it is striking that in relation to Handelspost, a Dutch company, you get a bank statement for an individual with a UK home address with a nominal balance on it, and that's not on the public notice 726 list, is it?

A. No, it's not, and it's not ... I think, again, I don't want to misquote HMRC, but I remember having a conversation along the lines back then that there were five or six things to ask for, and if you only end up getting three or four, but they were okay, it was your decision as to whether you went ahead.

JUDGE ALEKSANDER: But you have three or four and they're okay, but this is the point, what's your definition of "okay"? So, what did you have --

A. It's a lot different now.

JUDGE ALEKSANDER: I appreciate that, but ...

A. It was less then. That's all I can say really.

253. Included in Whitmount's original diligence file were:

(1) A new account form signed by Mr McArdle (the sole director).

(2) An explanation of the company business.

(3) A copy of the VAT registration certificate.

(4) A utility bill.

(5) A copy of Mr McArdle's passport.

254. Included in the later file were:

(1) An email from Cavendish dated 3 August 2016, and a reply by letter from HMRC dated 10 August 2016 confirming the validity of Whitmount's VAT registration.

(2) A VIES VAT number validation dated 3 August 2016.

(3) A copy of Whitmount's certificate of incorporation.

(4) A copy of Whitmount's VAT Registration Certificate.

(5) An undated letter of introduction on Whitmount letterhead (the letterhead has a professional appearance).

(6) A copy BT telephone bill addressed to Whitmount dated 25 February 2016

(7) Photographs of Whitmount's office and warehouse, and of Mr Kelly and Mr Lumsden taken by Mr Burden on his visit there.

(8) Email correspondence in May 2015 about Whitmount's due diligence on suppliers

(9) A further undated letter of introduction, referring to various enclosures (also in the file – being the certificate of incorporation, VAT certificate, a page with bank details, letterhead, Mr McArdle's passport (the copy in the bundle was very faint), and a BT bill (dated 4 April 2015).

255. Mr Burden, in his evidence, complains several times that the due diligence exercise being undertaken by Cavendish in 2014 to 2016 is being unfairly compared with the standards expected for due diligence in 2019:

> A. But, again, I refer back to what the due diligence was at the time of 2013 and 14 and 15 and so on, and the public notice 726. We were only meant to do what was reasonably practical. In actual fact, the public notice 726 only had about three or four requirements at the time. You know, like the directors' passports and the utility bill and the VAT certificate and the certificate of incorporation. It was not a full in depth HMRC analysis of everyone's back history or everything else

256. But this is not an accurate reflection of HMRC's expectations on due diligence at the relevant times, as set out in PN726. The version from of PN726 from which we quoted above is the version published in March 2008, and so would have been in force for over six years at the time Cavendish started to trade with Whitmount, and applied throughout 2014 to 2016. At no point does it say that the trader's requirement is limited to "three or four" things.

257. The attention of Mr Burden and the other Cavendish staff was drawn by HMRC officers on many occasions to Section 6 of PN726. And while Cavendish may well have obtained some of the documents listed in section 6.2, we find that they paid little attention to the recommendations in sections 6.1 and 6.3 – not least the statement in 6.3 that HMRC will focus, most importantly, on the actions taken by the trader in response to the results of those checks.

258. We were only provided with copies of Cavendish's due diligence materials in relation to Whitmount, MAK Logistics, and Handelspost. What is particularly striking in relation to the due diligence materials relating to both MAK Logistics and Handelspost is that in both cases, even a cursory examination raises questions about the legitimacy of both companies.

259. In the case of MAK Logistics, the documents provided do not comply with Cavendish's own requirements as set out on their application form, as there is no recent utility bill or letter of introduction provided, and the period of trading is left blank on the application form. The credit report states that there is no financial information available about the company, that the company was recently incorporated, and recommends a credit limit of €0. When Mr Burden goes to visit MAK Logistics, although he seems to take lots of photographs everywhere else, he does not take any photographs of their premises, nor does he view their warehouse facilities – so that when they send him photographs of the purported warehouse subsequently, he is unable to verify whether those photographs are reliable.

260. In relation to Handelspost, the due diligence file is absurd, and again fails to comply with Cavendish's own due diligence requirements, as no recent utility bill is included. The bank

account stated on the application form is a branch of HSBC in Hong Kong, and PN726 section 6.1 (1) specifically warns about the use of offshore bank accounts. Mr Burden does not think to wonder why a company based in the Netherlands and trading in Europe would want to bank through a branch in Asia, and not use a bank based in the Eurozone. Bizarrely, a statement of Mr Dixey's personal bank account (with a tiny balance) is included, but there is no evidence given in relation to the company's own bank account. The credit report states that no financial information is available, and recommends a credit limit of €2000. Even more odd is the fact that Mr Burden appears to meet Mr Dixey in a bar, rather than at business premises.

261. Mr Burden says in his evidence that he remembers having a conversation with HMRC along the lines that if there were five or six things to ask for, but you only get three or four (and they were okay) "it was your decision as to whether you went ahead". There is nothing in any of the visit reports or evidence of any of the HMRC officers that corroborates Mr Burden's evidence on this point. But even if it was true, the "things" obtained from MAK Logistics and Handelspost cannot, on any basis, be described as "okay".

262. As regards Whitmount, Cavendish received the first tax loss letter on 2 June 2015, just as Mr Burden was returning from his visit in Northern Ireland. Although he had been specifically warned by Officer McKay at the 15 May visit to consider the due diligence checks that Whitmount did on their own suppliers, and whether Cavendish would be happy to rely on a third party's due diligence, Mr Burden did not inspect any of Whitmount's due diligence files. If he had, he would have seen the lack of substance in the files – and the existence of some of the warning signs listed in PN726 (such as the fact that many of Whitmount's suppliers traded from residential accommodation) and he would have seen the many notifications from The Due Diligence Exchange on the front of the files that financial references were still awaited. Further, Whitmount invited Mr Burden to contact the Due Diligence Exchange to verify the work they carried out, but he did not do so.

263. One of the indications of fraud flagged in PN726 Section 6.1(1) is whether HMRC have informed the trader that previous deals involving the supplier have been traced to a tax loss. PN726 stresses that HMRC will focus on the actions traders take in response to the results of their checks, and whether checks were appropriate in relation to risks. Yet, notwithstanding this tax loss letter, Cavendish did not undertake any deeper due diligence checks on Whitmount. Whitmount appear to have provided further copies of basic due diligence information, but Cavendish did not look any deeper. PN726 recommends undertaking credit or background checks, and obtaining trade references, none of which was ever done in respect of Whitmount. It also recommends that traders should check whether goods are adequately insured, whether the goods exist and are undamaged, and to check details against other sources, such as websites. Because Cavendish relied upon Whitmount to arrange delivery of the goods directly to Cavendish's customer, Cavendish never inspected the goods being sold, and had no assurance that they existed and were undamaged (for completeness we note that Cavendish bought some Red Bull from Whitmount for resale in their cruise line business, and these goods would have been delivered to Cavendish's warehouse, where they would have been checked). But in the case of the export sales, we find that a reasonable trader would have realised that this was a risk factor, and would have taken steps to mitigate that risk. Instead, Mr Burden was happy to rely on an unverifiable assurance from Whitmount that they had ceased buying from the defaulting trader.

264. Mr Burden and his colleagues are correct in stating that PN726 does not recommend that traders should conduct due diligence on freight forwarders or transport companies, but it does state that the lists of suggested checks are not exhaustive, and that a trader needs itself to decide what checks to do before dealing with a supplier or customer.

265. If Cavendish had undertaken some straightforward Google or other internet searches in relation to their supply chain, they would have been quickly alerted to information signalling that the supply chain was not legitimate. Mr Burden described Mr Kelly in the report he made after his 1 June 2015 visit as director of Whitmount, and it must have been clear to Mr Burden that Mr Kelly was engaged in the management of Whitmount, If he had undertaken a Google search against Mr Kelly's name when he returned to the office after that visit, he would have found the disqualification undertaking, and have been alerted to the fact that Mr Kelly was engaged in managing Whitmount in breach of the undertaking.

266. Mr Burden was asked why he did not undertake any searches against either Mr Kelly or Mr Dixey:

> Q. In relation to the directors or the people you worked with, firstly in relation to Whitmount, you didn't do any searches in relation to Mr Kelly, even though he's the person that you dealt with most of the time, is that right?
>
> A. We wouldn't have conducted director searches at that time.
>
> Q. No, but Mr Kelly wasn't a director.
>
> A. Well, how would we search for Philip Kelly then?
>
> Q. Well, did you undertake any sort of checks on Mr Philip Kelly?
>
> A. We wouldn't have done Google checks on individuals at that time, not unless, you know, something alarming had happened that had arisen our interest, no.
>
> Q. And you didn't check in relation to, for example, the director of Handelspost, Mr Dixey, you didn't search for them on Google or do anything other than the Handelspost due diligence pack that we've been through, did you?
>
> A. At the time we didn't investigate directors or company employees.

267. Yet something alarming had happened, as Cavendish had received a VAT loss letter in June 2015 relating to goods supplied by Whitmount – but Cavendish did not consider undertaking any investigation of any kind into the directors or managers at Whitmount.

268. Internet searches would also have revealed that Gold Haus were a sawmill, and not a haulier or a warehouse, that Almax West were a carpentry, cleaning and car rental parts company, and that the address of Vincor's sole director was in Rhyl in Wales, and not in Slovakia.

Documentary discrepancies

269. Given the warnings by HMRC to Cavendish to ensure the integrity of their supply chain, we would have expected that a reasonable trader would be concerned to ensure that their paperwork relating to trades was consistent. The importance of paperwork to support the legitimacy of transactions in mentioned in PN726.

270. Officer Mankad noted that there were many examples where the delivery address on Cavendish's purchase order did not match the delivery address on Whitmount's invoice to Cavendish. Officer Mankad's evidence was that this occurred in some 90% of the trades under appeal. Presumably at some point between the order being made by Cavendish's customer, and the delivery being executed, the customer told Cavendish to deliver to a different address. Yet it does not appear that Cavendish were curious about these many changes in delivery instructions, nor sought to investigate further.

271. There were also discrepancies in the CMRs and invoices which are not resolved. To take one example, which is deal 39, the deal chain is:

Food & Drinks Scotland > Impact Traders > Sha Brothers > Whitmount > Cavendish > Swift Valley Trading

The goods are Dove Soap Original Bars. But the description in the documentation with Cavendish does not mention the size of the case (the unit of sale). By tracing back to the Sha Bros invoice, it can be seen that a pallet (case) is 24 packs of 4 bars. A case is 4 bars of 100g. The invoiced price by Cavendish to Swift Valley of £13.40 is not credible, when Officer Mankad's evidence is that the wholesale price of a Dove bar is 50p-60p (based invoices to Cavendish from other suppliers of Dove bars). The CMR says 26 pallets (say 10000 kg) are transported, whereas the invoice states 1300kg.

272. The evidence of Ms Crompton was that she only saw the CMRs after the goods were delivered, so she had to trust the haulier to put the correct information onto the CMRs as they were shipping the goods. Ms Crompton said that she checked the CMRs, but only for the quantity and the fact that the goods were delivered. She did not check the weight. She did however check the quantity delivered, in terms of the number of pallets or cases.

273. She explained that the reason why the weights shown on the invoices and the CMRs differed may have been due to the weight of the various different lines having been set up incorrectly in Cavendish's accounting system, and these incorrect weights were then picked up and entered automatically on Cavendish's invoice. In addition, Cavendish's invoices state that a weight is the gross weight, whereas in fact the weight given is the net weight – Ms Crompton could not explain why this occurred, and said that it was still the same now.

274. There are also discrepancies in the delivery destinations for Cavendish's customers as shown on the CMRs. Some of the CMRs show the goods to be "shipped on hold to Handelspost" with the delivery stated to be SDS Cash & Carry in Stoke-on-Trent. HMRC could not trace an "SDS Cash & Carry", but could find a company named "SDS Environmental Limited" with a registered office at the same address. John Williamson was the director of SDS Environmental Limited from 1 July 2014 to 2 February 2015, as well as being a director of AV Traders from 2 November 2015 to 21 April 2016, and a director of Monarch for one day on 2 November 2015. This address in Stoke was also the registered office address for AV Traders from 18 April 2016.

275. Sales by Cavendish to Best Distribution in Romania were delivered to Almax West in Poland, with Whitmount's address on the CMR being stated to be in Stoke-on-Trent (but not SDS Cash & Carry's address). The only addresses shown on Whitmount's emails and letterhead were the addresses of their head office in Northern Ireland and their "virtual" office in Liverpool.

276. A review of the CMRs provided by Cavendish to HMRC for supplies in April 2016 to Best Distribution and to Handelspost showed that in a majority of cases, no date of delivery is shown.

277. At no stage did Cavendish query why goods were being delivered to a different country to the country in which its customer was located.

278. In the correspondence produced in evidence, there is only one instance where Cavendish appeared to have queried a discrepancy in a CMR. In May 2016, Officer Williams requested copies of CMRs and other documents from Cavendish. When replying with the copies, Cavendish apologised for the delay, stating that they had noticed the discrepancy on some of the Polish CMRs as both boxes 3 and 4 had been labelled as "place of delivery". Cavendish queried this with Whitmount, and Whitmount obtained a response from Gold Haus (which was forwarded to Cavendish) that there had been a mistranslation. There are a couple of curiosities about this email chain. The first is that Gold Haus appear on the CMR to be both the haulier

and the destination warehouse for the goods, and the second is that appended to the email chain is an email from Gold Haus to Whitmount saying "Please can you start paying some of the outstanding invoices asap."

279. If these errors were the only issues with the deal chains under appeal, we might have put these discrepancies down to innocent errors. And we believe some of Ms Crompton's evidence that the discrepancies in the weights, or in the number of Dove bars is probably due either to errors when products were first entered into Cavendish's computer systems, or individual mistakes.

280. We acknowledge that Cavendish could not have been aware of the links between SDS Cash & Carry, AV Traders. Mr Williamson, and Monarch.

281. But we consider that the fact that customers regularly specify delivery addresses in countries other than the one in which the customer is located to be unusual, and would have merited further questioning by Cavendish.

Third-party payments

282. PN726 states in terms that third-party payments are an indicator of MTIC fraud.

283. In the case of sales to Handelspost, the payments to Cavendish were made by Delcom SP Zoo, and the narrative on Cavendish's bank statements was "F/Flow Delcom SP. Handelspost Centrale" (the "F/Flow" or "Fast Flow" designation means that the payment was made through the CHAPS same-day clearing system). Mr Burden's evidence was that, until he was alerted to Handelspost's third-party payments, he was unaware of anyone ever having paid Cavendish via third parties, and that they had always insisted on being paid up-front.

284. His evidence was that Ms Crompton and Ms Shingleton were responsible for checking Cavendish's bank statements and the source of payments, and that it was only after Officer Williams telephoned Cavendish in May 2016 that he became aware that a third party was making payments for Cavendish's customer, Handelspost. Ms Shingleton in her evidence said that because the bank statement had "Handelspost" on the relevant line, she had no reason to believe that it had come from anywhere else – even though it also said "Delcom".

285. But we note that Officer Williams, when she reviewed the bank statements, spotted that the payment was made by a third party on behalf of Handelspost. We find that that a reasonable business would have realised – just like Officer Williams – that these payments were being made by a third party.

Directors and others associated with defaulting traders linked to other companies in supply chain

286. HMRC submit that the links between the individuals involved in the supply chains under appeal is an indication that the chains were connected with fraud.

287. John Williamson was a director of AV Traders from 2 November to 2015 to 21 April 2016, and so was a director at the time of the transactions in the deal chains under appeal. He was also a director of Monarch on 2 November 2015 (for one day only) and of SDS Environment (stated on the CMR to be the delivery address for Handelspost in one of the deal chains) between 1 July 2014 and 2 February 2015. Monarch was the business started by Mrs Kaur after transferred control of AV Traders to Mr Williamson in November 2015. Monarch was a buffer in the supply chain

Oldbury > Monarch > Whitmount > Cavendish.

288. Aaron Sanghera was a director of AV Traders between 3 February 2012 and 2 November 2015, and was a director of Monarch from 18 January to 9 May 2016.

289. Robert Dixey was director of AV Traders from 17 March 2016 and was a director of Handelspost, one of Cavendish's customers.

290. Jaspan Dalman was a director of Oldbury at the time of the transactions involving Cavendish. He also signed a contract in his capacity as a director of Delcom Sp Zoo on 18 January 2016 (the contract was with Handelspost, appointing it as a broker for the sale of equipment owned by Delcom)

291. Whilst these connections do indicate that the connections between various entities in the supply chains – and might well be an indication of fraud – there is no way in which Cavendish could have become aware of these links, even with diligent investigations. We therefore find that these links are not indications of which Cavendish should have been aware.

Terms of business

292. The due diligence packs for MAK Logistics and Handelspost include New Customer Account forms signed by the prospective customer, with the following statement

> We/I hereby acknowledge that we/I have read and understand the attached Trading Terms and Conditions governing our/my purchases with Cavendish Ships Stores Ltd and agree to unconditionally abide with them.

293. The Trading Terms and Conditions were not supplied by Cavendish in their evidence.

294. We know from the reports of the visits that HMRC made to Whitmount that Whitmount did not have any formal terms of business.

295. A copy of Cavendish's cargo insurance policy was provided to us. The policy covered all goods appertaining to Cavendish's business, including food provisions, supplies for cruise ships (including spirits and tobacco products) and/or like and/or similar goods all suitably packed and protected. The policy had a limit of £50,000 on any one vessel, aircraft, vehicle, conveyance and location in the ordinary course of transit, and £100,000 at any one third party location.

296. Whilst some of the full loads sold by Cavendish were sold for less than £50,000 (such as Dove bars), most loads had a sale price in excess of the £50,000 insurance limit. Red Bull loads were typically slightly in excess of £50,000, Mars confectionery typically in excess of £100,000 for a full load. Other products (such as Cadburys or Nestle products) were sold for an amount in excess of either £50,000 or £100,000, depending upon the items.

297. Mr Burden was questioned about the insurance policy and the terms on which Cavendish did business:

> Q. Now, I think perhaps first it is best just to look at the email that is the cover page because that summarises the position […] there are few points that they draw to your attention. So I think the first is in terms of the warranty: all property stored in the premises is either stored on racks, shelves or stillages or stored on pallets not less than 10 centimetres above floor level. Correct? Again, in relation to that did you check that, those kinds of specifications with Whitmount in terms of how they were storing your products?
>
> A. No, it is a question we had never asked ever of a customer or a supplier. That is completely up to them.
>
> […]
>
> Q. So that would appear -- for example, £50,000 [limit for] any one vessel, aircraft, vehicle, conveyance and location in the ordinary course of transit.
>
> A. Yes, seems like that.

Q. Right, so it would appear that the limit would have been £50,000 for something going in transit and then £100,000 when it reaches a third-party location, is that right?

A. It would appear that way, yeah.

Q. So we know, don't we, from the evidence that we have seen that, for example, in relation to Handelspost there are a large number of deals, are there not, where the goods come to roughly £111,930, correct?

A. Yes, okay.

Q. So that obviously exceeds the limits that your insurance has, doesn't it?

A. Remember they -- Whitmount organise the transport for us.

Q. Yes, but again you are responsible to your customer, are you not, for the goods because you are the one that is supplying them, even though it is coming from somewhere else. So, if there is a problem with the goods, they come to you, don't they? Your customer comes to you, don't they?

A. Yes, they will come to us.

Q. Right. So, if there is a problem and there is damage or there is a dispute, your insurance does not cover you for the amounts that were going to your customers via Whitmount, does it?

A. I would still contend that this is Whitmount's problem because they have organised the transport and it is not ours. But in the normal course of business though this is an annual group insurance policy. These insurance companies are not that easy to deal with. They go through everything with a fine-tooth comb. If, at the end of the day, they set this as a limit and that as a limit and so on, it is at the end of a long professional process where they've the insurers, as we know are not going to give out money for no reason, would have come up with, if occasionally during the year -- you know, if you've got a policy that covers £50,000 for a truck and over the year it has worked out that it is £55,000, I am sure the insurance company would have put it up to 55 the following year.

Q. So you discussed talking to the insurance company, but in relation to Whitmount, when you've got goods that are going for over £100,000, did you ever go back to them and say, "well hang on a minute, we are only covered up to 100,000. Can you please --"

A. Our FD didn't come running and say that if that is, no.

Q. "-- reduce the value so that our insurance is covered?"

A. No, just.

Q. Why did you not do that?

A. Because it is not realistic. We send lorry loads of meat places. We send lorry loads of other things are expensive elsewhere. You know, we do lorry loads of alcohol.

Q. But in relation to, for example, the meat and the alcohol and so on does that function on exactly the same basis or do you not have a contract for sale in relation to, for example, meat?

A. I think you are splitting hairs. I think this is normal course of business. If you are consistently transporting goods that you need to ensure you will raise your insurance limit.

Q. Well, let us just be clear then, Mr Burden. So I think you accept, don't you, that there is a difference in the trade that you do in relation to, for example, the cruise lines and meat and so on because there is present -- for example, with the cruise lines, you have a tender contract, so you have a contract for sale that has in it the terms and conditions of the supply and the goods and so on and so forth, is that right?

A. Yes.

Q. But obviously in relation to the goods coming from Whitmount and going into Europe that is not the case, is it? You don't have contract of sale for each load or a standing contract or tender with them, do you?

A. And on the trading side there is no contracts, no, you know if you –

JUDGE ALEKSANDER: Can I just pause. Because if you look at the due diligence pack, on the form when the customer signs it, they say they are agreeing to your terms and conditions.

A. To our terms and conditions, sir.

JUDGE ALEKSANDER: Yes.

A. Yes.

MR JACKSON: Mr Burden, perhaps you can assist; what are those terms and conditions?

A. Now you have done me. I don't have it to hand.

Q. So, is there a document or is there not a document that would indicate what those terms and conditions are that are contained within the due diligence pack?

A. I think now --

Q. Is there a real document or is that just sort of bumph that is put in there for them to sign?

A. We have a -- and, again, I cannot be 100 per cent accurate on this, but I believe that we send it is like a one page terms and conditions to new customers at the start. We don't have it printed at Cavendish on the back of our invoices or anything. We have got one. I do not think it is in any of this though. It is not.

Q. So, your evidence is, I think in summary, you think one exists, but you have not produced it in evidence in this case?

A. It is not produced in evidence, certainly.

Q. Do you recall what any of the contents of the document are?

A. Standard basically.

Q. You say standard, but what would that be?

A. I don't know.

Q. If this is a document that you get each of your customers to sign and it is a standard document –

A. It is not something we ask them to sign. It is just, it is something we send out.

Q. So, you sent it out to them. You are the director, are you not, obviously? So, is it not the case that you would know roughly at least what is in that document?

A. Standard terms and conditions.

Q. Are you aware of what the, for example, insurance position is in the standard terms and conditions?

A. No, not personally.

[…]

JUDGE ALEKSANDER: So if we have a look at your insurance […] We have "limits", and it's "£50,000 for any one vessel, aircraft, vehicle, conveyance and location in the ordinary course of transit." So, you have loads of over £100,000 and they're uninsured?

A. Yes, but we haven't included the Whitmount element in this, because we're taking Whitmount as being their responsibility.

JUDGE ALEKSANDER: But you have no documentation or anything in respect of that, have you?

A. Not drawn up between us and Whitmount, no.

JUDGE ALEKSANDER: And one of your replies to when you were questioned about this was you said: well, insurers, it's a bit take it or leave it. But I have to tell you my experience is insurers will insure anything, but at a price, pretty much, and I've certainly seen insurance for goods in transit for much larger sums than £50,000.

A. Maybe. In terms of the negotiations with the insurance companies, and everything else, it's not me personally, it's our financial director. So, what gets put into it and what gets left out, I'm not sure.

298. Cavendish were also questioned about who took the risk if goods were damaged or destroyed. The answer given by Ms Crompton and Mr Burden was that as Whitmount arranged delivery, they took the risk – and in practice on the few occasions where goods were damaged on delivery, Whitmount credited Cavendish for the damage, and Cavendish credited the customer. But they could give no reason why legally Whitmount took the risk, they could not refer us to any express or implied term in any agreement with Whitmount that allocated all risks to Whitmount. Mr Burden was asked during cross-examination:

Q. Right, so what is your evidence as to when transfer of the title of the goods passes to you, as Cavendish, from Whitmount? When does that occur?

A. I don't know, you've got me on a technicality there, because --

Q. Well it's an important technicality, isn't it, because you want to know when you're responsible for £111,000 worth of goods?

A. Everything that we've always done in terms of ordering from suppliers is always delivered. You can't go around collecting things from everybody. I suppose under law it becomes yours once you've paid for it.

299. Judge Aleksander asked Mr Burden

JUDGE ALEKSANDER: So, if […] the lorry caught fire in transit, who's responsible?

A. I would have liked to think in this particular instance it was Whitmount.

JUDGE ALEKSANDER: Why?

A. Because we asked for delivered prices. So, if it's still en route to the customer, and something like that had happened, well, I'd like to think it was Whitmount's responsibility.

> JUDGE ALEKSANDER: But you never checked on whether they were insured, or whether they had the underlying financial resources to be able to -
>
> A. No, I can't lie, no we didn't.
>
> […]
>
> JUDGE ALEKSANDER: What would happen if goods were late?
>
> A. If they were delayed? We would chase them up, you know, we would have heard --
>
> JUDGE ALEKSANDER: Could the customer reject it?
>
> A. Yes.

300. We consider that a reasonable trader would not undertake business in this way. This is an expert tribunal with significant experience on international trading, and our experience is that businesses undertaking international trading take great care in specifying in their contractual conditions the tasks, costs and risks assumed by buyer and seller, and the legal system to be adopted for the settlement of any disputes. The amounts involved with Cavendish's trading division were substantial, as the turnover for the year ended January 2016 was £15million, and the business done, for example, with Handelspost in two months was around £1.2million.

301. We asked both Mr Burden and Ms Crompton whether Cavendish considered utilising Incoterms to specify how the tasks, costs and risks associated with the transport of their goods were allocated. Incoterms are standard terms published by the International Chamber of Commerce which are widely used in international trade. Mr Burden said that HMRC have been discussing the use of Incoterms in connection with Brexit, which struck us as an odd comment, as a properly informed business is likely to use Incoterms (or something equivalent) on an international (non-consumer) trading transaction, irrespective of Brexit. Mr Burden's evidence was that Cavendish used Incoterms in relation to their cruise line business, where goods are supplied to liners FAS (free alongside ship), or are purchased from suppliers "Ex works" but that they did not use Incoterms in relation to their trading business. Ms Crompton's evidence was similar. And this struck us as odd – if Cavendish were familiar with Incoterms (as they clearly were in relation to their cruise line business), why would they not want to use Incoterms (or an equivalent provision) in their contracts and agreements with Whitmount and with their customers to ensure that the tasks, costs and risks associated with transportation were clearly allocated.

302. But even if there was an implied term that Whitmount assumed all risk for the transportation of goods to the customer, Cavendish were still taking a risk that Whitmount would be solvent and able to meet their obligations in the event of a dispute. Yet Cavendish undertook no due diligence on the insurance arrangements that Whitmount had in place in respect of the goods sold and for which it arranged transport.

303. And Mr Burden took no steps to check whether Cavendish's own cargo insurance policy would cover the goods being sold. He made no enquiries, for example, of Mr Kennedy-Sloane to verify the insurance arrangements. And if he did, he would have found that most of the full loads sold by Cavendish would not have been covered by their insurance, as the policy had a £50,000 limit on any one vehicle in the ordinary course of transit.

Back-to-back sales

304. All of Cavendish's sales were full container loads (e.g. Red Bull, Dove Soap, confectionery). In the case of confectionery, some deals would be of a mix of chocolate bars made by the same manufacturer (for example Mars and Snickers bars, which are both

manufactured by Mars/Masterfoods). But there was no example of a mixed load where the content of a container was goods from different manufacturers.

305. HMRC note that the transactions between Whitmount, Cavendish and the customer were "back-to-back". In other words, the quantity supplied by Whitmount to Cavendish exactly matched the quantity supplied by Cavendish to the customer. In addition, the relevant transactional paperwork – such as orders and invoices – were usually on the same day. Only in seven cases were the respective invoices on different dates – in the case of seven, Whitmount's invoice to Cavendish was dated later than that of Cavendish's invoice to their customer.

306. HMRC submit that the back-to-back nature of these transactions, and the same day (or closely dated) paperwork, are indications of a connection with MTIC fraud.

307. When cross examined about the back-to-back nature of Cavendish's deals, the response given by Mr Burden was that this was normal business for Cavendish:

> Q. You had been made aware, had you not, by virtue of the MTIC visits and the PN726 notice and how to spot missing trader fraud that to use the phrase back to back detail -- back to back deals were a feature of the missing trader fraud, that is correct?
>
> A. It was on, yeah, yes.
>
> Q. So, having that knowledge, did you think to query with Cavendish why it appeared that so many of these deals appeared to be taking place on the same day?
>
> A. I think when you say "the same day", they would have the same delivery day. It is not like you phone up at a 9.30 and then book it at 9.45. You are booking it for a week in advance or three days in advance. That is not unusual. And doing deals in full loads is not unusual. There are many cruise items that we buy in full loads. We buy, we buy full container loads of rice, full container loads of milk, containers loads of wine, containers. It is not unusual. You cannot say just that any full load deal is fraudulent. We supply water to the cruise lines. Now, again, there is not a lot of money in water to be honest. There is not enough money to cart it around. We get the water man, the water company to deliver directly to the ship on our behalf because it makes sense. It is -- the fact that it is back to back. As I say Tarka Water will invoice us on the same day as we deliver it down to cruise lines. It is not fraudulent. It is just normal business.

308. The dating of the invoices is also inherent in the manner in which Cavendish undertook their business. The deals were typically agreed by telephone and email several days before dispatch. The invoices, and payments, then followed on (or immediately prior) to dispatch – on a date that was agreed. We therefore find that the fact that invoices were dated on the same dates (or close together) in the circumstances of these appeals is not an indication of MTIC fraud.

309. Given the basis on which Cavendish were trading, we do not consider that in the specific circumstances of this appeal, that the back-to-back nature of the trades, nor the fact that the deals were for full container loads, are – of themselves – indications of MTIC fraud.

310. But it is striking that the significant profits Cavendish made from back-to-back trading (on sales of £15m in the period ended January 2016), were made on an entirely risk-free basis. In cross examination, Mr Burden was asked

> Q. So in that circumstance, when you're looking at these deals and you've already been paid for them, did it not strike you as being a transaction in which there was very little risk for your company?

A. If you're paid up front, if you take HMRC out of it, yes, it's less risk for us to get paid up front, obviously.

Q. So bearing in mind at this point you've obviously been advised on the public notice 726, and how to spot MTIC fraud, did any of this in relation to April 2016 strike you as "risk free" transactions?

A. I think you need to put it to context. We -- and again, if I get the chance, I can go through this and explain it -- but we got, you know, a "how to spot a missing trader" thing, and a public notice 726, back in 2012, or 2013 as well, perhaps. We visit customers all the time, or customers visit us, we're a bonded warehouse for food, we're a bonded warehouse for alcohol, we have a WOWGR, we're AWRS registered, we're a general storage and distribution warehouse, we've done cap refunds, many HMRC inspections of us include them coming round and obviously having a meeting with them for a couple of hours. At the end of the meeting they always give you a recommendation of one sort, "read excise notice 196" or "read this" or "read that", again, in the past year it's been Brexit, Brexit, Brexit, and sometimes you get an HMRC report come through later on, many instances you don't, and the fact that when we've had a customs visit someone's given us a "how to spot a missing trader" thing back in 2012, it doesn't mean that it's at the forefront of our mind in 2016. But, through the different inspections we've had with HMRC, we do try and adopt things, you try and do what you can, you try and upgrade your own due diligence and so on, but it's not -- to answer your specific question about having four payments from Handelspost in a two day period, did that mean "how to spot a missing trader", or public notice 726, then no, because we're just going through the normal course of business.

Q. So in summary, is it your evidence then that bearing in mind the bank statement I've just taken you to for April and a bit of March 2016, the fact that you were receiving all this money from Handelspost, that's a significant amount of the trade as we've been through in the accounts that represents a very large increase in EU trade, that did not strike you as too good to be true?

A. No. Felt quite lucky at the time.

311. But trading typically involves taking entrepreneurial risk. A trader will grasp the opportunity to buy stock that he perceives to be cheap, in the belief that he can subsequently sell the stock at a profit – utilising capital or borrowings to purchase the stock and taking entrepreneurial risk as a consequence. We can see that Cavendish did this kind of trading from time to time as Mr Burden said

> What happens with all these companies, as I say, Diageo, Britvic, Red Bull, Fever Tree, anyone that you want to mention, they have period of year probably when they are trying to hit targets or earn their bonuses and commissions and so on where they are up for a bit of trade or they may be overstocked and they want to shift some stock or something like that, and, again, that is not specific to Cavendish, this is just the normal course of business in food and drink. So, they normally approach us and say, "we have got this slow-moving stock, is there anything you can do with it? And we say, "where do you want us to sell it?" and they say, "well, you can sell it anywhere apart from Timbuktu" and we go, "okay, fair enough, and we will see what we can do". So, but it purely depends on their policy at the time and their account manager at the time and so on.

312. But Cavendish never did this kind of trading in relation to the kinds of FMCGs they bought from Whitmount – they only ever purchased goods from Whitmount when they already had a committed customer (and vice versa).

313. Alternatively, a trader will exploit inefficiencies in the market, exploiting their better knowledge of the market – so being able to find potential suppliers that are unknown to their customers, or customers that are unknown to their suppliers. Cavendish did undertake some trading on this basis in relation to craft beers and gins, where the UK manufacturer did not have the experience or capabilities to manage the export of their products. But this was not what Cavendish did in relation to its FMCG deals. Cavendish sourced their products exclusively from one supplier – they did not "shop around" or try to see if they could source products more cheaply from anyone else. And this supplier apparently advertised itself widely – Cavendish "found" Whitmount at a trade show, and included in the bundle are examples of Whitmount's publicity and advertising materials (such as their brochure). Indeed, Mr Burden's evidence was that Whitmount widely distributed its mailshots.

314. And the evidence that we have is that the market for FMCGs, at least in Europe, is reasonably efficient. Both Whitmount's and Cavendish's many competitors have websites and send out mailshots widely, and examples of those mailshots were also included in the evidence bundles. Cavendish had no special technique for finding customers - they found their customers through trade shows, mail shots, and from recommendations.

315. FMCGs are, in a sense, a generic product. If a customer wants, for example, "Danish" Red Bull, they get the same product, whether they buy it from Cavendish, or from anyone else. There is nothing special or unusual about the products that Cavendish are selling that differentiates them from other suppliers in the market. They were selling branded FMCGs that could just as easily be obtained from anyone else operating in this market.

316. Nor did Cavendish seek to differentiate themselves from their competitors in terms of the service they offered.

317. The absence of any differentiation between Cavendish and other sellers in the market came out during the course of Ms Crompton's evidence, when she was asked by us why Cavendish only sourced goods from Whitmount, and did not use any other suppliers:

> JUDGE ALEKSANDER: Okay. You talked about what happened if Whitmount couldn't supply the goods because they didn't have them on the floor, or because they didn't have them, or they were going to come in too late. I don't understand why you didn't approach other potential suppliers. You'd lose the business, because presumably, if the customer saw that one of your competitors could supply, there's the risk that they'd go to them rather than trade with you?
>
> A. Yes, correct. I think it was more of a case of setting up new accounts with new Cash & Carries, and new suppliers. It takes time. So when you're talking you couldn't supply for a week or two, when it could take two months to open up a new account with a new supplier, they would be getting their goods in two or three weeks' time, when available.
>
> JUDGE ALEKSANDER: Yes, but how often did it happen that Whitmount couldn't supply you?
>
> A. It wasn't a lot. There were quite a few occasions, but it wasn't that they could --
>
> JUDGE ALEKSANDER: And it didn't occur to you, that if it was happening a few times, better to have a second source of supply?
>
> A. To me personally at the time, no, it didn't.
>
> JUDGE ALEKSANDER: And you were saying the prices Whitmount gave you were no different from any other cash and carry?

A. Not when you -- no. No, they were the same.

JUDGE ALEKSANDER: So why did customers come -- so if the prices were no different from any other cash and carry, why would these customers come to you, when you would be marking up on the "no different from any other cash and carry", and just not buy from a cash and carry?

A. I can't answer that, I'm afraid, I don't know

318. The fact that Cavendish made significant profits without utilising any especial expertise in sourcing their products or finding its customers, and without taking any risk whatsoever is striking, and we find that this in an indication that the trades in which they participated must have been contrived.

Cessation of trading

319. Cavendish placed their last order with Whitmount in April 2016. Following HMRC's notification to Cavendish that Handelspost's VAT registration had been cancelled, Cavendish ceased to do business with Whitmount.

320. We found this to be very odd, as Cavendish had not (yet) received any indication from HMRC that Whitmount were involved in further tax losses. Indeed they place great weight in their submissions that all the tax loss letters relating to the transactions under appeal had been received after they stopped trading with Whitmount – and that they had no reason to believe that there were any problems with their supplier.

321. So why did the notification of the cancellation of Handelspost's VAT registration trigger Cavendish's decision to cease trading with Whitmount? Mr Burden did not provide a clear answer:

Q. […] it was the Handelspost VAT number that was found to be invalid?

A. Yes, indeed.

Q. So as a result of that you stopped trading with Whitmount?

A. Yes.

Q. Right. Now, in this period, around April 2016, you are also trading with other companies that go through Whitmount, are you not?

A. Yes.

Q. In Ireland, Dipway, I think MAK Logistics?

A. All of them, yeah. I mean, we stopped all business with Whitmount.

Q. Right. But the problem is with Handelspost, isn't it, because that is the VRN that came back invalid?

A. Yes

[…]

Q. Right. Bearing in mind that at that stage there did not seem to be any problems with the other companies that you were dealing with via Whitmount that were going into Europe, you still stopped trading with them?

A. Because we're heeding customers' warnings, yeah, and we want to be safe.

Q. Is that because you knew Whitmount were orchestrating these deals?

A. No, it is just that we'd had the scare before in May 2015 and as soon as this cropped up, we stopped until we could investigate it more.

> Q. In terms of when you are dealing with the cruise line side of the business -- and you have a problem with a customer, whether it is an invalid VRN or something else, in that side of the business would you go back to your supplier and then stop trading with all of the suppliers that you use and further customers?
>
> A. No, of course not, but these are blue-chip companies on the cruise liners.
>
> Q. So, is it fair to say that the fact that you are going to the source, as it were, of these deals indicates that you were suspicious of Whitmount at this stage?
>
> A. No, no, we were doing what was correct. You know, as soon as we hear there is a problem, we stop, we investigate it.

322. We sought clarification from Mr Burden:

> JUDGE ALEKSANDER: Why do you decide to stop trading with Whitmount altogether?
>
> A. Why? I thought we were doing the correct thing.
>
> JUDGE ALEKSANDER: No, I'm not saying it's right or wrong, I'm trying to understand why.
>
> A. Well, it's ... (Pause) a lot of these things weren't just my decision a lot of the time. I mean, we were obviously discussing this in the board room as well and so on. HMRC were getting more involved all the time, and for us it's always worrying when HMRC are more involved, and it just seemed the right thing to do. It was --
>
> JUDGE ALEKSANDER: But it's the customer in this case that is the problem that HMRC have identified?
>
> A. In those two months, March and April 2016, as has been pointed out a few times, Handelspost were the bulk of those orders, and it was just safer to -- it was safer to, I think, it was -- it would have been reckless to have carried on without finding out what's happened, and I think it was right thing --
>
> JUDGE ALEKSANDER: Why didn't you carry on supplying your other customers?
>
> A. It felt safer to stop.

323. This answer made no sense to us, and we do not believe Mr Burden. Cavendish's submissions are that at this point in time they had no reason to believe that their deals with Whitmount were connected with VAT fraud. They had customers other than Handelspost that they could continue to supply, and it is no part of their submissions that they had any reason to suspect that deals with these other customers were connected with fraud.

324. We find that the only reason why Mr Burden, and Cavendish, decided to cease trading with Whitmount must be because he either knew that there was, or turned a blind-eye to, a link between Handelspost and Whitmount – and that the deregistration by the Dutch tax authorities of Handelspost was an indication that not only were Handelspost implicated in VAT fraud, but that VAT fraud infected the whole supply chain.

325. We also do not understand why Cavendish only sourced their FMCGs from Whitmount, and did not use any other suppliers. The evidence of Ms Crompton was that there were occasions where they were unable to fulfil a customer's request because Whitmount did not have the stock "on the ground". She referred in her evidence to MAK Logistics having a "standing order" for Red Bull, which Whitmount were unable to meet in full. Yet Cavendish did not try to find alternative sources that might be able to meet their customers' requirements. And an alternative supplier would also provide some competitive tension.

326. Mr Burden was asked why Cavendish only purchased from Whitmount, especially in the period after June 2015 when the first tax loss letter had been received:

> Q. When you'd received the Whitmount tax loss letters, did you look around amongst your numerous other suppliers to see if they could supply you with similar goods?
>
> A. What, in that two-week period when we stopped in June 2015?
>
> Q. Yes.
>
> A. Yes, we did. You will notice, and again I won't take you to it unless you want to go there, but there's evidence in here of other companies like Whitmount who do the same type of business. We saw a couple of them earlier on, on the Creme Eggs. Discount Brands, for example, is one. Abra Wholesale. There's another firm called Millennium and so on. So, there are other ones. And if it continued any longer, yes, we would have probably found another supplier instead.
>
> Q. And so, when you received this letter, so did you initially, then, appreciate that this was a risk factor with Whitmount?
>
> A. Indeed, that's why we stopped business, did the inspections, did all the further due diligence and everything else. And, you've already shown it, me giving Whitmount a hard time about it.
>
> Q. Yes. But nevertheless, you do continue trading with them, shortly afterwards in July. I appreciate, obviously we accept that you visited them at that point, but I suppose the question is really this: given the number of other suppliers that you'd named, would it not have been more prudent to simply keep trading with the numerous other suppliers you had and stop trading with Whitmount at this point?
>
> A. They don't all do the same job. To find someone that was doing the same job as Whitmount, as you're obviously trying to prove in this case here now, requires a lot of due diligence, and we wouldn't just spark up with some fly-by-night company and buy a container of Pepsi off of them unless we knew them, and met them a few times, and, you know
>
> Q. But I'm not asking you if you would have struck up a new business venture with a company you didn't know about, I'm asking whether or not the numerous other companies that you have mentioned that also dealt in the similar market area could have provided the goods that Whitmount were providing?
>
> A. They could have, yes.
>
> Q. So why didn't you go with them?
>
> A. Because we put the business on hold until we could check it out, and then we continued with them.
>
> Q. And in terms of the volume of trade that was going through Whitmount, was that something you could have done with the other companies that you operated with in this same goods area?
>
> A. In theory, yes. Yes. But we didn't go down that path.
>
> Q. And I think just lastly on that point, the reason you didn't go down that path is you thought it was just simply easier to deal with Whitmount --
>
> A. It's not easy just to chop and change things, you know, you have to go through the account setting up stage and everything else, I mean --

> Q. Well, you already had accounts with those companies, presumably, because you were dealing -- these are not new companies that I'm asking about, it's the companies that you mentioned yesterday --
>
> A. The suppliers?
>
> Q. Yes, suppliers, that you had a good trading relationship with, so ...
>
> A. No, but you're confusing our normal suppliers, like our cheese companies and our meat companies and our Heinz and Tetley tea and Twinings and so on, this was a --Whitmount was a company for fast moving consumer goods that you could go to. Yes, we had accounts with Millennium, for example, and I think we've even got an account open with Discount Brands, but we're not that active with them. But I don't see the relevance, because we'd obviously done the correct thing here, I don't know why you want us to be seen to be ordering with other people

327. We do not find Mr Burden's explanation as to why Cavendish did not use their existing relationships with, for example, Discount Brands or Millennium, credible. Even if Cavendish had "done the correct thing" by ceasing to do business with Whitmount, they could have continued to supply their other customers by using their trading relationships with other suppliers. Ms Crompton's evidence was that Whitmount's prices were no different from any other cash and carry (she said that the pricing in mailshots received from other suppliers was no different to the pricing Cavendish was receiving from Whitmount). Indeed, we do not understand why Cavendish did not maintain an active relationship with other suppliers at the same time as they used Whitmount – in order (a) to provide some competitive tension, and (b) in order to be able to supply customers with their requirements at times when Whitmount were unable to meet the order.

CAVENDISH'S SUBMISSIONS

AV Traders

328. Mr Brown summits that the 30 transactions traced back to AV Traders as the "blocker" are not connected with the fraudulent evasion of VAT. For the reasons that we have given above, we disagree with Mr Brown's submissions, and have found:

(1) The stock sold to Whitmount in these 30 transactions were in deal chains that can be traced to a fraudulent defaulting trader; and

(2) AV Traders were a knowing participant in VAT and other frauds, not only prior to the 30 transactions, but also in relation to these transactions, and that they were therefore at all material times themselves dishonest traders, and ones that had also defaulted in respect of VAT assessments.

Knew or should have known

329. Mr Brown submits that there is no direct evidence on which HMRC can rely to prove that Cavendish actually knew their transactions were connected with fraud and they vehemently deny the accusation. In this regard, Mr Brown makes the following submissions, which we deal with in turn:

(1) Cavendish are a long-standing, highly reputable, and *bona fide* business. They are authorised by HMRC under the WOWGR and AWRS regimes. They provided full cooperation to HMRC during Miss Williamson's enquiries.

We agree

(2) Cavendish's witnesses were all honest and reliable. Mr. Burden strongly denied any knowledge of wrongdoing (although the allegation was not put to Ms Shingleton or Ms. Crompton).

We did not find all of the evidence given by Cavendish's witnesses to be credible for the reasons we have given.

(3) Officer McKay recorded in relation to the visit on 15 May 2015 that Mr. Burden seemed "genuinely concerned" about Cavendish possibly being connected to MTIC fraud. We agree that the visit report of Officer McKay records that Mr Burden appeared to be genuinely concerned about MTIC fraud.

However, for the reasons we have given, Mr Burden did not then follow-up on his apparent concerns in the manner in which we find a reasonable businessman would have.

(4) Cavendish were not aware of any other traders in the transaction chains except for their immediate supplier Whitmount and immediate customers.

We agree – but this is because Cavendish took no steps to investigate the integrity of their supply chain beyond Whitmount, and were prepared to rely on unsubstantiated assurances about Whitmount's trading practices and their due diligence. When he visited Whitmount in June 2015, Mr Burden had the opportunity to review their due diligence files (which were laid out on the boardroom table – inviting inspection), but he chose not to do so –even though he was specifically advised by HMRC in May 2015 to take steps to ensure the integrity of his supply chain and to verify the due diligence that Whitmount carried out on its own suppliers. Further, he was invited by Whitmount to contact the Due Diligence Exchange to verify the work they carried out, but he did not do so.

(5) There was no circularity of goods except two transactions (deals 120 and 123) where product moved from Northern Ireland to the Republic and back; there was no allegation goods had ended up back with a business that had supplied them earlier in the chain, as is usual in many MTIC frauds.

We agree.

(6) There was no allegation of circulatory of funds, often found in other MTIC frauds.

We agree.

(7) Cavendish provided to HMRC a contract between Handelspost and their customer Delcom in November 2016 (we have referred to this previously) after they had instructed M&R Tax Advisers to advise them. The contract shows a connection between Delcom and Monarch. The provision of the contract by Cavendish to HMRC was not the action of a company knowingly involved in a VAT fraud.

We agree that Cavendish's advisors provided a copy of the agreement. We make no comment or finding as to whether this is the action of a company knowingly involved in VAT fraud.

330. Mr Brown makes the following submissions as to whether Cavendish should have known that the deal chains were connected with the fraudulent evasion of VAT, which we address in turn.

331. First, in reaching its decision the following are factors that Mr Brown submits we should not take into account–

(1) Length of deal chains

(2) Who was in the chain

(3) The similarity of the chains

(4) Pricing of goods and mark up (except for the Cavendish's)

(5) Whether there was a manufacture or retailer/end user in the chain

(6) Insurance – whether or not the goods were adequately insured. That was at Cavendish's own risk if the goods were under insured

(7) Errors on documentation caused by Cavendish.

332. We agree with all of these submissions except point (6). Whilst we accept that it was possible for Cavendish to make a commercial decision to assume the risk of underinsurance – that is not what happened here. The evidence is that Cavendish gave no consideration to the risk of damage or theft of goods in transit. There was an assumption by Cavendish's witnesses that Whitmount were liable for these risks, as Whitmount arranged delivery – but Cavendish did not provide us with evidence relating to their terms of business (if they had any) or make submissions on any terms implied by law, so we do not know (and Cavendish did not know) whether this assumption was correct. And even if this assumption is correct, Cavendish would retain a risk that Whitmount might become insolvent and no have the resources to stand behind any claim – and Cavendish appear to have given no thought to this possibility.

333. Secondly Mr Brown submits that Cavendish's trading with Whitmount must be judged from Cavendish's perspective. The following factors are relevant to this assessment:

(1) Cavendish ceased trading with Whitmount in May 2015 after being advised by HMRC that nine transactions were linked to VAT fraud.

(2) Cavendish made enquires and satisfied themselves that future trades would not be tainted by fraud. They took comfort from the fact that HMRC were monitoring Whitmount, and knew that Whitmount were using an independent third party to conduct due diligence on their behalf.

(3) The 2 June 2015 tax loss letter stated in terms that HMRC's power to deny input tax was not limited by the issuing of the letter if when the facts were known Cavendish's due diligence was inadequate; they heard nothing further and input tax was not subsequently denied.

(4) There was nothing Cavendish could have discovered through reasonable checks that would have led to a conclusion that the only reasonable explanation was that their purchases were tainted by VAT fraud.

(5) To that end, HMRC could not deregister Whitmount for VAT before they did so in 2017 because "…there was still a proportion of business that could not be traced back to a tax loss"

(6) It took HMRC two years to satisfy themselves they could prove Whitmount knew or ought to have known of the connection to fraud in their purchases in spite of being aware of all the circumstances of the transactions, yet they allege Cavendish should have known immediately.

334. We disagree with these submissions. Cavendish's trading with Whitmount has to be viewed objectively. The question we need to answer is whether Cavendish had the means at their disposal of knowing that they were participating in transactions connected with fraud. The

test is an objective one, so a naïve taxpayer will not satisfy the objective criteria if it failed to deploy means of knowledge available to it.

335. Mr Brown referred us to paragraph [65] in the judgment of Arden LJ in *Davis and Dann* in support of the contention that in determining means of knowledge, we should not consider the perspective of a reasonable person mindful of the circumstances of the transactions, but of the person alleged to have the means of knowledge. She said:

> However, in assessing whether the respondents' knowledge met the no other reasonable explanation standard, the FTT still had to go on to consider all the circumstances. The question is whether or not a reasonable person mindful of those circumstances ought to have concluded that the Transactions were connected with fraud. What matters is the perspective of the person alleged to have such knowledge. A finding of knowledge to the no other reasonable explanation standard can accordingly be reached irrespective of whether the other parties to the Transactions were in fact fraudulent.

This paragraph of her decision relates solely to whether the individual's knowledge met the "no other reasonable explanation" standard – and not the wider issue of whether Cavendish had the means of knowledge available to it.

336. We agree that Cavendish suspended trading with Whitmount in May 2015. This was not after they had been informed that nine trades had been linked to fraud, rather it was after HMRC's May visit, when questions were asked about Cavendish's due diligence procedures. Cavendish only received the tax loss letter on 2 June.

337. We find that Cavendish's enquiries into Whitmount were inadequate. They had been warned by Officer McKay that Cavendish should take steps to ensure the integrity of their supply chain, and whether Mr Burden knew about the due diligence that Whitmount undertook on their suppliers. When Mr Burden telephoned Officer McKay to report on his telephone and email conversations with Whitmount, Officer McKay made the pointed remark: "would he be happy to rely on a third party's due diligence before doing business". Although Mr Burden visited Whitmount on 1 June, he did not look inside any of Whitmount's due diligence files, even though a few of them were laid out on the boardroom table. If he had done so, he would have seen that information was missing, and updates on financial references promised by the Due Diligence Exchange were never provided. Nor did he take up Whitmount's offer that he contact the Due Diligence Exchange to verify the work they carried out.

338. The fact that Whitmount were being monitored by HMRC and were using a third party to conduct due diligence should not have given comfort to Cavendish. Mr Burden admitted during cross examination that he was naïve in drawing comfort from the fact that HMRC were monitoring Whitmount. And Officer McKay had made a pointed remark about third party due diligence providers when he spoke to Mr Burden on the telephone. Mr Burden and Cavendish should have been aware that Officer McKay in making those remarks was not supportive of due diligence being conducted by third parties.

339. It is unfortunate, to say the least, that there was no communication between HMRC and Cavendish between June 2015 and April 2016, and that it took HMRC two years before they denied Whitmount credit for its input VAT. But that does not provide Cavendish with an excuse. Having received one tax loss letter in relation to sales by Whitmount to Cavendish, Cavendish should have been more alert to the risk of supplies from Whitmount being connected with VAT fraud. A reasonable trader would not have continued trading with Whitmount solely on the basis of unsubstantiated assertions, and would have conducted additional diligence and verifications itself, and would have done so before resuming trading with Whitmount. It then should have been particularly alert to unusual or strange trading patterns, and have sought

further information about them. If Cavendish had followed these actions, they would have undertaken a Google search against Mr Kelly's name, and would have discovered that he had been a bankrupt. If the search was undertaken after the receipt of the June 2015 tax loss letter, such a search would also have revealed the disqualification undertaking. A greater degree of alertness would have caused Cavendish to consider why Whitmount could offer to deliver goods throughout the EU for the same price, and undertake checks (such as internet searches) in respect of Gold Haus, Almax West, and Vincor Logistics. Cavendish would also have queried the export of UK price marked Red Bull – particularly to the Irish Republic, where it could easily be sold back into the UK (an indication of MTIC fraud), as in fact it was. And finally, Cavendish should have realised that profitable risk-free trading was "too good to be true" and that this was an indication that their trades were connected with fraud.

340. Finally, Mr Brown submits that there are the following other factors that demonstrate that Cavendish could not have known that its purchases were connected to fraud:

(1) Checks on Mr Kelly. Mr Brown asserts that no documentary evidence was put forward to show what a Google check on Mr Kelly would have revealed in 2014 or on any other date. However, we have the evidence of Officer Wilkinson (which Mr Brown did not challenge) that Mr Kelly's bankruptcy and disqualification undertaking were one of the first things to come up on a Google search.

We agree with Mr Brown that Mr Kelly's disqualification undertaking was only given on 2 June 2015, but a Google search after that date (which is when Cavendish received their first tax loss letter) would have revealed this.

(2) Mr Dixey was not a director of both AV Traders and Handelspost at the time Cavendish were selling to Handelspost.

We agree that Cavendish were not aware that Mr Dixey was a director of AV Traders, and that he was not a director of both companies when Cavendish were dealing with Handelspost. But Mr Dixey's involvement in both companies (and his conviction for money laundering) is part of the matrix of facts indicating that AV Traders were a fraudulent trader.

(3) If Whitmount cut their immediate customer out of deals, they would earn a reputation as being deceitful, untrustworthy, and unreliable.

Mr Burden's evidence was that Cavendish operated on trust. However, if Mr Burden is to be believed, then the evidence is that his judgment of character was not reliable. He admitted that he was naïve in obtaining comfort from the fact that HMRC were undertaking extended verification of Whitmount's trades. He says that he trusted Whitmount – but the evidence shows that they were deeply engaged in a web of deal chains connected to the fraudulent evasion of tax, and Mr Kelly had been disqualified as a director for flagrant breaches of company law and causing a company to fail to pay tax to HMRC. After Mr Burden visited Handelspost in the Netherlands, he and Mr Kennedy-Sloane described Mr Dixey (who was later convicted for money laundering) as being "naïve and stupid" (a somewhat ironic comment in the circumstances). Mr McCreesh, another trader in FMCGs, told Irish Revenue officers that he would have cut Cavendish out of the supply chain if he knew who was supplying them. Mr Burden's apparent trust was entirely misplaced.

But we consider, and find, that Mr Burden in reality knew that if Whitmount were a genuine trader, there was a risk that Cavendish could be cut out of deals by Whitmount, but deliberately chose to turn a blind-eye to this risk.

(4) Mr Brown also submits that there is no evidence that Cavendish's customers knew who was supplying Cavendish – and refers to the conversation that Mr McCreesh had with the Irish Revenue officers. He also notes that the travelling copy of the CMR would stay with the receiving warehouse, and would not necessarily be provided to the customer (so the customer would not necessarily see that Whitmount were the sender of the goods).

But just because there was no evidence to this effect, does not mean that a legitimate customer of Cavendish could not have ascertained that Whitmount were the supplier, if it went through the paperwork – and in many cases the buyer was also the owner of the warehouse to which the goods were sent, and so would have the CMR.

(5) Mr Brown submits that was no requirement or advice in PN726 or How to Spot Missing Trader Fraud that checks on transport companies should be carried out. The advice from HMRC was that their main concern was the suppliers.

We agree that the principal risk for Cavendish in the integrity of its supply chain was the risk of a fraudulent evasion by Whitmount (or a direct or indirect supplier to Whitmount). But given the risk-free nature of Cavendish's business, they should have been alert to the possibility that they were just middle-men in a tax fraud chain. PN726 states that the lists provide examples and are not exhaustive. In particular HMRC will focus on the actions taken by traders in response to the results of their diligence. Cavendish undertook little additional diligence into Whitmount following the tax loss letter, and given the risks in relation to the integrity of the supply chain, checks on the destination of their goods and the hauliers used would have been appropriate.

(6) Mr Brown submits that even if Cavendish had carried out checks, they would have found nothing to alert them – for example John Williams was the director of SDS until February 2015 when he then became a Director of AV Traders, which Cavendish had not heard of.

We agree that searches in relation to John Williams would not have revealed the information indicating links to fraud. However, searches against Mr Kelly, Gold Haus or Vincor Logistics would have revealed information that would indicate that the trades were linked to fraud.

(7) Mr Brown submits that the fact that Cavendish undertook their sales "back-to back" does not indicate a link to fraud.

We agree that the mere fact that Cavendish dealt in full loads that were sold back-to-back is not of itself an indication of a link to fraud, nor is the fact that Cavendish and Whitmount's invoices were issued on the same day, or close to each other. However, the fact that these trades were entirely risk-free and did not exploit any special trading expertise of Cavendish is such an indication.

(8) Mr Brown submits that the fact that HMRC could not trace all vehicle declarations to cross-channel movements is not a relevant indication.

We agree that the information in the TASFIS database was not available to Cavendish. However, if Cavendish had made checks on the existence of the goods in transit, or arranged the transport themselves, they would either have prevented empty trailers being sent (purportedly on their behalf), or at least had the possibility of discovering that empty or non-existent trailers were sent by Whitmount to their customers.

(9) Mr Brown also submits that when Whitmount quoted the same price for delivery of goods originally consigned to Holland being eventually delivered to Poland at no extra cost, Cavendish queried this with Whitmount and was satisfied with the explanation.

As discussed above, if this consignment represented a single back-load, we could understand why the pricing makes sense. But Whitmount were able to provide a single price for delivery anywhere in the EU – and they could not guarantee that an economical back load would be available for all destinations at all times, which is why this pricing does not make sense.

(10) We also accept the submissions from Mr Brown that the fact that Whitmount could supply Red Bull cheaper than Cavendish could buy it from the manufacturer is not an indication of a link to fraud, and that there is some limited evidence of price negotiation with some of Cavendish's customers.

(11) Mr Brown submits that the narrative on Cavendish's banks statements "F/Flow Delcom Handelspost Centrale" is not sufficient to give rise to a suspicion of a third-party payment. Mr Brown suggests that the reference to "Delcom" could have been a reference to an account name or bank code used by Handelspost.

We reject this submission, as Ms Shingleton's evidence was that she did not know what "Delcom" stood for, and did not consider why the narrative for this payment looked different to the narrative used for other receipts on the bank statement. We note that the test is an objective one, and the question we have to ask is not whether Ms Shingleton recognised this as being a third-party payment, but would it have been so recognised by a reasonable trader – and we find that it would have been so recognised. The fact that Officer Williams spotted that this narrative represented a third-party payment when she inspected the statements is a good indication that persons other than Ms Shingleton would have done so.

DISCUSSION

341. Cavendish started trading with Whitmount in October 2014, and their volume of deals built up quickly. On 15 May 2015, Cavendish were visited by HMRC officers and were warned about MTIC fraud, and were given another copy of PN726.

342. On 2 June 2015, Cavendish received a tax loss letter alerting them to the fact that supplies from Whitmount for the periods 02/15 and 03/15 had been traced to £97,000 of tax losses. These were deals that arose at an early stage in Cavendish's trading relationship with Whitmount. Yet instead of looking for an alternative supplier, Cavendish decide to continue to trade with Whitmount.

343. Cavendish's sales grew substantially – and the trades with Handelspost were exceptionally large indeed. Yet all of these trades were sourced through a small company with a modest warehouse in Warrenpoint in Northern Ireland, and no one at Cavendish considered whether it was suspicious that such a modest company could undertake trading on this scale.

344. One of the indications that a transaction is connected to tax fraud is payment by a third party. Such payments were made in the case of sales to Handelspost, where the payments were made by Delcom. Even though the narrative on Cavendish's bank statements referred to Delcom, no one at Cavendish recognised that this was a third-party payment, until it was pointed out to them following a review of the statements by HMRC. We agree with Mr Jackson's submission that it does not help Cavendish's case that no one at Cavendish recognised that the statement narrative indicated a payment by a third party. The test we have to apply is an objective one. It is instructive that when Officer Williams reviewed the bank

statements, she recognised that Delcom was a different company to Handelspost, and that these were third-party payments. We find that a reasonable business would have realised that the narrative on the bank statements indicated that a third-party was making a payment on behalf of Handelspost.

345. We also note that no one at Cavendish became suspicious that Whitmount's pricing did not change for deliveries to the Netherlands or to Poland. We can understand that back loads are available on an opportunistic basis, but Whitmount were offering in their pricing tables the same prices for delivery of their goods to anywhere in the EU. We find that the undifferentiated pricing – irrespective of destination – would not have occurred in a genuine commercial transaction. The fact that such pricing was offered here is an indication that these transactions are not genuine, and we find that Cavendish ought to have been aware of that this indicated a link to tax fraud.

346. We also agree with Mr Jackson's submission that there is something of a running theme with Cavendish's disinterest in their responsibilities to their customers to deliver goods on time and undamaged. Although there is a reference to standard terms of trading on Cavendish's account application form, no such terms were ever produced in evidence. And the evidence is that Whitmount also undertook business without any written contractual terms. Cavendish were familiar with Incoterms for the supplies they made to cruise liners, but they did not adopt Incoterms for either their purchases from Whitmount or their sales to their customers. Cavendish were unconcerned about when risk and titled passed from Whitmount to them, and from them to their customer. And Cavendish were unconcerned about whether the goods were insured in transit. The quantities often exceeded the limits of their own insurance policies, and they made no effort to ascertain whether Whitmount had adequate insurance, or indeed Whitmount's financial status. Indeed, from the tenor of Mr Burden's evidence, we believe (and find) that Mr Burden was disinterested in Cavendish's own insurance policies. We find that if these transactions had been genuine ones undertaken on commercial terms, Cavendish would have been concerned about whether there was insurance in place that covered their liability for the goods, particularly as the goods' value regularly exceeded the limits of their own insurance policy. And this is another indicator that Cavendish either knew that these transactions were connected with fraud, or were not asking questions and were deliberately closing their eyes to the nature of the Whitmount trades. Together with the other factors that we discuss below, we find that this disinterest in the transport, insurance and contractual arrangements is indicative that Cavendish were aware that (or deliberately turned a blind eye to) the trades were connected to fraudulent tax losses.

347. We find that the due diligence that Cavendish undertook in relation to Whitmount was utterly inadequate. It is not true to say that Cavendish are now being held to a higher standard than was generally applicable in 2014, given that the editions of PN726 provided to Cavendish were published in March 2008. The guidance in PN726 had already been in force for some six years at the point Cavendish started to trade with Whitmount. What is apparent to us from the evidence provided by Cavendish is that their due diligence procedures were just a "box ticking" exercise. Providing the supplier or customer provided some paperwork that would satisfy Cavendish – irrespective of what the paperwork said or revealed. The fact that the information obtained through the due diligence process ought to have rung alarm bells was of no consequence to Cavendish, and we so find. The fact that the credit reports obtained for MAK Logistics and for Handelspost gave recommendations of €0 or €2000 (wholly disproportionate to the values actually traded) was ignored. And as Mr Burden admitted in his evidence, all that worried Cavendish in relation to diligence was that they were going to be paid, and as they were being paid up-front by their customers, they ignored the diligence information. The fact that Cavendish were prepared to sell £1.2 million of goods to Handelspost, notwithstanding a

dodgy credit reference, the fact that they did not provide details of a bank account in Europe (they said their account was with HSBC in Hong Kong) and a bank statement in the name of the director with a balance of less than £200 demonstrates the contempt that Cavendish had for their due diligence obligations. Mr Burden described the process in his evidence as just "getting pieces of paper". We find that Cavendish's due diligence procedures were just "window dressing".- although it gave the impression that Cavendish had investigated their suppliers and customers, it was not what Mr Jackson described as a "thinking exercise". At no stage did Cavendish take any action in response to the information they received.

348. Following the visit by HMRC in May 2015, Cavendish were on notice that they needed to verify the integrity of their transaction chains – particularly on the supply side. Cavendish were aware that there must be risks associated with continuing to trade with Whitmount, as they suspended trading pending further investigation. And we note that this was before Cavendish became aware of the tax losses in the supply chain.

349. Yet when Mr Burden visited Whitmount, he made no attempt to check the diligence undertaken by Whitmount on their suppliers. He was content to rely on unsubstantiated assurances as to the work that they did. Even though examples of Whitmount's due diligence files were on the boardroom table, he made no attempt to look at them. We do not know whether Whitmount would have objected to Mr Burden reviewing these files (on the basis that they were commercially sensitive), because he did not even ask. And even if Whitmount did object, he could at least have asked for the pro-forma (if any) used by Whitmount and the Due Diligence Exchange – indeed he was invited to contact the Due Diligence Exchange himself, but he declined to do so.

350. Cavendish first became aware of the tax losses in Whitmount's supply chain when Mr Burden received the first tax loss letter dated 2 June 2015. We note that Mr Burden decided to continue to trade with Whitmount on the basis of unsubstantiated assurances that Whitmount were no longer buying from the fraudulent supplier. We find it surprising that Cavendish did not make a decision at this point to stop buying from Whitmount altogether, or (at the very least) undertake deeper diligence into Whitmount, on the basis that this was the appropriate action to take in response to the receipt of the tax loss letter (see section 6.3 of PN726). Cavendish were familiar with the FITTED checks that apply to excise goods, and could have used these as a model for the additional diligence checks, and we find that this would have been the action of a reasonable trader faced with these circumstances. Mr Burden did not even bother to search in Google against Mr Kelly's name. If this was done after 2 June 2015 (the date on which the tax loss letter was received), it would have revealed the disqualification undertaking – but even if the search had been done earlier, it would have revealed his bankruptcy.

351. Mr Brown submits that Cavendish did not undertake any diligence in respect of transport companies or warehouses used by their customers, as there was no requirement for this in PN726. But Ms Crompton confirmed that she did use Google to verify Gold Haus's address in Poland. It strikes us as odd, and not credible, that she did not then see from the list of "hits" that Gold Haus was a sawmill, and not a warehouse.

352. We find it to be highly significant that Mr Burden decided to stop all dealings with Whitmount when he became aware that Handelspost's VAT registration had been cancelled. Mr Burden could not articulate why it made sense to stop trading with his supplier when he had (on the face of it) other customers wanting to buy FMCGs from Cavendish. We find that this indicates that Mr Burden either must have known that Whitmount were orchestrating the deal chains, or at the very least, he must have suspected that this was the case, but he deliberately chose to turn a blind eye towards it.

353. The fact that Cavendish only used Whitmount for the supply of FMCGs is also a factor that indicates that these trades were not undertaken on a genuine commercial basis. We note that, for example, MAK Logistics wanted to buy more cans of Red Bull than Whitmount were able to supply to Cavendish. Yet instead of looking around to see if there were other suppliers, Cavendish decided not to make the sale. There is evidence that Cavendish turned down other purchase offers because Whitmount did not have the stock to sell. We find that this is not the action of a genuine commercial business, and is another indication that Cavendish knew that these trades were connected to fraud (or were "Nelsonian" blind to this).

354. We did not find Ms Crompton's evidence credible that Sterling price-marked Red Bull was being sold to Irish customers (and elsewhere in Europe) for onward sale to "British Shops". Red Bull is an international product, with no cultural or culinary association with the UK. We find that the fact that these goods were being supplied to customers in the Irish Republic should have raised the possibility to Cavendish that these goods would then be sold back into the UK (in Northern Ireland), an indication of MTIC fraud.

355. And finally, we find that the fact that Cavendish were able to make profits without taking any risk and without exercising any special trading skills, demonstrates that the transactions under appeal could not have been genuine and commercial – and we find that Mr Burden either knew this, or deliberately turned a blind eye towards this. And that is why, when Handelspost were deregistered for VAT, Mr Burden realised that the game was up, and stopped trading with Whitmount.

356. It is dishonest for a person deliberately to shut their eyes to facts which they would prefer not to know. If he or she does so, they are taken to have actual knowledge of the facts to which they shut their eyes. Such knowledge has been described as "Nelsonian" or "blind-eye" knowledge". Although not cited to us, Lord Scott in *Manifest Shipping Company Limited v. Uni-Polaris Shipping Company Limited and Others* [2001] UKHL 1 at [112] said the following about blind-eye knowledge:

> "Blind-eye" knowledge approximates to knowledge. Nelson at the battle of Copenhagen made a deliberate decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. It is, I think, common ground - and if it is not, it should be - that an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence. Lord Blackburn in *Jones v. Gordon* (1877) 2 App Cas 616, 629 distinguished a person who was "honestly blundering and careless" from a person who "refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind - I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover". Lord Blackburn added "I think that is dishonesty".

357. We find that Mr Burden is neither an honest blunderer nor a stupid man. He is no fool. He has many years of experience in buying and selling products for Cavendish, and previously worked for many years in the City of London.

358. During cross-examination, Mr Jackson put it to Mr Burden that:

> Q. […] what you in fact did was shut your eyes to the reality of what was going on in relation to Whitmount, because you could make a quick buck, and simply ignored or refused to investigate all of the indicators that would have led you to conclude that Whitmount were involved in fraudulent taxation transactions?

A. No.

359. We do not believe Mr Burden. We find that Mr Burden – and therefore Cavendish – had "blind-eye" knowledge that the transactions under appeal were connected with the fraudulent evasion of VAT. He decided in June 2015 that Cavendish should continue to trade with Whitmount. He deliberately and knowingly refrained from asking questions or making further investigations – not because he was stupid, naïve or careless - but because, in his own secret mind, he knew it was likely there was something wrong, and if he asked questions and made further enquiries, it would no longer be his suspecting it, but his knowing it.

360. We reach these findings on the basis of the cumulative circumstances of Cavendish's transactions. We have considered the totality of the deals effected by Cavendish (and their characteristics), and what they did or omitted to do, and what they could have done, together with the surrounding circumstances in respect of all of them (see *Red12 v HMRC* [2009] EWHC 2563). In considering the surrounding circumstances, we consider their cumulative effect:

> One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion: but the whole taken together may, create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of (per Pollock CB in *R v Exall* (1866) 4 F&F 922)

361. In reaching our finding that Mr Burden had such blind-eye knowledge, we have taken into account the cumulative impact of the following in particular:

(1) That Mr Burden (and other members of Cavendish's staff) had been warned on a number of occasions about the risk of MTIC fraud, and had been provided with advice and information on MTIC fraud, and how to spot it and guard against it – including discussions about MTIC fraud when HMRC officers visited Cavendish, PN726, the "How to spot missing trader fraud" leaflet, and various letters on the topic;

(2) Although warned by HMRC that Cavendish should verify the integrity of their supply chain, and should consider the diligence undertaken by Whitmount on their own suppliers, Mr Burden neglected to review Whitmount's own diligence files;

(3) Having received a tax loss letter from HMRC in respect of goods purchased from Whitmount on 2 June 2015, Mr Burden was content to rely on Whitmount's unsubstantiated assurance that they had ceased buying from the supplier in question, and did not undertake any further diligence enquiries into Whitmount (such as, for example, FITTED checks);

(4) That Whitmount was Cavendish's sole supplier of FMCGs for their export trading business, even though Whitmount were not able always to supply goods to meet the requests of Cavendish's customers, and that goods previously supplied by Whitmount had been the subject of a tax loss letter;

(5) That the diligence information obtained in respect of MAK Logistics and Handelspost was not that which would be expected for a genuine commercial trader;

(6) Mr Burden's approach to due diligence as "just getting pieces of paper";

(7) That Whitmount were prepared to deliver goods to Poland at the same (delivered) price as for delivery to the Netherlands, and provided pricing tables to Cavendish which showed the same delivered price irrespective of the destination in continental EU;

(8) Mr Burden's disinterest in the terms under which Cavendish did business with their suppliers and customers, including his indifference to the risk to Cavendish of non-delivery or damage during transport;

(9) Mr Burden's disinterest in the insurance arrangements for the goods being bought and sold;

(10) That Mr Burden decided to stop all trading with Whitmount following the discovery that Handelspost's VAT registration had been cancelled, even though Cavendish had other (apparently) legitimate customers for FMCGs;

(11) The substantial turnover (and associated profits) generated by Cavendish from a business that was essentially free of all risks (at least in relation to the transactions subject to this appeal).

362. Whilst the existence of one or two of some of these factors on their own might be explained by carelessness or negligence – their cumulative impact indicates to us, and we find, that Mr Burden had blind-eye knowledge that Cavendish's trading with Whitmount was connected with MTIC fraud. We therefore find that Cavendish knew that the 200 transactions that are the subject of this appeal were connected with the fraudulent evasion of VAT.

363. And even if we are wrong in our findings that Mr Burden had blind-eye knowledge, as the various factors that we have discussed demonstrated (and we find) that Cavendish had the means of knowledge to alert it to the connection of these transactions to VAT fraud, and would have been aware that there was no other reasonable explanation for the transactions. We therefore find that Cavendish should have been aware of the connection of these transactions to the fraudulent evasion of VAT.

CONCLUSIONS

364. We find that all of the transactions that are the subject of this appeal are connected with the fraudulent evasion of VAT.

365. We find that Cavendish was either aware that all of the transactions that are the subject of this appeal were so connected, or ought to have been so aware.

366. The appeal is therefore dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

367. 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 2 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.

NICHOLAS ALEKSANDER

TRIBUNAL JUDGE

RELEASE DATE: 15 JUNE 2020

Cases mentioned in skeletons, but not referred to in the decision:
Optigen Ltd v Customs and Excise Commissioners (C-354/03) EU:C:2006:16
Edgeskill Ltd v HMRC [2014] UKUT 38 (TCC)