[2021] UKFTT 166 (TC)

TC08135

VAT – MTIC – whether Appellant's transactions connected to VAT fraud – whether Appellant knew or should have known of such connection – whether input tax on purchases and zero-rating of intra-EU despatches should be disallowed – Kittell, Mecsek-Gabona, Italmoda and Mobilx considered – appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2014/02268
TC/2015/06390
TC/2015/07093
TC/2016/01295
TC/2016/01297

BETWEEN

TURKSWOOD LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE KEVIN POOLE
TERRY BAYLISS

Sitting in public at Centre City Tower, Birmingham on 9-10 April 2019

Avtar Singh Kainth, Director for the Appellant (at the start of the hearing only)

Vinesh Mandalia, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

Outline of the case

1. This appeal relates to five separate decisions by HMRC to disallow input tax or zero rating totalling some £4.9 million over various VAT accounting periods of the Appellant from 06/11 to 06/14, essentially on the basis that the Appellant knew or should have known that the relevant transactions were connected with VAT fraud.

2. One of the decisions (to assess for some £4.7 million of output VAT in consequence of zero rating being unavailable as claimed in respect of despatches by the Appellant to traders in Poland) involved a situation in which HMRC were alleging that the fraud in question took place not in the UK but in Poland, and was perpetrated by the Appellant's customers rather than traders in the chain of supply leading up to it.

Attendance of the Appellant

3. Avtar Singh Kainth, director of the Appellant, attended the start of the first day of the hearing, but confirmed it was neither his nor the Appellant's intention to participate in the proceedings. The consequences of that decision were explained to him but he said he had decided to absent himself. He had previously supplied the Tribunal and HMRC with a witness statement dated 27 October 2017 and a written skeleton argument; to the extent they sought to give factual evidence which did not emerge from either HMRC's evidence or the documents before the Tribunal, it was explained to Mr Kainth that the Tribunal would be likely to place less weight on them than if Mr Kainth had submitted to cross-examination on them. By not attending, it was explained that he would also lose the opportunity of cross-examining HMRC's witness. Mr Kainth said he was satisfied that the Tribunal had already reached its decision and that his attendance was therefore a waste of his time. Despite being informed that the Tribunal had not reached any decision yet and would do so only on the basis of the evidence presented to it during the course of the hearing (which had been listed for four days in addition to a reading day for the panel), Mr Kainth then absented himself. In the circumstances, we decided it was in the interests of justice to proceed in the absence of any representation from the Appellant. By absenting himself, Mr Kainth denied the Appellant the opportunity of providing innocent explanations for many of the extremely unusual features of its activities set out in this decision. We inferred that his reason for doing so was because he would not have found it possible to provide such explanations which were convincing.

Evidence

4. We received written witness statements as follows:

   (1) by Avtar Singh Kainth dated 27 October 2017 on behalf of the Appellant;

   (2) by Carolina d'Dores Pereira dated 13 July 2018 on behalf of the Appellant; and

   (3) by Matthew Bycroft dated 6 January 2017, HMRC officer on behalf of HMRC.

5. The witness statement of Mr Kainth was 7 pages long (including a one page list of exhibits, separate copies of which did not appear to have been included together in the bundles, though some, but possibly not all, of them appeared at various places). Mr Kainth, during his brief appearance at the hearing, made no complaint that any of the documents included in his list of exhibits was missing from the document bundle before the Tribunal and we infer that he had no objection to the omission of any of those exhibits which did not in fact appear in the bundle.

6. The witness statement of Ms Pereira was a little over one page long, explaining that it was "not at all exhaustive, but the best I can give under the circumstances". Ms Pereira was

clearly suffering from significant medical issues, for which she has the Tribunal's sympathy. However, as was made clear in her witness statement, her role was:

> "to deal with the administration of the trading documentation appertaining to the deals negotiated by Mr Kainth. Mr Kainth was responsible for the sourcing of all customers and suppliers, negotiating individual trade transactions and initiating all payments. My duties, both as a Director and employee, were to try and ensure that all the correct paperwork relating to the trades agreed by Mr Kainth was completed properly and carry out the monthly VIES check on all current customers and suppliers to ensure that their VAT registration was valid."

It is therefore apparent that even if Ms Parreira had been in a position to give more detailed evidence, it would have had little evidential value on the issues with which this appeal is primarily concerned, namely whether the Appellant knew or should have known of a connection between its various transactions and any VAT fraud perpetrated by others in the various chains of transactions in which it was involved.

7. Exhibited to officer Bycroft's witness statement were some 625 exhibits, comprising 13 lever arch files. There were no visible tab dividers separating them (merely A4 pages showing the tab number, without any projecting tabs to mark their location), so finding any particular exhibit was a frustrating and time consuming exercise, as each exhibit could be anywhere from one page to 100 or more pages in length and the copy of officer Bycroft's witness statement in the bundle did not include any marginal page references in the bundles to the exhibits referred to. Also, many of the exhibits (especially spreadsheets) which had been originally produced in landscape layout were carelessly copied in portrait layout with large (and often crucial) sections of the originals simply cut off at the sides. Further, many documents were duplicated and appeared out of logical order, or were missing individual pages. This rendered the whole process of gleaning evidential detail from some of the documents painfully longwinded. We were essentially given a two-day introduction to a six and a half thousand piece jigsaw puzzle with numerous missing pieces and a very poor picture and left to make the best of it. We assume that Mr Mandalia was not given the opportunity of checking the bundles before they were delivered to the Tribunal, but advise that in future a solicitor (and preferably counsel) be given the task of checking the bundles in such cases before they are submitted. Whilst the Tribunal had directed that the bundles be produced "jointly", the burden lies on HMRC in this appeal and we would have expected them to ensure the bundles were prepared in a way which would assist rather than impede the Tribunal in reaching its decision.

8. We heard oral testimony from Matthew Bycroft, the HMRC officer who had taken over responsibility for the Appellant's affairs at HMRC following the retirement of officer Patricia Essex (who had taken the original decisions to deny the relevant input tax). Mr Bycroft confirmed (and we accept) that he had re-examined every document in the case himself and had not simply repeated officer Essex's evidence. Witness statements previously made by officer Essex were also included in the documents before us at the request of the Appellant, but HMRC did not rely on them. We also had the skeleton argument submitted by Mr Kainth on behalf of the Appellant, which contained assertions of fact. As Mr Kainth had absented himself after the start of the hearing, we only heard submissions from Mr Mandalia and brief comments from officer Bycroft by way of supplement to his witness statement, lasting two days in total. In that time, we were only taken to a tiny fraction of the documents in the bundles, leaving us to navigate through the rest as best we could after the hearing.

9. Before turning to our findings of fact, we set out the applicable law.

THE LAW

Denial of input tax

10. With respect to the denial of input tax, the law is well-established by the decision of the CJEU in *Axel Kittell v Belgium; Belgium v Recolta Recycling* (C-430/04 & C-440/04), which included the following statement of principle:

> 55 Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (see, inter alia, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 24; Case C-110/94 *INZO* [1996] ECR I-857, paragraph 24; and *Gabalfrisa*, paragraph 46). It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends (see *Fini H*, paragraph 34).
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> 56 In the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.
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> 57 That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.
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> 58 In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.
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> 59 **Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'**.
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> 60 It follows from the foregoing that the answer to the questions must be that where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void – by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller – causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.
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> 61 **By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct**.
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> [Emphasis added]

11. The application of the "knew or should have known" principle in domestic UK law was set out in the decision of the Court of Appeal in *Mobilx and others v HMRC* [2010] EWCA Civ 517, as follows:

> 52. If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in *Kittel*. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises.
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> …
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> 56. It must be remembered that the approach of the court in *Kittel* was to enlarge the category of participants. A trader who should have known that he was running the risk that by his purchase he *might* be taking part in a transaction connected with fraudulent evasion of VAT, cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in *Kittel*, nor is it the language it used. In those circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase he *was* taking part in such a transaction…
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> …
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> 59. The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel*.
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> 60. The true principle to be derived from *Kittel* does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion.

12. The appellants in *Mobilx* had argued that whilst the CJEU decision in *Kittell* mapped out the extent to which it was permissible for member states to deny the right to deduct input tax, domestic legislation was required to implement any such action, and there was no domestic legislation in the UK. The Court of Appeal gave this argument short shrift:

> 47. Accordingly, the objective criteria which form the basis of concepts used in the Sixth Directive form the basis of the concepts which limit the scope of VAT and the right to deduct under ss. 1, 4 and 24 of the 1994 Act. Applying the principle in *Kittel*, the objective criteria are not met where a taxable person knew or should have known that by his purchase he was participating in a transaction connected with fraudulent evasion of VAT. That principle merely requires consideration of whether the objective criteria relevant to those provisions of the VAT Act 1994 are met. It does not require the introduction of any further domestic legislation.
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> …
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> 49. It is the obligation of domestic courts to interpret the VATA 1994 in the light of the wording and purpose of the Sixth Directive as understood by the

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

13. It is clear that the burden of proving that a trader knew or should have known that his transactions were connected to fraudulent evasion of VAT lies on HMRC. The Court of Appeal went on to say this about the scope of the enquiry that might lead to that conclusion:

> 81. HMRC raised in writing the question as to where the burden of proof lies. It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary.
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> 82. But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. As I indicated in relation to the *BSG* appeal, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.
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> 83. The questions posed in *BSG* (quoted here at § 72) by the Tribunal were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge. I can do no better than repeat the words of Christopher Clarke J in *Red12 v HMRC* [2009] EWHC 2563:-
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> > "109 Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
> >
> > 110 To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as

> the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.
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> 111 Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

> 84. Such circumstantial evidence, of a type which compels me to reach a more definite conclusion than that which was reached by the Tribunal in Mobilx, will often indicate that a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time…
>
> 85. … A trader who chooses to ignore circumstances which can only reasonably be explained by virtue of the connection between his transactions and fraudulent evasion of VAT, participates in that fraud and, by his own choice, deprives himself of the right to deduct input tax.

Denial of zero rating

14. There is no dispute that in general zero rating was, at the relevant time, available in respect of despatches of goods to a trader in another EU member state, subject to satisfaction of the relevant conditions. HMRC however rely on two CJEU cases as effectively extending the *Kittel* principle to cover denial of the right to zero-rate intra-EU despatches in circumstances where the trader's transactions are shown to be connected to VAT fraud perpetrated in another member state by the trader's customer.

15. In *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* (Case C-273/11) ("*Mecsek-Gabona")*, the CJEU considered a case in which a Hungarian wholesale supplier of cereals, tobacco, seeds and fodder had entered into a contract with an Italian company for the sale of 1,000 tonnes of rapeseed.

16. The customer was to be responsible for their removal from Hungary to another member state. The trader was given the registration numbers of the trucks that would collect the goods, and eventually it was sent CMRs from its customer (which was registered for VAT in Italy) which supposedly showed the goods had been removed from Hungary.

17. The full details of the facts are not clear, but obviously the Hungarian authorities did not believe that the goods had arrived at their supposed destination; this belief was reinforced by the fact that the Italian VAT authorities could not find the Italian customer, which had never paid any VAT to them. Its registered office was a private home. The Hungarian authorities assessed the Hungarian supplier to VAT on the basis that there was inadequate evidence that the goods had in fact left Hungary. Ultimately, the following questions were referred by the Hungarian courts to the CJEU:

> 1. Is Article 138(1) of Directive 2006/112 to be interpreted as meaning that the supply of goods is exempt from VAT if the goods are sold to a purchaser who is registered for VAT in another Member State at the time when the contract of sale is concluded, and the purchaser has had a clause inserted in the contract of sale for the goods in question under which the right of disposal and the right of ownership are transferred to the purchaser at the time when the goods are loaded on to the means of transportation, and the purchaser assumes the obligation of transporting the goods to another Member State?
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> 2. Is it sufficient, for the vendor to be able to apply the rules relating to VAT-exempt supplies, for the vendor to satisfy itself that the goods sold are picked up by the foreign registered vehicles and for the vendor to be in possession of the CMRs returned by the purchaser, or must the vendor make sure that the goods sold have crossed the national border and been transported within Community territory?
>
> *[A third question was also referred, but that is not relevant for present purposes.]*

18. The key part of the questions referred to the CJEU was therefore whether the vendor of the goods had to make sure, as a precondition of entitlement to zero-rating, that the goods had left Hungary and been transported elsewhere within the EU. The Court observed that, with the abolition of border controls within the EU, it was difficult to establish with certainty that the goods had left a member state and the authorities had therefore to rely, in checking the position, on evidence and statements from the taxable persons involved. Furthermore, it was a matter for member states to decide how eligibility for zero-rating must be established. It is clear that there was no information before the Court as to the applicable conditions in Hungary; it therefore made general statements about the principles involved and, in particular, said that "where there appears to be no tangible evidence to substantiate the conclusion that the goods concerned have been transferred out of the territory of the Member State of supply, to oblige taxable persons to provide conclusive proof of this does not ensure the correct and straightforward application of the exemptions". Accordingly, the failure of the supplier to provide conclusive proof that the goods had left Hungary was not a sufficient reason to deny it zero-rating; instead it would be the purchaser, having been obliged to remove the goods from Hungary, that would become liable for the Hungarian VAT. To this point, the case affords no support to HMRC's position in these appeals.

19. There was however clearly a strong whiff of fraud about the *Mecsek-Gabona* case, so the CJEU went on to qualify what it had already said about the entitlement of the Hungarian supplier to zero-rating in the following way:

> 46 However, where the supply of goods concerned is part of a tax fraud committed by the purchaser and where the tax authority is not certain that the goods have actually left the territory of the Member State of supply, it is necessary to consider, thirdly, whether that authority may subsequently require the vendor to account for the VAT on that supply.
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> 47 According to settled case law, the prevention of tax evasion, avoidance and abuse is an objective recognised and encouraged by Directive 2006/112 (see Joined Cases C 487/01 and C 7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I 5337, paragraph 76; R., paragraph 36; and Joined Cases C 80/11 and C 142/11 *Mahagében and Dávid* [2012] ECR, paragraph 41 and the case law cited) which can, in certain circumstances, justify stringent requirements as regards vendors' obligations (*Teleos and Others*, paragraphs 58 and 61).
>
> 48 Accordingly, it is not contrary to European Union law to require an operator to act in good faith and to take every step which could reasonably be

asked of it to satisfy itself that the transaction which it is carrying out does not result in its participation in tax fraud (*Teleos and Others*, paragraph 65, and *Mahagében and Dávid*, paragraph 54).

49 The Court found those factors to be important for the purposes of deciding whether the vendor can be obliged to account for the VAT after the event (see, to that effect, *Teleos and Others*, paragraph 66).

50 Consequently, in the event that the purchaser in the case before the referring court has committed tax fraud, it is justifiable to make the vendor's right to exemption from VAT conditional upon its good faith.

51 It is not immediately clear from the order for reference that Mecsek Gabona knew or should have known that the purchaser had committed tax fraud.

52 However, in its written and oral submissions before the Court, the Hungarian Government claims that several factors not mentioned in the order for reference prove, in its opinion, that Mecsek Gabona acted in bad faith. To that effect, the Hungarian Government argues that, even though Mecsek Gabona was not familiar with the purchaser of the goods at issue in the main proceedings, it had not requested any guarantees from the purchaser; it did not check the purchaser's VAT identification number until after the transaction; it did not collect any additional information on the purchaser; it had transferred the right to dispose of the goods as owner to the purchaser, while accepting that payment of the original sale price could be deferred; and it had presented the CMRs returned by the purchaser even though they were incomplete.

53 In that regard, it should be borne in mind that, in proceedings brought under Article 267 TFEU, the Court has no jurisdiction to check or to assess the factual circumstances of the case before the referring court. It is therefore for the national court to carry out an overall assessment of all the facts and circumstances of the case in order to establish whether Mecsek-Gabona had acted in good faith and taken every step which could reasonably be asked of it to satisfy itself that the transaction which it had carried out had not resulted in its participation in tax fraud.

54 If the referring court were to reach the conclusion that the taxable person concerned knew or should have known that the transaction which it had carried out was part of a tax fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be asked of it to prevent that fraud from being committed, there would be no entitlement to exemption from VAT. *[Emphasis added]*

55 In the light of all the foregoing considerations, the answer to Questions 1 and 2 is that Article 138(1) of Directive 2006/112 is to be interpreted as not precluding, in circumstances such as those of the case before the referring court, refusal to grant a vendor the right to the VAT exemption for an intra-Community supply, provided that it has been established, in the light of objective evidence, that the vendor has failed to fulfil its obligations as regards evidence, or that it knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser, and that it had not taken every reasonable step within its power to prevent its own participation in that fraud.

20. Thus, with no findings of fact before it to the effect that Mecsek-Gabona had been in any way implicated in VAT fraud, the CJEU went out of its way to propound a test that would be applicable in such cases. In short, if it is "established, in the light of objective evidence, that [the vendor] knew or should have known that the transaction which it carried out was part of a

tax fraud committed by the purchaser, and that it had not taken every reasonable step within its power to prevent its own participation in that fraud", then the zero-rating of an intra-Community supply could be denied.

21. That is the principle which Mr Mandalia invited us to apply here.

22. This jurisprudence was further developed in the CJEU case of *Staatssecretaris van Financiën v Schoenimport 'Italmoda' Mariano Previti vof* (C 131/13) ("*Italmoda"*) in 2014. That case was concerned with a Dutch company which had, amongst other things, acquired a quantity of computer hardware in the Netherlands and Germany and supplied it to a trader in Italy which was registered for VAT there. The Dutch trader claimed a deduction for input tax on its acquisition of the goods it had acquired in the Netherlands, and claimed to zero-rate its onward despatch of those goods to Italy. The Italian purchasers declared none of the intra-Community acquisitions and no Italian VAT was paid. The Dutch tax authorities took the view that Italmoda had knowingly participated in fraudulent activity designed to evade VAT in Italy and therefore refused it the right to zero-rate the intra-Community supplies effected in Italy and the right to deduct its own input VAT on the goods it had acquired in the Netherlands. Assessments were issued to recover these amounts of Dutch VAT.

23. Two crucial points arose in the Dutch proceedings, in respect of which a referral was made to the CJEU. First, there was no specific provision in the Dutch fiscal code which allowed the authorities to deny the zero-rating or the deduction of input tax on the basis that the taxpayer knew or ought to have known that it was participating in VAT evasion in respect of the goods concerned.[1] Second, the Dutch court was unclear whether the fact that the VAT evasion took place in Italy rather than the Netherlands should affect the position, in a situation where all the formal conditions imposed by Dutch domestic law in relation to the zero-rating and input tax deduction had been met and all relevant information about the goods, their despatch and their acquirer had been provided.

24. The CJEU addressed both points square on, holding as follows:

> [*As to the first question*:] 62 …the Sixth Directive must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of VAT, even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in VAT evasion committed in the context of a chain of supplies.
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> [*As to the second question*:] 69 … the Sixth Directive must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of VAT, that person was participating in evasion of VAT committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.

25. The answer to the first question had already effectively been given, in relation to *Kittell* cases in England & Wales, by the judgment of the Court of Appeal in *Mobilx and others v HMRC* [2010] EWCA Civ 517 (see [12] above), and we take it as confirming that the comments

[1] There was also an issue around the goods sourced direct from Germany, but for the sake of clarity we do not include reference to that here.

of the Court of Appeal in *Mobilx* can properly be regarded as extending to cases in which the *Mecsek-Gabona* and *Italmoda* principles are under consideration. The answer to the second question, for present purposes, has simply reinforced the principle already laid down by the CJEU in *Mecsek-Gabona*, making it quite clear that (for the purposes of the present appeal) if fraudulent evasion of VAT in Poland by the Appellant's customers is established, and the Appellant knew or should have known that by its supplies of the mobile phones in question to its Polish customers it was participating in that fraudulent evasion, then the zero-rating of its supplies to its Polish customers should be denied unless the Appellant can show that it had taken every reasonable step within its power to prevent its own participation in that fraud.

26. It is clear that the burden lies on HMRC to show that the relevant frauds have taken place, that the Appellant by its transactions was participating in those frauds and that it knew or should have known that it was doing so. To the extent that the Appellant might be relieved from liability in relation to the *Mecsek-Gabona* appeal by showing that it had nonetheless taken every reasonable step within its power to prevent its own participation in the relevant frauds, the burden clearly lies on the Appellant to do so – it could not be right that HMRC should be required to prove that the Appellant had not taken every reasonable step within its power to prevent its own participation in the frauds, as this would effectively be requiring HMRC to prove a negative by reference to facts which, almost by definition, would be outside their knowledge.

27. It also goes without saying that the burden lies on HMRC to show that any particular transaction of the Appellant which they wish to impugn under the *Mecsek-Gabona* principle actually falls within the scope of that principle, i.e. it is a transaction of a type involving zero-rating as referred to in *Italmoda* (though the CJEU in that case used the normal VAT Directive term of "exemption" rather than zero-rating).

THE FACTS

Incorporation and ownership of the Appellant

28. The Appellant was incorporated on 9 December 1980. It was registered for VAT with effect from 7 January 1981, its expected business stated as being a franchise telex bureau. Its shares were owned by three members of the Smith family. It was the subject of a number of VAT visits up to 1995, by which time the falling margins and turnover of the business had resulted in its principal place of business being moved to Mr Smith's home address and the nature of the business being changed to sale and installation of communications equipment.

29. On 23 November 2000 the shares in the Appellant were transferred to a company called Insistdesign Limited and Leslie Beverley and Derek Bulmer took over as directors. Insistdesign Limited (which was owned as to 51% by members of the Ruprai family and 49% by members of the Kainth family) remained the sole or majority shareholder until some time between 31 October 2010 and 31 October 2011. Thereafter, the shares in the Appellant were owned by S A Kainth (40%), K Kainth (15%), K S Kainth (15%), S Thakor (10%), D Taylor (10%) and C D Pereira (10%), until some time between 31 October 2013 and 21 November 2014, when Avtar Singh Kainth acquired a 20% shareholding (with S A Kainth's holding dropping from 40% to 20%).

Historical overview of the Appellant's VAT affairs

From 1997 to early 2003

30. The VAT return records for the Appellant included in the documents showed that from periods 06/97 up to 09/01, it was typically making sales of around £30,000 to £50,000 per quarter, generating a net VAT liability of approximately £1,000 to £4,000 per quarter. In period 12/01 the outputs jumped to approximately £150,000 and remained in the £110,000 to £155,000 range (generating net VAT liabilities of up to £6,875) until early 2003. The

Appellant returned no EU despatches or acquisitions in any VAT accounting period prior to the two-month period 05/03 (i.e. from 1 April to 31 May 2003), and in that period it returned EU despatches of £1,154,925 (see [35] below).

Events in 2003 involving 05/03 repayment claim

31. On 12 March 2003, a Mr Kainth, describing himself as a company director, telephoned HMRC on behalf of the Appellant to verify a Spanish VAT number. On 30 April 2003 a person recorded as "Keith" (an employee of the Appellant, which we infer to be Mr A S Kainth) telephoned HMRC to verify a French VAT number, to be told it could not be verified. Later the same day, a person recorded as "Mr Kainth" (an employee of the Appellant) telephoned again, to verify the same French VAT number, to be told it could not be verified. A similar call was recorded on 2 May 2003, in relation to a Portuguese VAT number.

32. On 29 April 2003, HMRC wrote to the Appellant, confirming that they were "still experiencing certain problems with businesses in the trade sector involving wholesale mobile telephones and other communications goods. As part of our local controls you were asked to verify the status of both new and potential customers and suppliers, and also to forward to this office a regular summary of your trading activities. Please note that the procedure for verification of the VAT status of customers and suppliers remains as before." Attached to this letter was a copy of Customs & Excise budget notice 15/03, describing the new "joint and several liability" provisions that were being introduced in response to missing trader VAT fraud.

33. On 8 May 2003 a call was received from a David Adhee (presumably Addy), a Director of the Appellant, asking for the Appellant to be put onto monthly returns. He was told the request needed to be made in writing and on 8 May 2003 a letter was sent to HMRC on behalf of the Appellant, signed by Mr Addy as its managing director, requiring "urgently" a change to monthly VAT returns. The reason was given as "Our company has recently entered into the expert *[sic]* business and as such needs to process the corresponding VAT returns as quickly as possible. As an expanding company this may involve monthly returns in the order of £250,000 which to represents a major capitol investment on our part." *[sic]*

34. HMRC started to take interest in the Appellant as a potential MTIC trader and a visit was made to it on 15 May 2003, though the details of what took place at that visit are not clear.

35. The Appellant was placed on monthly VAT returns after an initial two-month period covering April and May 2003. Its return for those two months included outputs of £1,562,151, including £1,154,925 of zero-rated despatches to EU member states. Its inputs were £1,483,561 and the return resulted in a net repayment claim of £250,467.86.

36. On 9 June 2003, a call was received by HMRC, noted as being from a Mr Cainth/Kainth, accountant/employee of the Appellant. He was enquiring whether the VAT return for April and May 2003 had been received. Initially HMRC refused to provide any response, as Mr Kainth was not properly authorised. After speaking with HMRC, Mr Addy sent by fax a formal letter dated 9 June 2003 confirming to HMRC that Mr A S Kainth, (also known as Taff), referred to as the Appellant's "internal accountant", could be treated by HMRC as the Appellant's representative (he only became a director of the Appellant over 12 years later, on 12 October 2015).

37. Thereafter, nearly all communication between the Appellant and HMRC was conducted by Mr Kainth. He chased the repayment claim in the 05/03 return persistently.

38. On 25 June 2003 HMRC wrote to Mr Kainth at the Appellant, informing him that the repayment claim had been suspended pending verification. It had been established that in respect of some of the Appellant's purchases, the chain of supply had been traced back to a

hijacked VAT number used without the relevant trader's knowledge, and there had been a third party payment to an overseas account. On 16 July 2003, having made further enquiries, HMRC wrote again. They informed the Appellant that in relation to the Appellant's three zero-rated sales to the EC and Hong Kong, the chain of supply of the goods in question had all been traced back to hijacked VAT numbers and involved overseas third party payments. Further correspondence and telephone calls followed, during which Mr Kainth said that HMRC had "incorrectly stopped me from trading some four and a half years ago using similar tactics".

39. Ultimately the Appellant's repayment claim was paid on a "without prejudice" basis in August 2003.

Subsequent events up to mid 2011

40. The Appellant's volume of supplies reported on its VAT returns then returned to previous levels, until its return for the month of July 2004 was submitted, though in February 2004 HMRC wrote to the Appellant asking for submission of weekly listings of purchases and sales, including details going back to 1 November 2003. Mr Kainth responded to the letter by a telephone call on 16 February 2004, when he said that provision of weekly listings was not practical, due to the numbers of documents involved. He explained that the bulk of the Appellant's purchases were computer components, bought from either Dell or Panasonic and sold within the UK, the last sales to EC customers having been nearly a year previously. There was also discussion about another company Mr Kainth was involved in, R S International Limited, which was considering buying up to 100,000 phones to allow it to on-sell from stock without needing to source phones as and when required. This was followed up with a letter from Mr Kainth on behalf of the Appellant dated 18 February 2004 referring to the request for weekly listings, in which he said "I believe had you known the nature of our business you would not have asked this question. To conform with this request, it would probably take up 3-5 hours per week. However if you are willing to pay for this then I am sure that Turkswood can accommodate the same." At a meeting on 23 February 2004, this was followed up and the meeting note records the following:

> "Also discussed the provision of weekly deal sheets for both Turkswood Ltd and R S International Ltd. Mr Kainth felt this was unnecessary for Turkswood as all of their deals are within the UK, consist of small amounts of computer hardware, the majority of which is bought direct from the manufacturers, usually Dell or Panasonic. I scanned the purchase/sales ledgers provided by tdr and confirmed the purchases and sales were as he described and, at present, accepted that he did not have to complete the weekly sheets as previously suggested."

41. This was confirmed by letter dated 25 February 2004.

42. The July 2004 return comprised a repayment claim of £1,648,302.53. Upon investigation, this repayment claim arose from a reported purchase of airtime from a UK company Mediatel plc with an onward sale to a Turkish company Archnet Internet Co Ltd. Mediatel plc had left their notified principal place of business by the time HMRC sought to verify the transaction with them, and the initial enquiries to establish the identity of the Turkish customer yielded results which HMRC considered dubious. Ultimately, Mr Kainth stated that as the Appellant had not paid Mediatel plc for the supply in question, he was withdrawing the claim for input tax of £1,750,000.26 on the purchase. The Appellant had also reported output tax of £97,551.35 on sales to Mediatel plc in the same period, and as those supplies had also apparently not been paid for the Appellant was permitted to issue a credit note in a later VAT period in respect of them. Subject to that correction, the returns up to period 09/05 disclosed small net liabilities, then the return for 10/05 resulted in a repayment claim of £1,696.94, which resulted in an HMRC check. By this time (indeed in March 2004), the Appellant had notified

HMRC that its principal place of business had moved to Mr Kainth's home address, and the visit took place there on 6 January 2006. Subject to a small adjustment, the repayment claim was verified and allowed. The visit note again records that the Appellant's purchases were mainly from Dell.

43. On 30 January 2006 Avtar Singh Kainth was convicted of assisting another to use the proceeds of criminal conduct. On 27 February 2006 he was sentenced to 54 months' imprisonment, which was reduced on appeal to 48 months. From then until June 2011 there was minimal contact between HMRC and the Appellant. No VAT visits were undertaken during that period. We draw no inferences from these events, beyond regarding them as a potential explanation for the apparent pause of several years in the Appellant's large scale trading activities.

44. The Appellant's returns for the periods from 1 February 2006 to 31 December 2006 disclosed a total of £48,657 in net sales (though £34,053 of that was in one month, April 2006, and there were no sales at all in five of the months). The total of the repayments claimed during the period was £3,633.47 and the total of the net payments shown as due during the period was £3,361.82.

45. The Appellant's returns for the periods from 1 February 2007 to 29 February 2008 disclosed a total of £214 in net sales, and claimed total net repayments of £1,844.65 (12 of the periods showing no sales).

46. On 29 May 2007 HMRC wrote to the Appellant informing it of the extension of the "joint and several liability" provisions to cover various additional types of goods, and of the introduction of the reverse charge provisions from 1 June 2007 in relation to supplies of mobile phones and computer chips.

47. According to its VAT returns, the Appellant then traded very sporadically until levels started to increase in period 10/10, so that from then up to period 04/11 its net sales were £175,652 (all zero rated) with input tax claimed of £39,557.28.

48. For VAT period 05/11, the Appellant reported net purchases of £178,638 (with associated input tax of £35,686.05, all claimed by way of repayment) and sales of £186,807, all by way of zero-rated despatches to EU member states. On 24 May 2011, Mr Kainth wrote to HMRC on the Appellant's notepaper as follows:

> "Our current registration currently stipulates that our Trade Classification is 64200 - Telecommunications.
>
> Whilst we still continue to operate in the telecommunications field we are now taking advantage of business opportunities and starting to trade in many different commodities. We are also pursuing certain business contacts, which will, if the negotiations are successful, lead to trading in non-precious metals on an international basis.
>
> The trade in non-precious metals, if it goes ahead, will be the major source of business for our company in the future.
>
> Will you please advise if we need to change our Trade Classification at this stage."

49. The Appellant's turnover reported in its statutory accounts for the years ended 31 December 2009 and 2010 was £98,746.90 and £91,864 respectively.

Overview of trading from mid-2011 to mid-2014

50. These appeals arise from the Appellant's trading over this period, so a view of how its trade developed helps to put in context the facts of each appeal.

51. From the middle of 2011, the Appellant's reported trading activity picked up sharply, and its statutory accounts for the calendar year 2011 show turnover of £970,980.

52. The reported figures for its VAT returns from period 03/11 to 12/11 were as follows (the shaded lines in the tables below show the periods to which these appeals relate):

Period	Net Sales	Net Purchases	EU acquisitions	EU despatches	Input tax	Output tax	Net VAT liability/ repayment
03/11	8814	9965	0	8764	1930.37	0	-1930.37
04/11	81965	78193	0	81675	15638.66	0	-15,638.66
05/11	186807	178638	0	186807	35686.05	0	-35686.05
06/11	260548	251301	0	257720	50221.07	565.54	-49655.53
07/11	431150	417280	0	359982	82805.22	0	-82805.22
08/11	161090	156588	0	161090	30849.25	0	-30849.25
09/11	0	2324	0	0	57.27	0	-57.27
10/11	75312	76665	0	0	15254	15056	-198.14
11/11	194132	199802	0	0	39523.65	39083.19	-440.46
12/11	146871	217098	69678	0	43407.26	43309.72	-97.54

53. The reported net sales on the VAT returns for ten months of the year therefore total £1,546,689 and there is no explanation in the documents before us of the difference of £575,709 between that and the turnover figure of £970,980 for the whole year in the accounts. The reported net profit for the year was £24,886.

54. The figures reported in the Appellant's VAT returns for the 2012 calendar year were as follows:

Period	Net Sales	Net Purchases	EU acquisitions	EU despatches	Input tax	Output tax	Net VAT liability/ repayment
01/12	455452	365169	178546	195000	72956.62	72931.47	-35.15
02/12	914882	884411	239309	703450	176804.37	176822.60	18.23
03/12	1455377	1377736	386433	956542	275317.28	275538.33	221.05
04/12	3411818	3388408	714940	2707005	677236	676371	864.88
05/12	483981	480051	238571	244445	95970.93	95621.41	-349.52
06/12	3233708	3347357	929	3233604	668302.51	665054.21	-3248.30
07/12	5189281	6020642	912	5189281	1204032.75	1200129.10	-3903.65
08/12	8074941	7972291	0	8074941	1595217.98	1591438.92	-3779.06
09/12	3630140	36212870	0	3625907	722352.70	717713.17	-4639.53

10/12	4730828	4645993	-116500	4707557	929079	884356	-44723.15
11/12	8463921	8424745	10456	2101456	1684854.70	1636210.20	-48644.50
12/12	6927480	7203881	445	6927245	1434810.32	1430098.12	-4712.20

55. The reported sales during 2012 therefore totalled £46,971,809, compared to a turnover reported in the Appellant's statutory accounts for the calendar year 2012 of £63,225,802. No explanation for the difference appears from the documents before us. The reported net profit for the year was £251,248, after deducting £245,207 in respect of what was described as "Trade loan agreement profit share".

56. The figures reported in the Appellant's VAT returns for the 2013 calendar year were as follows:

Period	**Net Sales**	**Net Purchases**	**EU acquisitions**	**EU despatches**	**Input tax**	**Output tax**	**Net VAT liability/ repayment**
01/13	9804465	9343607	0	9804465	1864490.11	1856088.80	-8401.31
02/13	5999104	6821194	535963	1766827	1364118.19	1361970.27	-2147.92
03/13	6321649	4790550	0	542177	958081.86	953124.96	-4956.90
04/13	6733141	7242582	1714289	0	1448484.98	1433997.45	-14487.53
05/13	4963618	5161839	108745	526505	1036177.49	1016305.96	-19871.53
06/13	4404069	4185994	0	3884276	837168.90	831227.08	-5941.82
07/13	9565369	9568269	391552	5878306	1913625.17	1913660.67	35.50
08/13	7207520	7138347	273401	4976470	1427609.94	1427654.01	44.07
09/13	No return submitted for this period – the 10/13 return is stated to cover the two month period from 1 September to 31 October						
10/13	3544612	3654196	138240	3428580	729672.68	702846.43	-26826.25
11/13	2568857	2627787	0	2797561	477412.95	477318.93	-94.02
12/13	3925661	3875177	0	3925846	775043.61	771708.62	-3334.99

57. The reported sales during 2013 therefore totalled £65,038,065, compared to a turnover reported in the Appellant's statutory accounts for the calendar year 2013 of £65,728,531. No explanation for the difference appears from the documents before us. The reported net profit for the year was £278,999, after deducting £187,471 in respect of what was described as "Trade loan agreement profit share".

58. The figures reported in the Appellant's VAT returns for the period from 1 January to 30 June 2014 were as follows:

Period	**Net Sales**	**Net Purchases**	**EU acquisitions**	**EU despatches**	**Input tax**	**Output tax**	**Net VAT liability/ repayment**
01/14	1828485	2230520	0	1461772	446039.53	446495.14	455.61

02/14	2159877	1727030	0	2119542	345378.84	346629.48	1250.64
03/14	7194460	7156867	0	7032040	1430688.85	1432320.15	-1631.30
04/14	4115390	4111836	0	4108800	821792.88	819238	-2554.88
05/14	13265	13649	0	0	2611.61	2903.50	291.89
06/14	2340818	2338288	286317	2039598	467268.86	467005.28	-263.58

59. The reported sales during the first six months of 2014 therefore totalled £34,414,047, compared to a turnover reported in the Appellant's (amended) statutory accounts for the calendar year 2014 of £18,686,457. No explanation for the difference appears from the documents before us. The reported net profit for the year was £8,585, after adding (not deducting) £187,471 in respect of what was described as "Trade loan agreement profit share" – an exact cancellation of the previous year's entry for the same item.

Facts in relation to period 06/11 – appeal reference TC/2014/02268 – purchase of computer hard disk drives and ink cartridges from 3A Distribution Ltd

60. Whilst it is only the 06/11 repayment claim that is under appeal, the 05/11 return was also subject to extended verification and accordingly the facts in relation to the two periods are somewhat intertwined, hence part of the history of the 05/11 verification is also relevant here.

61. In early June 2011, the Appellant electronically submitted its VAT return for period 05/11, claiming a repayment of £35,686.05, being the total input tax incurred in that month. By letter dated 9 June 2011, HMRC informed the Appellant that its 05/11 return had been selected for extended verification. They attempted to contact the Appellant by telephone to arrange an initial meeting, but were not successful. They therefore wrote to the Appellant on 4 July 2011 saying that they intended to visit the Appellant at its principal place of business (Peatling Lodge) on 15 July 2011 at 10 am in relation to that return. The meeting actually took place on 21 July 2011, and Avtar "Taff" Kainth (described as the "manager") and David Taylor (described as the recently appointed "company accountant") attended on behalf of the Appellant. Officers Paul Fisher and Mahomed Nazir attended from HMRC.

62. At that meeting numerous possible future lines of business for the Appellant were mentioned by Mr Kainth and he gave some explanation of the current business. The day after that meeting, he emailed detailed information about the Appellant's trading during May and June 2011, including details of suppliers and customers, copies of invoices and credit notes (for both sales and purchases) for both May and June 2011 and "VAT return information for June". Over time the verification process extended to a number of other accounting periods in 2011, but those are not relevant for present purposes.

63. In the meantime, the Appellant had electronically submitted its VAT return for the period 06/11, claiming a net repayment of £49,655.53. It transpired that this included input VAT claimed of £49,189.37 in respect of the purchase of computer hard drives and printer ink cartridges.

64. In respect of period 06/11, HMRC ultimately established to their satisfaction that the Appellant's purchases of computer hard drives and printer ink cartridges from 3A Distribution Limited ("3A") in five transactions could all be traced back to a defaulting trader, resulting in a VAT loss of more than £49,000 and they notified the Appellant of that fact by letters dated 24 January and (in more detail) 29 March 2012. All the goods were sold by the Appellant to a French company, 2 A à Z s.a.r.l. ("2AaZ") by way of zero-rated despatch. HMRC's analysis

of the transactions by reference to the records obtained by it from the Appellant and various other traders involved in its supply chain showed that the goods involved could be traced back from 3A (the Appellant's supplier) to EDCL UK Limited and then to Banahan Capital Corp Limited ("Banahan"). Banahan had not included its supposed supplies to EDCL UK Limited in its VAT return for the relevant period, indeed all its VAT returns from at least period 04/09 up to 12 December 2011 (the date on which HMRC deregistered it for VAT), including its return for the period covering June 2011, were nil returns. A representative of Banahan claimed that it had never taken part in the deals in question and that some other person must have fraudulently used its VAT number to create fake invoices for the relevant deals. HMRC were satisfied that either Banahan had acted fraudulently in failing to account to HMRC for the VAT it had charged to EDCL UK Limited or some other unknown person had acted fraudulently in a similar way by using Banahan's VAT number on fake invoices. So are we. We are also satisfied that HMRC's tracing of the deals back to Banahan is correct. It follows that we are satisfied that the Appellant's five transactions involving goods which HMRC traced back to Banahan were connected to fraudulent evasion of VAT.

65. One particular quirk of the first of the five sale and purchase transactions undertaken by the Appellant in period 06/11 was as follows. It must be remembered that the goods themselves were never seen by the Appellant, they were apparently transported direct to its customer in France. One would have expected therefore that the accuracy of the purchase and sales documentation would have been extremely important. However, whilst the first invoice and associated packing list addressed to the Appellant by its supplier 3A (dated 28 June 2011) included reference to 652 items described as "Hard Drive SATA 2TB", the Appellant's purchase order of the same date referred to 652 items described as "HD/WD/SATA 2TB Western Digital Serial ATA 1Tb Hard Drive". There was no evidence of this apparent discrepancy in the documentation ever being raised, or even considered, by the Appellant or its supplier 3A. Furthermore, the Appellant's invoice to 2AaZ dated 30 June 2011 referred to 652 "Western Digital Serial ATA 1 Tb hard Drive", which does not appear to have given rise to any query from the Appellant's French customer, even though the Appellant's instructions to its carrier by email on 30 June 2011 (which were copied to 2AaZ) referred to the items in question as "2 Tb" hard drives. Given that the invoice value of these items was £34,556, this oversight appears somewhat odd.

66. Officers Newmarch and Hall of HMRC attended a visit to the Appellant at Peatling Lodge on 20 September 2011. Mr Kainth and David Taylor attended on behalf of the Appellant. HMRC returned the business records which had been provided to them in respect of periods 06/11 and 07/11, though further records had been requested (and not yet supplied) in relation to period 07/11. These records appear to have been supplied at the end of the meeting. Much of the meeting was taken up with a discussion of the Appellant's plans for the future development of its business. They were considering importing clothing from Italy, and cooking products and spices from India. They were also considering "dealing in steel", and contemplating some activity involving gold and diamonds. They were interested in dealing in mobile phone airtime as well, but were actually only still dealing in electronics, where Mr Kainth had a long history.

67. In response to a question from officer Hall as to the checks carried out by the Appellant on new customers and suppliers, Mr Taylor "advised they undertook credit checks, internet research checks as well as Companies House checks." It was stated that they did not visit potential suppliers or customers, and "this point was discussed". DT said this might change, but currently they did not have available manpower for the task. Officer Newmarch produced a copy of Public Notice 726 and referred to the due diligence checks that were listed in it. Mr Taylor asked about "Redhill checks" (by which the validity of VAT numbers in other EU states

could be verified) and was informed they were now carried out through Wigan. Mr Taylor asked about the turnaround time on such checks, and was told the officers would check this.

68. HMRC continued their checks into the chain of supply of goods to the Appellant (in respect of numerous accounting periods, including 06/11) and confirmed by letter dated 24 January 2012 that a tax loss had been established as a result of one VAT defaulter relating to 4 of the Appellant's deals in period 06/11.

69. On 29 March 2012 officer Newmarch wrote to the Appellant, notifying it that all the transactions it had carried out with 3A had been traced back to a defaulting trader.

70. By letter dated 4 July 2012, HMRC asked specific questions about the detail of the transactions involving 3A, to which the Appellant replied by letter dated 10 July 2012 from Mr Kainth. In response to the questions asked, the answers were as follows:

(1) In response to the question "were the goods purchased to order i.e. back to back trading if not please expand on how the actual deals were constructed":

> The goods were purchased for back to back trading. We do not usually trade directly with the end user, but normally with wholesalers and retailers.

(2) In response to the question "the details of any inspections undertaken either by yourself or on your behalf to confirm the integrity of the goods":

> The goods purchased went straight from our supplier to our customer. We did not inspect them ourselves. The goods were inspected and verified by our customer.

(3) In response to the question "please confirm pricing policy. I note this was discussed briefly with officers Fisher and Nazir with regards to mark up expectations but as this appears to be generalised. I require the specific expectations on the deals in 06/11":

> The pricing policy as mentioned to Fisher and Nazir was the policy that we did and do still adopt. Chiefly we aim to sell small quantity high value at low margins, unlike many supermarkets where they generally sell low value at low margins. With low margin selling turnover is all-important as is a quick return on any outlay. For Turkswood the meaning of low margin in relation to the sales to 2 A à Z was in the region of 4% to 5%, depending upon the price negotiating, but certainly we did not want to go below 4%.

(4) In response to the question "how did Turkswood make contact with the supplier 3A Distribution and what due diligence was put in place, please provide copies":

> From my recollection Turkswood did not make the initial contact with 3A Distribution, I believe that they contacted Turkswood. They may have seen some old trade advertisements or seen some old yellow pages entries. For the due diligence documents please refer to the documents that were delivered by me to HMR&C on St Margaret's Way, Leicester. I have a receipt signed by a Mohamed Nazir dated 9 August 2011. I also have a signed document from Mrs Newmarch confirming that the documents were returned to us during her visit on the 20 September 2011.

(5) In response to the question "how did Turkswood make contact with the French company 2 A&Z and what due diligence was put in place, please provide copies":

> From my recollection Turkswood did not make contact with 2 A à Z, I believe that they contacted Turkswood. For the due diligence, see point 4 above.

(6) In response to the question "when did title to the goods pass from your supplier to Turkswood and from Turkswood to the customer? If 'ship on hold' please provide the timings re the movement of goods and money":

> If you care to read the 3A Distribution invoices you will see that title to the goods passed to Turkswood when they were paid for in full. Similarly the title passed to 2 A à Z once they had paid the invoices. The originals of these invoices were delivered to HMR&C on 9 August 2011, see point 4. They were not "ship on hold".

(7) In response to the question "please provide copies of CMR's or other commercial evidence that the goods left the UK":

> Once again I refer you to point 4; the originals of the documents that you are requesting copies of were delivered to HMR&C on 9 August 2011.

71. The detail of the contact between the Appellant and HMRC for the 18 month period following July 2012 was not clear in the bundles before us. It is clear however that HMRC wished to deal with Mr Taylor (the director of the Appellant) rather than Mr Kainth and this caused some friction. Essentially however it is clear that HMRC were investigating the position in relation to the traders involved in the Appellant's chain of supply and also its EU customer, as well as evaluating the evidence as to the Appellant's knowledge (or means of knowledge) of a connection to fraud with its trading.

72. By letter dated 21 January 2014 HMRC informed the Appellant of their decision to deny deduction of the input tax for period 06/11 totalling £49,189.37 which is the subject of appeal TC/2014/02268. This decision was confirmed, following a statutory review, in a letter from HMRC dated 4 April 2014.

73. In the original denial letter dated 21 January 2014, HMRC expressed themselves satisfied both that there was a connection between the Appellant's purchases and fraudulent evasion of VAT and that the Appellant knew or should have known of such connection. They cited the following features of the trades as having been taken into account in reaching their decision:

- That all the transactions in that period have been traced back to tax losses
- All the transactions are back-to-back, no contracts/terms and conditions,
- There is no evidence of insurance or goods inspection by the company or third party,
- The freight forwarding company used was a new company with few credentials and a missing trader
- Poor export evidence
- Turkswood have a general awareness of VAT fraud from warning letters issued by HMRC *[Various letters, emails, visits and telephone calls were listed, largely dating back to 2003 & 2004, with one reference to the 29 May 2007 letter referred to at 46 above.]*

74. In their statutory review letter dated 4 April 2014, HMRC provided a little more detail of the basis upon which it was asserted that the Appellant knew or should have known of the connection to fraudulent evasion of VAT, apart from an assertion that the Appellant had a general awareness of VAT fraud on the basis of the earlier contacts set out in the 21 January 2014 letter:

> The transactions undertaken were on a back to back basis in that they were made on the same day and the supply chain has the same companies in the same role. You matched your customer's needs with your supplier's stock on hand and you were never left with stock that hadn't sold. There is no evidence that you or any other party in the chain were or had dealt with the manufacturer of the goods, authorised distributor or recognised retail trader. There is no evidence of any contracts between suppliers and customers nor is there any evidence of insurance to cover loss of or damage to the goods. Mark-up on the goods was uniform within the chain regardless of the type, value or quantity of the goods. You always made a substantial gain despite adding no value. The export evidence provided is poor. All these factors would indicate contrivance.
>
> You were advised to undertake due diligence prior to undertaking transactions. Prior to undertaking the transactions relating to this. You checked the VAT numbers using the Europa site and exchanged VAT certificates to establish the credibility and legitimacy of customers and suppliers. There is no evidence that third-party checks and reports were carried out to confirm your suppliers and customers were credible, solvent businesses that would honour their trading commitments. This evidences a lack of meaningful due diligence on your part.

75. Prior to conducting business with 2AaZ, the Appellant's due diligence appears to have consisted of the receipt (unsolicited, as far as can be ascertained) from 2AaZ of a generic letter of self-introduction (with bank account details attached) which expressed an interest in various products, an online VAT number check dated 14 June 2011 showing that the VAT number given by 2AaZ was a valid French VAT number (but without confirming that it belonged to 2AaZ) and a one-page listing of French companies with "2AAZ" as part of their name, which included 2AaZ but gave a different address from that included in the letter of self-introduction. The letter of self-introduction listed a number of products that 2AaZ was "currently working with", but there was no mention of ink cartridges, which formed the majority of the products actually sold to 2AaZ. The only other document obtained by the Appellant which provided detailed information about 2AaZ was a Creditsafe company report dated 4 August 2011 (some weeks after the deals in question, all of which took place on 30 June 2011) which showed a recommended credit limit of £0. There was a single Director, said to be a Raymond Burling, born in London on 4 April 1949.

76. In relation to the Appellant's supplier 3A, the Appellant's due diligence appears to have consisted of the receipt of a generic letter of self-introduction (with bank account details attached and again, so far as can be ascertained, unsolicited) and copies of 3A's VAT registration certificate and certificate of incorporation. 3A described itself as "one of the UK's largest distributors of hardware and software solutions", again making no reference to ink cartridges. It stated that it carried out checks on all its customers "in accordance to HMCE guidelines" (HMCE had been merged into HMRC over six years before). The only other document obtained by the Appellant which provided detailed information about 3A was a Creditsafe company report dated 8 August 2011 (some weeks after the deals in question, all of which took place on 28 and 30 June 2011) which showed a recommended credit limit of £10,500. It also showed that 3A's turnover had fallen from over £25 million in the year to 31 March 2006 to less than £10 million the following year, £5 million the year after that, £1.2 million and then below £1 million in the year ended 31 March 2010. The total net profit for the same years had been £67,000, £18,022, £262, £9,013 and £3,470. There is no evidence that the Appellant carried out any independent check of 3A's VAT number until 30 January 2012.

77. The evidence of removal of the relevant goods from the UK was poor. Invoices headed "Express Freight" (apparently a trading name for a "Mick Tanna"), with an address of

"Maisonette 2, 21 Watkin Road, Leicester" appear to refer to a number of deliveries supposedly made to 2AaZ. From the partly filled out CMR forms and other documents, it is impossible to tell what good are supposed to have been transported when. There is a copy of an email from Mr Kainth to Express Freight dated 30 June 2011 which lists the goods involved in appeal TC/2014/02268, gives the address of 2AaZ in France and states "Hi Mate as per my earlier email, pleas deliver the goods that you have collected to the company bellow: you have already delivered there before" (though no explanation was provided to us as to why this might have been the case, given that this was the first deal the Appellant had done with 2AaZ). This email was copied to 2AaZ and on 7 July 2011 there is an email response from them to "Mr Taff" as follows: "We have confirmed the below stock delivered to our premises, all correct."

78. There is no evidence that the Appellant insured any of the goods, or arranged for any kind of inspection of them.

79. The evidence of payment (either by the Appellant to 3A or by 2AaZ to the Appellant) is vague. The total amount due to the Appellant from 2AaZ was £257,719.75. It received £22,768 on 27 July 2011 and a further £27,906 on 20 September 2011. There is no evidence it ever received the balance of well over £200,000. In an email to 2AaZ dated 20 September 2011, Mr Kainth chased payment of the balance and said that the Appellant's suppliers were now chasing it for payment, though he also said that the Appellant had "paid our suppliers every time you have promised a payment to us (That never came)". This email does not appear to have received a reply. On 26 March 2013 Mr Kainth sent an email to 2AaZ, saying he believed they had dealt direct with the Appellant's suppliers and asking for details. 2AaZ replied the same day, saying they had "dealt with your suppliers as we had their details on the delivery reports, and the matter is closed. We have contacted your offices several times and found you to be very arrogant and rude. We wish not to deal with your company any more."

80. There were various other communications suggesting payment might have been made direct by 2AaZ to the Appellant's suppliers, but these do not appear to relate to the transactions involved in period 06/11 the subject of these appeals.

81. There is also mention of the fact that the Appellant had unilaterally cancelled some transactions with 2AaZ in periods 07/11, 08/11 and 01/12, but the precise circumstances are not clear from the papers before us.

82. The Appellant's invoices to 2AaZ were all endorsed with the wording "Goods remain the property of SHARETIME ITC until paid for in full. Payment terms are strictly net, Unless agreed. E& OE. SHARTIME ITC is a trading name of Turkswood Limited Founded in 1980 company registration No. 1533330". The invoices to the Appellant from 3A included, under "Terms and Conditions", the following: "Goods remain the property of 3A DISTRIBUTION LTD until payment is received in full." Thus the Appellant was purporting to trade on terms that it was able to pass title to the traded goods as soon as payment was received by it, in spite of the fact that it would not itself obtain such title until it had paid its own supplier. Additionally, it was parting with possession of the goods (as was its own supplier) before any payment was made, meaning that its practical ability to enforce its terms of trade and recover the goods if not paid for them was completely undermined.

83. The profit margins made by the Appellant on these transactions are worthy of note. Out of 13 product lines sold across the five separate invoices issued on 30 June 2011, the Appellant made a mark up of between 4.9% and 5.1% on 11 of them. It made a mark up of 4.41% on one, and on sold one item (1000 black ink cartridges at £8.13 per unit) at cost.

84. HMRC submitted a request for assistance to the French tax authorities in relation to 2AaZ on 4 July 2011 because a request had been made to HMRC by another UK trader to validate the VAT number of 2AaZ. Full background details were requested. On 28 September 2011, a

further request was sent, by reference to HMRC's interest in the Appellant's possible involvement in MTIC activity, seeking information in particular concerning deals in the periods 05/11, 06/11 and 07/11. It appears that copies of sales invoices from the Appellant to 2AaZ were supplied to the French authorities, which they said "partially confirms the information cross-checked on our VIES database". The full details of the various exchanges with the French authorities are not clear, but on 18 March 2014 a communication was received from them in which they indicated that 2AaZ had not co-operated with their tax audit, as a result of which they had assessed 2AaZ for French VAT on the onward sale of the goods which they assumed to have taken place and had also lodged a complaint for VAT fraud against 2AaZ and its directors.

85. At the conclusion of their enquiries, HMRC issued their letters dated 21 January 2014 and 4 April 2014 referred to above, confirming the denial of input tax of £49,189.37 claimed on the purchases from 3A.

86. On the basis of the above facts, we are satisfied on a balance of probabilities that the Appellant's purchases from 3A were connected to VAT fraud and that even if the Appellant did not know of that connection (and we strongly suspect it did), the circumstances surrounding its transactions were such that it should have known of it.

Facts relating to periods 10/12 and 11/12 – appeal ref TC/2015/07093 – purchases of airtime from Waldon Comms Ltd

87. As mentioned at [54] above, the Appellant's VAT returns for the periods 10/12 and 11/12 resulted in repayment claims of £44,723.15 and £48,644.50 respectively.

88. In respect of period 10/12, the Appellant claimed input VAT of £23,081.62 in respect of the three transactions which are the subject of this appeal. In respect of period 11/12, it claimed input VAT of £38,429.07 in respect of the four transactions which are the subject of this appeal. Other issues also arose in respect of these two VAT accounting periods involving large quantities of sales of mobile phones and other goods to traders in Poland, which are the subject of appeal reference TC/2015/06390 (referred to below).

89. The transactions under consideration in this appeal were the Appellant's purchases of VOIP airtime from a UK company called Waldon Comms Limited ("Waldon") and their onward sale to an entity called Fox Telecom LLC ("Fox") in the USA. The sales and purchases were denominated in US$, but after conversion to GBP, the total amounts invoiced for this airtime to the Appellant (exclusive of VAT) were £115,408.10 (in period 10/12, over three invoices dated 22 and 30 October 2012) and £192,145.35 (in period 11/12, over four invoices dated 19, 22, 26 and 30 November 2012).

90. The Appellant had previously dealt in airtime in VAT periods 07/04, 10/11, 11/11 and 12/11. In the 07/04 deal (see [42] above) the Appellant dealt directly with a missing trader. As no payment was made to this supplier the input tax was denied with Mr Kainth's agreement. In the 11 deals in 2011, the Appellant purchased from a company called Paramount Solutions Limited and sold to CK Connect UK Limited. In all 11 deals, the Appellant was notified in January 2012 that its purchases traced back to tax losses. The Appellant was therefore clearly aware of the risk of missing trader fraud in airtime transactions.

91. The genesis of the transactions in October and November 2012 which are the subject of appeal TC/2015/07093 appears to have been an unsolicited email from one Imogen Hudson at Waldon on 3 September 2012 in the following terms:

> Hello,
>
> Greetings from Waldon Comms Ltd.

> We would like to offer you Zimb Econet termination at $0.35.
>
> This is a high performing root with 45% and over 5 mins acd.
>
> Please confirm you can use this route and indicate and traffic volumes.
>
> Kind Regards,
>
> Imogen Hudson

92. Mr Kainth responded by email on the same day as follows:

> Dear Imogen
>
> Thanks for the offer, but first we need to a little more about your company. So can you please forward us your company documents, together with a letter of introduction.
>
> We are always looking for Routes.
>
> And for completeness please find attached our company details
>
> Regards
>
> Taff Kainth

93. On 5 September 2012, the following email was received from Waldon Comms:

> Hello Taff,
>
> Our Welcome pack is attached, many thanks for your email. I will shortly send you over some more rates and targets.
>
> Regards

94. Attached to this email was an undated one page letter from Waldon, a copy of its certificate of incorporation (showing that it had been incorporated on 17 July 2012) and a copy of its VAT registration certificate, showing that it had been registered on 20 July 2012 with effect from 17 July 2012. Its Trade Classification was shown as "Business & Domestic Software Development". The introductory letter started by saying that "Waldon Comms has evolved to be one of the world's leading independent specialists within the sector of fixed line to mobile call termination", a somewhat startling claim for a company incorporated just two months earlier. There does not appear to have been any further contact between the Appellant and Waldon until 19 September 2012.

95. In the meantime, however, the Appellant received an unsolicited email from Kevin Campbell at Fox Telecoms dated 12 September 2012 which said this:

> Hello,
>
> I would like to introduce myself as CEO of Fox Telecoms based in the USA.
>
> We have huge volumes of traffic can you offers us A-Z Termination?
>
> Best Regards,
>
> Kevin

96. Mr Kainth responded by email some seven minutes later, as follows:

> Dear Kevin
>
> Thank you for your e-mail, I assume you found our information from the website.
>
> Can you please forward your full company details.
>
> Please find our details attached.

> And to answer your question, yes we can accommodate your request, but first we have to have your company details so as to progress due diligence on you company.
>
> Regards

97. Within a further 15 minutes, Mr Campbell had replied as follows:

> Hello Mr Kainth,
>
> I have attached our Welcome pack for your DD.
>
> Once you've had a look over at documents we can progress further.
>
> Thanks,
>
> Kevin

98. The "welcome pack" appears to have comprised a single page with extremely limited information. Mr Kainth queried this and was provided with a website address, telephone and fax number the following day.

99. Then, on 19 September 2012 at 10:06, the Appellant received the following email from Kevin Campbell at Fox:

> Hello Partner,
>
> Purchase Order attached,
>
> Kind Regards,
>
> Kevin

100. No copy of the purchase order referred to appeared in the documents before us. However, at 11:41 on the same day Mr Kainth replied by email as follows:

> Dear Kevin
>
> Please find attached an NCA[2] to be signed by your Director.
>
> We Note that you are an LLC therefore we require your company registration documents, this is a requirement by UK Customs authority.
>
> I also note that your PO is in GB Pounds is this correct? Or should it be in US$?
>
> As soon as I have your information back, we can then let you start testing/running traffic.
>
> We will require payment from you before any testing can commence.
>
> Please ensure that the NCA is scanned in colour before you send it back.
>
> Regards

101. On the same day (19 September) at 12:09, Mr Kainth emailed Waldon as follows:

> Dear Imogen
>
> Please find attached the NCA document. Please sign and send back, (must be scanned in colour), without this we cannot proceed to testing
>
> I also have a requirement for Zimbabwe, (This is for immediate testing and termination)

[2] This refers to a Confidentiality Agreement under which the parties agreed, broadly, to safeguard and not abuse "confidential information", which was very broadly defined.

> Can you please provide me with the Rates, your terms of payment and your testing procedure so that we can get our customer to start testing, to check the quality of the routes.
>
> Regards

102. On 24 September 2012 the Appellant received emails from Fox (timed at 14:31) and from Waldon (timed at 14:42). Both returned the signed NCA. Fox also attached some LLC registration documents and confirmed it had sent a purchase order in Sterling; Waldon asked whether the Appellant could "work with $0.30? We will pre-pay". Mr Kainth emailed back a few minutes later, pointing out that the Appellant was proposing to buy, not sell, and asking which Waldon was proposing to do. Approximately an hour and a half later, the following reply was received:

> Hello Taff,
>
> Apologies for that it's been a long weekend, we will accept pre-pay for Zimb at $0.30

103. The following day (25 September 2012), Mr Kainth replied by email as follows:

> Thanks for the offer, but as you are such a new company we can not do any prepayments, this may change after we receive your testing procedures.

104. Two days later, on 27 September 2012, Mr Kainth received the following response:

> Hello Taff,
>
> We understand your point of view as we are a new company. Please start testing the routes and we can negotiate afterwards.
>
> Thanks
>
> Imogen

105. By email on 28 September 2012, Mr Kainth asked for the necessary information to enable the Appellant to start testing. IP details were provided by Waldon a few hours later on the same day.

106. Mr Kainth then forwarded the entire email chain, incorporating the necessary details for testing, to Mr Campbell at Fox approximately 90 minutes later, asking him to contact Waldon direct if he had any problems. In doing so, he of course disclosed the identity and contact details of his supplier to his customer. In a situation where the Appellant was adding no value to the services which it was providing to its customer, and where both of them had introduced themselves to the Appellant unsolicited within the previous month, this course of action appears somewhat surprising, notwithstanding the terms of the NCA.

107. On 1 October 2012, Mr Kainth received an email from Mr Campbell at Fox saying that the testing had gone well, the routes looked very good and he was hoping this would be "the beginning of some fruitful long-term business". Mr Kainth emailed back to ask whether Fox had "run any traffic over the weekend?" To which Mr Campbell replied later the same day as follows:

> Hello Taff,
>
> The Vertecto Project has now been set up, we will start sending you traffic once we have sent payment over our project.
>
> Thanks,
>
> Kevin

108. In the meantime, on 26 September 2012, the Appellant had checked Waldon's VAT number through the European Commission VIES website.

109. The "Vertecto Project" referred to by Mr Campbell was explained to us as an "alternative banking platform", through which a number of payments and receipts were subsequently passed in relation to the dealings between Waldon, Fox and the Appellant.

110. Apart from the invoices issued to the Appellant by Waldon (on 22 and 30 October, 19, 22, 26 and 30 November 2012) and those issued by the Appellant to Fox (on 24 and 30 October, 19, 22, 26 and 30 November 2012), there was no evidence before us of any supplies of airtime having actually taken place between Waldon, the Appellant and Fox.

111. Unfortunately the copies of the spreadsheet in our bundles showing payments and receipts through the Vertecto platform were incomplete and we were not able to make sense of them. What is apparent, however, is that the Appellant only received an aggregate sum of $287,268.69 from Fox, compared with a total invoice value of supplies to Fox of $506,188.34. Further, it only paid $310,251.62 to Waldon out of the $594,281.66 invoiced to it by Waldon.

112. In relation to this issue, a letter dated 23 January 2014 from the Appellant to HMRC included the following paragraph:

> Whilst we still believe that our repayment claims for Waldon Comms in October 2012 are perfectly valid, we have decided that as our customer, Fox Telecom, has not paid for certain sales and we have not paid in full certain supply invoices from Waldon Comms Ltd, we will apply purchase credits to those unpaid parts of invoices that we received from Waldon Comms Ltd in November 2012 and similarly apply sales credits to those unpaid parts of our sales invoices to Fox Telecom.

113. There was no evidence before us of any attempt made by the Appellant to recover the significant outstanding sums due to it from Fox, nor of any attempt made by Waldon to recover the significant amounts owed to it by the Appellant. Nor was there any evidence of negotiations with the Appellant's counterparties on the matter or explanation as to why, purely because the Appellant had not been paid by its customer, it felt justified in withholding payment from its supposedly entirely unconnected supplier.

114. There was no evidence before us of any independent due diligence being undertaken by the Appellant to establish the substance, trustworthiness or financial standing of Fox. So far as Waldon is concerned, the Appellant obtained a Creditsafe report on 5 September 2012, which gave a £500 recommended credit limit, and made no mention of an Imogen Hudson.

115. Coincidentally, whilst the initial contacts between the Appellant and Waldon were underway, HMRC made a first VAT visit to Waldon at its principal place of business (a room rented within a chiropractor clinic near Worthing) on 14 September 2012. The visit had been prompted because Waldon was newly incorporated and newly VAT registered and another suspected MTIC trader had contacted HMRC to verify its VAT number. They met a person who identified himself as Paul Hodge (named as a director on the Companies House records), though he was unable to produce personal identification and one of the visiting officers believed he heard him refer to himself as Mark Thompson when telephoning Waldon's accountants. Mr Hodge explained that Waldon purchased its airtime from TATA Communications. Much later, when HMRC were carrying out their checks in relation to these transactions, they told the Appellant that they had not yet completed their work on tracing back the chain of supply past Waldon. Mr Taylor of the Appellant then contacted Waldon and obtained from them a copy of a supposed invoice from TATA. This invoice was dated 31 October 2012, gave no corporate name (beyond "Tata Communications") or registration number (just a VAT number and a statement "Payment via Akirix Escrow", the amount

($142,880.54 plus VAT of $28,576.11), invoice number and address details. The product description was simply "A/Z Wholesale Traffic Termination". It was subsequently established that TATA had not issued this invoice by contacting them and sending them a copy of the invoice, which they confirmed was not issued by them.

116. Waldon itself did not render any VAT returns for any period. It therefore made no return of the VAT which it invoiced to the Appellant, nor did it account for that VAT to HMRC. We are satisfied therefore that Waldon (or an individual operating through it) carried out VAT fraud and the Appellant's purchases from Waldon were clearly connected with that fraud.

117. HMRC wrote to the Appellant on 12 November 2012 and 2 January 2013 confirming that its VAT returns for periods 10/12 and 11/12 had been selected for verification. Ultimately, by letter dated 13 October 2015 HMRC confirmed it was denying the input tax claimed in respect of the invoices from Waldon. This was confirmed by letter dated 26 November 2015 following a statutory review.

118. On the basis of the above facts, we are satisfied on a balance of probabilities that the Appellant's purchases from Waldon were connected to VAT fraud and that even if the Appellant did not know of that connection (and we strongly suspect that it did), the circumstances surrounding its transactions were such that it should have known of it.

Facts relating to period 10/13 – appeal reference TC/2016/01295 – purchase of copper cathode from Netcomp Systems Ltd

119. As mentioned at [56] above, the Appellant's VAT return for the period 10/13 contained a repayment claim of £26,826.25.

120. In respect of that period, the Appellant's VAT return reflected a claim for input tax of £20,319.81 in respect of the purchase of some copper cathode from Netcomp Systems Limited ("Netcomp") which it had subsequently sold on to Intertrade Global Limited ("Intertrade"). Both Netcomp and Intertrade were in the UK. The purchase invoice from Netcomp was dated 7 October 2013 and whilst the Appellant's original sales invoice to Intertrade was dated 8 October 2013, that invoice was cancelled and replaced by a new (slightly amended) invoice dated 16 October 2013. It is HMRC's denial of the input tax on the Netcomp invoice dated 7 October 2013 that is the subject of this appeal. There were other similar trades during the 10/13 period (and earlier periods), but whilst we touch on some of those below by way of background, they are not in issue in the present proceedings.

Appellant's dealings with Intertrade

121. The Appellant's first known contact with its customer Intertrade was when it received an unsolicited enquiry through its website from Intertrade on 15 July 2013 at 13:08 as follows:

> Dear Sirs,
>
> I notice from your web site that you trade in copper, can you please confirm what type of copper products you deal in.
>
> We are currently buying 200 tons of copper cathode, Milberry bright wire & no2 mixed per week
>
> look forward to hearing from you
>
> Regards
>
> David Darley

122. Some 20 minutes later (at 13:27), Carolina Pereira replied by email as follows:

> Hi Dave,
>
> Thank you for your enquiry that has been made throughout website.

> Before we can commence trading, we need to exchange company details as standard procedure and as part of due diligence.
>
> Could you please forward us with your company docs and we will send our company docs by return.
>
> Regards
>
> Carolina Pereira

123. Just over an hour later (at 14:32, still on 15 July 2013), Intertrade sent an email simply stating "Company Docs enclosed", but it is not clear what its attachments were. Just over a further hour later (at 15:38), Intertrade re-sent the same email, to which Carolina Parreira at the Appellant sent an apparently blank email form in reply at 15:46.

124. At 8.15 am on the following day, 16 July 2013, a CreditSafe report on Intertrade was obtained using the login of David Taylor. It showed the company as having a recommended credit limit of £1,500, a sole director (one Joann Stow) and David Darley holding all its £100 issued share capital. It had £5,722 of shareholders funds on its latest filed accounts (to 29 February 2012).

125. It appears that the Appellant then sold various large quantities of copper cathode to Intertrade, starting on that day, 16 July 2013, as referred to below.

DMS appears

126. It appears that the Appellant's initial supplier in respect of the goods sold to Intertrade was also a very recently acquired contact. In the bundles before us was an email dated 15 July 2013 (timed at 17:38, just four and a half hours after the initial approach from Intertrade) from a Wasim Butt at DMS Traders Limited ("DMS") attaching "our company profile as requested", to which Mr Kainth responded by email on 16 July 2013 at 07:21 as follows:

> Dear Mr Butt
>
> Please find attached our company details, I am sure that by now you would have looked at our website.
>
> We have clients that are constantly looking to buy and sell ALL commodities, Currently we are looking to fulfil orders for Copper cathode.
>
> Regards
>
> Taff Kainth

127. At 08:10 on the same day (16 July 2013), the Appellant obtained a CreditSafe report on DMS, which gave no credit rating, and showed that Mr W K Butt had left the board on 1 July 2013.

128. On 16 July 2013 at 08:15, the Appellant obtained a CreditSafe report on Intertrade, suggesting a credit limit of £1,500, with a "contract limit" of £3,000. Nonetheless, at 14:27 on the same day, Mr Kainth emailed Intertrade as follows:

> Hi
>
> We will have stock of 50mt Copper Cathode (LME) HK Brand in stock tomorrow, please confirm to me if this would be of interest to you also please forward me your delivery address for the stock.
>
> Price will be determined on landing
>
> Regards
>
> Taff Kainth

We infer that the Appellant had at some point during the day received an email from DMS offering it this stock, and had accepted the offer. We were not directed to any emails in the bundles before us reflecting this, but it is clear from the documents included in the bundle that the relevant goods were sourced from DMS.

129. Less than half an hour after Mr Kainth had sent his email to Intertrade offering the copper (at 14:53 on 16 July 2013), Intertrade replied as follows:

> Hi Taff
>
> Yes that would be fine price is -190 and fixed on day of delivery.
>
> Delivery address would be
>
> H. Starkey & Sons Ltd
> Unit 82 Owen Road industrial estate
> Owen Road
> Willenhall
> West Midlands
> WV13 2PX
>
> Please deliver in the name of premier Metals Ltd
>
> Many Thanks
>
> Dave

130. On the same day (16 July), the Appellant raised two sales orders to Intertrade in respect of 24,785 and 24,994 (presumably kilograms) of "Copper Cathode" and two purchase orders to DMS in respect of the same amounts of the same commodity.

131. It appears that the two orders were duly delivered the following day – at 09:47 on 17 July 2013, Intertrade emailed the Appellant to say that "one trailer has been unloaded and the second will be unloaded shortly". This email went on to say "I will confirm fix and weights a little later". This was followed up by an email at 14:57 on the same day, stating that the "total weight" was 49.753 tonnes, and that the price was £4,359.87 (per tonne), calculated by reference to an "LME rate" in US$ of 6,924, converted to GB£ at a rate of 1.5218, then deducting £190 per tonne. Mr Kainth was not present to explain to us how that precise price per tonne came to be included in the Appellant's sales order apparently issued the previous day.

132. Also on 17 July 2013, DMS issued two invoices to the Appellant (based on the "purchase order" quantities rather than the weights reported by Intertrade, which totalled 26kg less than the order quantities) adding up to £214,895.95 (plus £42,979.19 of VAT, totalling £257,875.16) at a price per tonne of £4,317 (there was no evidence before us as to when and how this price had been agreed) and the Appellant issued two invoices to Intertrade (again based on the "sales order" quantities) adding up to £217,029.97 (plus £43,406) of VAT, totalling £260,435.97) at a price per tonne of £4,359.87 as given by Intertrade that day. Also on the same day, Intertrade paid £260,435.97 into the Appellant's account and the Appellant immediately paid out of the same account on the same day £257,875.13 to DMS's Vantage eTrader account in Hong Kong[3] (the 3p discrepancy was not explained).

133. In short, therefore, within a matter of a few days the Appellant had come into contact with a seller of 50 tonnes of copper by some unknown means, had received an unsolicited approach from a potential buyer who was happy to take delivery of that 50 tonnes of copper, had arranged a back to back purchase and sale, the copper had been delivered by the supplier

[3] Vantage eTrader was described to us as an "alternative banking platform" allowing immediate transfers between account holders

to a destination nominated by the customer (without the Appellant having to be involved at all in any delivery arrangements) and the Appellant had issued and received invoices and had also received and made payment of over £250,000 in settlement of those invoices. It is noteworthy that the Appellant did not make payment on DMS's invoices until it had received payment of its own invoices to Intertrade. It incurred no transport or insurance costs, never took delivery of the copper itself and had no contractual terms of dealing with either of its counterparties beyond the statement on its sales order (repeated on its invoices) that "Goods remain the property of Sharetime ITC until paid for in full. Payment terms are strictly net, unless agreed. E&OE." It was explained that "Sharetime ITC" was a trading name of the Appellant.

134. Ten similar transactions took place between the same parties during July 2013, and a further two in early August 2013.

Netcomp appears

135. The Appellant's first contact with Netcomp was when it received an email from Saleem Ramzan at Netcomp on 6 August 2013 at 14:19, reading as follows:

> Hi,
>
> I came across your site and would like to introduce our Company, with a view to Supply and Purchase certain products.
>
> I would most appreciate if you could get in touch with me on my email or telephone to further any exchange of details and information.
>
> My email is ncsltd@europe.com.
>
> My contact number is *[mobile phone number given]*.
>
> I look forward to your contact.

136. Some 40 minutes later (at 14:55), Mr Kainth emailed back to Netcomp as follows:

> Dear Saleem
>
> Please find attached our company details, please send your by return and let us know what you trade in.
>
> Regards
>
> Taff Kainth

137. With this email, Mr Kainth sent copies of the Appellant's VAT registration certificate, of its certificate of incorporation and its memorandum and articles of association. He also sent two documents described as "Turkswood Certificate of Good Standing" and "Turkswood Signed Profile", but we were not directed to any copy of any of these documents in the bundle before us.

138. Within an hour (at 15:50), Mr Ramzan emailed back as follows:

> Hi Taff,
>
> Thank you for your email.
>
> Please find attached our Company Profile with Company docs & Bank details.
>
> I would further like to offer you some stock that will be available to us for tomorrow.
>
> **Stock details:**
>
> Product: COPPER CATHODES LME GRADE, HK
>
> Weight: 50MT

please advice as to your requirements and delivery instructions.

On a separate matter, our main email address which is info@netcompsystemsltd.co.uk is unavailable for the next 24 hrs, after which we will be able to continue to use.

Also, other than myself, all communique will be also with our Sales Manager, Mr Mark Ashley.

We hope to hear from you at your earliest.

Kind regards

Mr Saleem Ramzan

(Director)

139. The attached "bank details" gave details of two bank accounts, one with HSBC in Sheffield and the other entitled "HSBC Hong Kong" referring to an account in the name of "Vantage etrader Ltd" but with "Ref: Netcomp Systems Limited" at the end. The "company profile" attached to this email read as follows:

Business Introduction

Thank you for the opportunity and privilege to introduce the services offered by Netcom Systems Ltd.

We are a 9 Year old Company and still growing. Having started in the Computer Industry we are now trading in a wide-ranging products.

Further, we are expanding, having taken new premises to cater for the ever-growing supply of new and alternative products.

Our areas of expertise are to source, broker, supply, and distribute global products.

We aim to create competitive deals in our global market; and with this I look forward to hearing from you to establish a strong and prosperous business relationship.

If you have any questions please feel free to contact me.

Kind regards

Saleem Ramzan

Director

140. The Appellant carried out a credit check with CreditSafe at 16:08, which gave a recommended credit limit of £5,000 (with a "contract limit" of £10,000).

141. Ms Carolina Pereira from the Appellant emailed Netcomp back at 16:15 as follows:

Hi Saleem,

Product: COPPER CATHODES LME GRADE HK

Weight: 50MT

We will take this stock. Delivery address is as follows:

Turkswood Ltd t/a Sharetime ITC
c/o Starkey & Sons Ltd
Unit 82 Owen Road Industrial Est
Owen Rd
Willenhall
West Midlands

> WV13 2PX
>
> Please confirm that you will be able to deliver at the above address.
>
> Please forward us with your pro-forma invoice and terms of trade.
>
> Regards
>
> Carolina Pereira

142. Thus, within two hours of receiving an unsolicited approach from an unknown third party, the Appellant had agreed to buy from it a large quantity (presumably 50 metric tonnes) of copper on unknown terms and for an unknown price. Furthermore, this new supplier used the same banking platform in Hong Kong as DMS, the Appellant's previous supplier.

143. There is no evidence that there was any further contact between the Appellant and its previous supplier DMS once Netcomp came onto the scene. It appears that DMS ceased all activity in August, submitting an online VAT return up to cessation of business on 20 August 2013 showing no supplies made by it during that period.[4] In effect, Netcomp had simply taken over the previous role of DMS and the supplies of copper by the Appellant to Intertrade, now sourced from Netcomp, continued as before.

The disputed transaction

144. The detail of the trading thereafter between Netcomp, the Appellant and Intertrade is unclear. There were two deals involving them on 7 August 2013 and a further two deals on 9 August 2013. Thereafter things appear to have gone silent until 23 September 2013, when Mr Kainth emailed Mr Ramzan at Netcomp as follows:

> Hi Sal
>
> Hope you are well, do you have any Copper cathodes for sale, we are looking for some 300MT per week, But will be transferring the trading to our other company.
>
> I am attaching details of the other company.
>
> Let me know what you can provide
>
> Regards
>
> Taff Kainth

145. It is not clear what "other company" was being referred to, nor was there any indication in the evidence before us as to why the Appellant had a sudden wish to acquire such large quantities of copper. In any event, Netcomp responded on 27 September 2013 at 15:14 by email, as follows:

> Hi Taff,
>
> I am able to offer 24MT of Copper Cathode LME Stock to you for next week.
>
> I will be in touch with you with further confirmation.
>
> Hope this is suitable to your requirements.
>
> Kind regards

146. Ms Pereira responded by email within an hour, saying "We will take this stock and advise you of the delivery address". On 1 October 2013, Netcomp emailed back, as follows:

---

[4] DMS subsequently submitted a letter to HMRC dated 1 November 2013, in which it said that the nil return had been submitted "in error" and it included some details of its supplies to the Appellant. Over its period of dealing with the Appellant, however, it had made all its purchases from a company called "Mr Rubbish Limited", which itself made no return of any such supplies to HMRC.

> Good morning Carolina,
>
> We are able to offer you 50MT Copper Cathode LME Stock for this week.
>
> Let me know if this is of interest.

147. By way of reply, Mr Kainth emailed back on 7 October 2013 at 12:15 as follows:

> Hi Sal
>
> Can you please confirm that a delivery will be made today.
>
> Regards

148. On the same day, at 13:10, Ms Pereira emailed back as follows:

> Hi Sal,
>
> Please forward us with the total weight, bundle numbers and trailer number for the 1st load of Copper Cathodes that has been delivered today.
>
> We also await your Sales Order to be able to send our Purchase Order by return.

Nothing appears on the face of the correspondence to indicate the address to which the goods were supposed to be delivered, but whatever that address was, the copper seems to have arrived safely. Neither is there anything in the documents before us to demonstrate any contact between the Appellant and its apparent customer for the goods, Intertrade, by way of enquiry or offer for the goods, agreement of quantities, delivery date or location, price or indeed any other aspect of the transaction.

149. Just after this email was sent, Intertrade emailed the Appellant at 13:18 giving some details of the load that had been delivered. 9 bundles, totalling 24.02 tonnes, were listed, though a total weight of 24.04 tonnes was given. Within the hour, Netcomp emailed the Appellant at 14:17 to say that the total weight of the delivery was 24.019MT and that a sales order would be forwarded shortly.

150. Netcomp appear to have issued two invoices numbered TWL 2900 dated 7 October 2013 to the Appellant in respect of this transaction, identical in all respects apart from a slightly different description of the goods ("LME Copper Cathodes HK Brand" on one invoice and "9 Bundles of NA ESN Copper" on the other). In each case, the stated unit price (i.e. per tonne) was £4,226.25, the weight was 24,040 kg and the gross value was £121,918.86 (including £20,319.81 of VAT). The Appellant issued an invoice number 10733 dated 8 October 2013 addressed to Intertrade for 24040 kg of "Copper Cathode" at £4.26620 per kg, totalling £123,071.34 (including £20,511.89 of VAT). There is no evidence as to how or when this overall price was agreed.

151. Some extremely poor quality photographs were provided by the Appellant to HMRC, supposedly of the load that arrived on 7 October 2013 and some associated paperwork. The only useful photograph is of a CMR document which supposedly accompanied the load. It referred to "9 Bundles", being "24,037 Kg" of "Brand NA ESN copper cathode", originating from "Mennicken Logistics", giving a partial address which tallied with the address in Germany of a company of that name which had supplied the Appellant in 2012 with metals. The consignee of the load identified on the document was Intertrade and it was signed and dated 7 October 2013. Nowhere on this document was there any reference to Netcomp, which was supposedly the company which was selling this copper to the Appellant; instead it referred only to Intertrade, the Appellant's customer: it would appear that the copper was always intended for Intertrade and the interposition of Netcomp and the Appellant appears to have taken place at the last minute.

152. No payments were made in respect of either the Appellant's sale or its purchase of this copper until 16 October 2013. On 15 October 2013 at 15:55, Saleem Ramzan of Netcomp emailed the Appellant (in an email headed "Invoice TWL 2904"), attaching an "invoice and proforma", but no copy of the attachment appeared in our bundle. Carolina Pereira replied on behalf of the Appellant on the same day at 15:59, asking whether this invoice was "for a new delivery or is it in replacement of inv TWL 2900?". There does not appear to have been any response to this email. The following morning at 11:07 on 16 October 2013, Mr Pereira emailed again, as follows:

> Hi Sal
>
> Please be advised that the confirmed total weight is now 24,050.00kgs
>
> We had to give our customer a substantial discount and hence the buy price is finalised at £4,181.00 per tonne.
>
> Please arrange to send your amended invoice & pro-forma invoice.
>
> Once this is confirmed, we can then proceed to make payments.

153. There does not appear to have been any response to this, however shortly afterwards the Appellant paid £80,663.66 from its HSBC account to the Vantage eTrader account of Netcomp (its payment instruction was timed at 12:04); the next two entries on its bank account for the same day (16 October) were receipts of £41,874.34 and £80,000 from Intertrade, immediately followed by a further payment to Netcomp of £40,000 as the first entry the following day, 17 October 2013 (with the payment instruction timed at 09:07).

154. Clearly the receipts from Intertrade (totalling £121,874.34) did not match the invoice amount on the Appellant's invoice (£123,071.34). There was no documentation in the bundles before us which showed any communication between the Appellant and Intertrade in relation to this difference. However, on 16 October 2013 the Appellant issued a credit note cancelling its original invoice issued on 7 October and on the same day it issued a new invoice to Intertrade for £101,561.95 plus VAT of £20,312.39 (totalling £121,874.34, the amount which it actually received on that day from Intertrade). This invoice was calculated on the basis of 24,050 kg of copper (not, as previously, 24,040 kg) described as "9 bundles of NA ESN Copper" (i.e. the same description as on the CMR referred to above, rather than just "copper cathode" as on the earlier invoice).

155. There is reference to Netcomp having submitted a revised invoice to the Appellant on 15 October 2013, but both versions of the invoice TWL 2900 in the bundle showed the same price and only differed in the detail of the description of the goods, as mentioned above. There was some suggestion that a different invoice TWL2904 might have been issued, but there was no copy in the bundle before us. The amount actually paid by the Appellant to Netcomp (£120,663.66 inclusive of VAT) was the appropriate amount in line with Ms Pereira's email set out at [152] above. On 17 October at 09:36, Ms Pereira emailed Netcomp, attaching "payment confirmation for the sum of £40,000.00 which clears the balance of your invoice. Please forward us the correct invoice." No response appears to have been received.

156. There does not appear to have been any discussion about, or response to, the Appellant's unilateral variation to the price apparently originally agreed with Netcomp. The result of the Appellant's unilateral variation of its purchase price was that it now achieved the 1% profit margin that it had generally made on its historic metal transactions. Notwithstanding the adjustment to the price, the Appellant still reclaimed the full amount of VAT on Netcomp's original sales invoice as input tax.

157. Netcomp's VAT returns had stopped with its return for period 05/10. It did not submit any subsequent VAT returns, so the output VAT of £20,319.81 charged in this transaction was

never accounted for to HMRC. There was no further evidence before us as to the steps (if any) that HMRC had taken to pursue that liability, beyond raising a simple assessment.

158. In a decision letter dated 15 December 2015, HMRC denied input tax of £20,319.00 (rounded down) claimed in respect of the above transaction. By a statutory review letter dated 17 February 2016, this denial was confirmed.

159. On the basis of the above facts, we are satisfied on a balance of probabilities that the Appellant's purchase from Netcomp was connected to VAT fraud perpetrated by Netcomp and that even if the Appellant did not know of that connection (and we strongly suspect that it did), the circumstances surrounding its transactions were such that it should have known of it.

Facts relating to period 06/14 – appeal reference TC/2016/01297 – purchase of airtime from Labeltec Services

160. As mentioned at [58] above, the Appellant's VAT return for the period 06/14 contained input tax of £467,268.86, resulting in an overall repayment claim of £263.58. In the main, the Appellant's trading during period 06/14 consisted of the domestic purchase and then onward sale to customers in the Czech Republic and Bulgaria of iPhone 5S mobile phones.

161. Of the Appellant's total input tax, however, £58,620.38 was attributable to the purchase of VOIP airtime by the Appellant from a UK business identified as "N. Satvilker T/A Labeltec Services" ("Labeltec"). This same airtime was then supplied by way of zero-rated supply to Sands Service & Support Sp Z.o.o ("Sands"), a company registered for VAT in Poland. The Appellant's purchases took place on the basis of two invoices from Labeltec, one dated 26 June 2014 for £123,146.17 plus VAT of £24,629.22 (total £147,775.39) and one dated 30 June 2014 for £169,955.77 plus VAT of £33,991.16 (total £203,946.93).

Events leading up to the relevant transactions

162. The Appellant had previous experience of the problems that could arise from dealing in airtime, not just from the dispute arising in respect of periods 10/12 and 11/12 referred to above, but from previous occasions (see [90] above).

163. On 26 March 2014, HMRC emailed the Appellant following its verification of the VAT registration numbers of three companies, World Wireless Limited, Ecocall UK Limited and The 3P Telephone Company Limited. They asked for information by 1 April 2014 of the exact nature of the Appellant's trade or intended trade with those companies, asked how it had become aware of them as potential trading partners and asked what due diligence the Appellant had carried out on them, beyond checking their VAT numbers with HMRC. They also notified the Appellant that Ecocall UK Limited had been deregistered for VAT on 4 March 2014 (which was followed up by a more detailed notification letter the following day).

164. Mr Kainth replied on behalf of the Appellant by email the same day (26 March 2014), informing HMRC that it intended to trade in "wholesale Minutes of airtime" once their customers and suppliers were happy with all aspects of testing. He said the Appellant had been contacted through its website (though only 3P had "tested our switches"), that the Appellant had only carried out credit checks thus far and no trades had taken place yet as they were still "getting rates etc." He said there had been no trading with Ecocall, nor had they tested any routes or signed any NCA with them. HMRC responded on the same day, asking for precise details of what the Appellant was proposing to do, where the "switches" were located, the name of the company that owned them and the switch capacity. They repeated that trading in "wholesale minutes of airtime" was an area of concern as VAT MTIC frauds were being perpetrated in that market.

165. Mr Kainth responded the following morning, confirming that "we do know what we are doing and we are definitely not involved in any fraud. We have the expertise, we are taking

our time to establish sound business links with major carriers." He went on to give the following details of "our switches":

> Frankfurt
>
> Ancotel/Equinix: Kleyerstrasse 88-90, 60326 Frankfurt am Main
>
> New Telco: Building B, Rebstoecker Str. 25-31, 60326 Frankfurt am Main
>
> Germany: Available interfaces: E1/STM1
>
> Germany: Available interfaces: E1/STM1
>
> New York
>
> Newport Datacenter: 111 Town Square Place, Suite 812, Jersey City, NJ, 07310, USA
>
> USA: Available Interfaces: T1/E1/DS3/STM1/OC3
>
> Owners of the Switch
>
> R&R Telecom
>
> We own the Sip registrars thou.
>
> Considering you do not know too much, you seem to know enough to ask questions about capacity… We have capacity to traffic up to 15 million minutes per month at both sites and easily upgradeable.

166. On 8 April 2014 HMRC wrote to the Appellant, in the light of its expressed intention to trade in wholesale minutes of airtime, warning that they had identified a significant threat of VAT fraud within that trade sector and sought the Appellant's cooperation and assistance by providing weekly listings of its sales and purchases, a sample copy invoice for each supplier trading with the Appellant for the first time from the date of HMRC's letter, including the name of the person or persons with whom the Appellant dealt, their VAT number, their principal place of business and the contact phone and/or fax number used in connection with the supply by the Appellant. They also asked for Call Data Records ("CDRs") on a weekly basis as this was a "fundamental part of your business records as it substantiates the deals recorded on the invoices". On 15 April 2014, Mr Kainth emailed HMRC to confirm that "as and when sales take place in VoIP or Airtime I will let you know, it may not be on a weekly basis but depending on workload, we will endeavour to assist you."

167. In response to a further request by email on 23 April 2014 for weekly confirmation of whether the Appellant had traded at all in energy or airtime, Mr Kainth replied by email on the same day as follows:

> As of yet this year we have not had any business dealings for either Airtime or Energy and I believe that it is most unlikely that we will trade in energy.
>
> I would suggest that we will email you as soon we commence trading in either of these two areas and once we have established trading we will continue to send you emails on a weekly basis. Until that time it would be simpler if you accepted that we have not yet commenced any trading in either field.

168. On 30 April 2014, HMRC wrote again to the Appellant, emphasising the "significant threat of VAT fraud" which HMRC saw in both airtime and energy trading, asking the Appellant to advise them immediately if it formed an intention to trade in either. The letter went on to say this:

> As both trading sectors require a significant undertaking in equipment, contracts, software and due diligence, to assist HMRC in combating these serious frauds, I require you to furnish the information **before any**

> **transactions take place plus a full reply to the questions asked in my letter 08/04/14**.

169. The Appellant does not appear to have responded directly to this letter, but Mr Kainth did respond to subsequent emails on 6 May, 20 May, 27 May, 3 June, 9 June, 16 June and 23 June, in each case in a standard form requesting a "yes/no" answer, as to whether the Appellant had traded in either airtime or energy in the periods of approximately a week specified in each email. His responses were "no", in increasingly large font on each occasion. Finally, in response to an email dated 30 June 2014 requesting details of all airtime/energy deals in the period 23 to 29 June 2014, Mr Kainth responded "YES VoIP Details to follow".

170. The Appellant did not initially reply straightaway to HMRC's email dated 23 June 2014; when they chased for a response by email on 25 June, as well as submitting a "No" response to the 23 June email, Mr Kainth emailed to say that the Appellant hoped to start with VoIP, hopefully that week. They would let HMRC know "as soon as traffic has been transmitted successfully".

171. Within half an hour, HMRC had emailed back as follows:

> Thank you for email re VoIP
>
> Please advice who you are buying from and selling to prior to the transaction taking place or any proposed transactions.
>
> As you are aware there had been issues with both your supplier and your Customer in periods 10 & 11/12
>
> As such I cannot emphasise enough the importance of due diligence.
>
> NB The ongoing fraudulent nature of some VoIP transactions could put any claim to input tax at risk of denial that Turkswood may wish to claim
>
> I attach two letters that have been sent to you previously about HMRC concerns over the nature of VoIP & Energy trading.

172. One hour later (still on 25 June), Mr Kainth replied by email, saying that the Appellant would be purchasing from "Nash Satvilker Labeltec Services" and selling to SANDS Service & Support sp. z o.o. Contact details for both were provided.

Prior contact with Sands

173. From documents obtained by the Polish tax authorities from the Appellant's Polish customer however, it appears that by 20 June 2014 the Appellant had already agreed with Sands that it would supply airtime to it, following some successful testing that had already taken place, starting on that date. The first communication between the Appellant and Sands that appears in the documents before us was an email dated 29 April 2014 from the Appellant to Sands, reading as follows:

> Hi Tomasz
>
> I am glad that you have asked to go into VOIP, I am now more comfortable as you will know how to manage any switching problems that we may have, do you have any routes that you want a price for? Please also let me know what currency you want to be priced in, ie. US$, GBP or Euro.

174. According to information provided by the Polish tax authorities to HMRC, "cooperation" between Sands and the Appellant was "already established in 1998". No further information concerning such cooperation was before us, and Mr Kainth was not available to answer questions about it, though from the terms of the email set out above it is clear there was some historical connection between him and "Tomasz" of Sands. There was evidence in the bundles before us of prior trading between the Appellant and Sands in mobile phones, but as implied

by the above email, this appears to have been the first airtime trading between them and, so far as the Appellant was concerned, the first foray of Sands into such trading.

175. There appears to have been further contact between the Appellant and Sands over the following two months or so, culminating in an exchange of emails on 20 June 2014, in which "Tomasz S" of Sands referred to some successful testing and expressed an interest in "services in the following directions", referring to Bulgaria and the Czech Republic. The successful testing appears to have been in relation to Bulgaria, for which he asked the Appellant to "confirm your rates", and he would "send prepayment as agreed". He went on to say this:

> Please confirm your GBP E-Trader Platform account Number?
>
> As agreed, In the terms Traffic Will start from today, Until 23.59 Hours 25.06.2014. Invoice issued on 26.06.2014. Deduction from prepayment.

176. In response, on the same day (20 June 2014), Mr Kainth emailed the Appellant's Vantage eTrader account number, and confirmed it was in the name "turkswoo".

177. From emails obtained from the Polish tax authorities investigating the Appellant's Polish customer Sands, it appears that Mr Kainth simply dictated the rates which Sands would pay the Appellant. In an email dated 24 June 2014 (more than half way through the first billing period), Mr Kainth emailed Sands as follows:

> Hi Tomasz
>
> I miscalculated the rates sorry. Please let your customer know your new rates
>
> They should be as below
>
> *[There then followed a short table, setting out in five lines the rates which the Appellant intended to charge for the five different Bulgarian mobile phone operators]*

178. This unilateral price variation appears to have met with no response from Sands. The invoices issued by the Appellant to Sands on 26 and 30 June 2014 reflected the revised rates in this email. It is not known whether Sands had any discussions with its own customer, more than half way through the billing period, about a change of prices. However, HMRC obtained through the Polish VAT authorities a copy of the invoice issued by Sands on 11 August 2014 to Numerotech Eood of Bulgaria which matched exactly the totals of minutes by network contained in the Appellant's two invoices to Sands. From that invoice, it appears that Sands made an overall loss of £808.57 on its sales totalling £294,433 (compared with the Appellant's profit of £2,139.63 on its sales of £295,241.57).

Contact with Labeltec

179. According to Mr Kainth, the Appellant was "first approached by Labeltec on the telephone, this was followed up by an email on 11/04/2014". We were not directed to any copy of such an email in the documents before us. He also said (in a letter dated 8 January 2016) that the Appellant had carried out checks on Labeltec, including "a VIES check, site of his VAT Certificate, copy of his driving licence and Creditsafe Report. Mr Satvilker also visited our offices." No records of such checks were included in the documents before us, beyond a VIES validation of Labeltec's VAT number on 14 July 2014, some two weeks after the Appellant's last deal with Labeltec. In contrast, the documents before us contained a copy of a letter sent by HMRC to the Appellant on 13 June 2014 in response to an email from it dated 30 May 2014 (which we did not see), which stated, in respect of Labeltec, that "I am unable to confirm that this is a valid registration", on the basis that "the information provided by you concerning the trader detailed below differs from that held by HMRC". The detail apparently provided gave the correct VAT number for Labeltec, but the name "Nawshadali Satvilker" without any mention of the Labeltec trading name. It appears there was a similar attempt by

the Appellant to verify Labeltec's VAT number by fax or email on 25 June 2014, to which HMRC responded by letter dated 17 July 2014 in similar terms. Thus the Appellant actually dealt with Labeltec (the agreement to deal appears to have been reached in principle by 20 June 2014 and the purchase invoices were dated 26 and 30 June 2014) at a time when it had been informed by HMRC that its VAT number could not be verified.

180. HMRC considered Labeltec to be at risk of MTIC trading, and at a visit on 3 July 2014 (when they met Mr Satvilker) they discussed airtime trading. Mr Satvilker said he was "learning about VOIP and has a customer called Turkswood". He said he had "talked to people in the industry and decided to get involved". He had very little knowledge of VOIP, but said he had spoken to Turkswood "and they themselves had mentioned suppliers". He was buying from a company called Numertecood in Bulgaria and selling to Turkswood. He said he had yet to receive an invoice, but he had already done a deal worth some £143,000 (including VAT). By the day before (2 July 2014), emails were being exchanged between the Appellant and a person at Labeltec, using Mr Satvilker's email account, signing himself "Jonathan Davies – Sales", in which payment from the Appellant for outstanding invoices was being heavily chased. However, at a later meeting with HMRC which took place on or before 11 August 2014, Mr Satvilker initially denied any knowledge of a Jonathan Davies, before saying, when pressed, that he had used him on an "unpaid trial shift" buying and selling airtime, and had not subsequently used his services again. Mr Satvilker said that Mr Davies had originally approached him to offer his services and he had later contacted him to take him up on his offer. At this later meeting, Mr Satvilker also said that he had decided to "switch" supplier from Numerotech to a UK supplier, Airluxe Limited, as a result of which he had "returned" the purchased minutes to Numerotech, which explained the numerous debit and credit entries on his Vantage eTrader account.

181. In any event, by 20 June 2014 it appears that the Appellant had agreed to purchase from Labeltec the airtime that it was proposing to sell to Sands, though there was no evidence in the bundles before us as to any negotiation or correspondence in advance about the terms.

Money movements, invoicing and pricing

182. It is instructive to follow the payment trail for the supplies that were said to have been made in respect of the impugned transactions, which can be seen by reference to documents supplied by Labeltec and (in respect of Sands) the Polish tax authorities, as well as the Appellant's own bank statements for its HSBC account.

183. First, at 22.45 on 20 June 2014, £65,400 was transferred within Vantage eTrader from an account called "Numerote" to the account of Sands, referenced as "DEPOSIT". Approximately two hours later (at 00.56 on 21 June) there was a transfer of £65,229.51 from the Sands account to another Vantage eTrader account called "turkswoo", with reference number 1612110156, referenced "Bulgaria prepayment – deposit". Approximately 40 minutes later there was a further transfer into Labeltec's Vantage eTrader account of £60,000 (referenced as "Deposit Payment") from that same "turkswoo" account, which we infer was an account held by the Appellant[5] (although no details of it were included in our bundle, and we accept the evidence of Mr Bycroft that the Appellant never mentioned it had its own account with Vantage eTrader, and therefore that statements for it were never disclosed to HMRC).

[5] In an email dated 20 June 2014 obtained from the Polish VAT authorities, Mr Kainth had confirmed to Sands that when making payment to the Appellant's "GBP E-Trader Platform account", it should "note that our user name is turkswoo".

184. Then, on 23 June 2014, £15,000 was transferred from the Appellant's HSBC account to Labeltec's Vantage eTrader account (showing as a net credit, presumably after deduction of charges, of £14,993 received at 20.03 on that date).

185. On 26 June 2014, Labeltec issued its first invoice to the Appellant, for £147,775.39 (including VAT) and on 26 June the Appellant issued its first invoice to Sands for £124,063.54 (zero-rated for VAT).

186. On 27 June 2014 at 20.34, two transfers, both from "numerote", were received into the Vantage eTrader account of Sands, for £58,925.73 (referenced as "Final invoice – 20.06.14 till 25.06.14") and for £85,999 (referenced as "DEPOSIT for week 26.06.14 till 30.06.14"). Within four hours (at 00.25 and 00.29 on 28 June), two slightly smaller sums were transferred from the Sands Vantage eTrader account to that of Turkswood. The first was for £58,690.02 (simply referenced "numerote") and the second was for £84,660 (referenced "DEPOSIT for week 26.06.14 till 30.06.14").

187. On 28 June 2014 at 03.19, Labeltec received £147,775.39 into its Vantage eTrader account from "turkswoo", referenced "invoice 62646". We infer this was paid by the Appellant from its Vantage eTrader account, largely using the two payments it had received in the previous three hours. There was no explanation as to why Sands had made two payments, one of them referenced "numerote" and the other by way of deposit against a future invoice, which between them amounted to just £4,425.37 less than the total invoice amount due from the Appellant to Labeltec.

188. Subsequent payment arrangements appear to have been somewhat disrupted by a letter dated 26 June 2014 which HMRC sent to the Appellant. This letter was headed "VAT Fraud Alert: Alternative Banking Platforms" and was stated to act as a "reminder" of a previous communication on the topic in the previous December/January and to "update on new risks". It identified certain "characteristics of an ABP used to further fraud", as follows:

- Generally, although not exclusively, the ABP will be held at a financial institution outside the jurisdiction of the supplier
- The ABP is not regulated by a recognised financial authority
- There is no face to face contact with the ABP personnel, all transactions rely on web facilities
- ABPs ask for limited, if any, information from account holders
- Account holders may not be able to provide personal contact details of ABP personnel
- They may operate outside the SWIFT system and consequently may lack transparency
- Fees may be abnormally high
- Counterparties are required to use the same ABP

189. Clearly the Appellant (obviously correctly) considered this letter to be important and relevant. On 1 July 2014 Ms Pereira emailed "Nash" at Labeltec attaching a copy of the letter and saying the Appellant was reluctant to use an ABP for any future transactions. She requested details of Labeltec's local bank account instead. Mr Satvilker responded at 14:37 on the same day from a slightly different email account, providing details of a Lloyds bank account, but the following day (2 July) at 15:01, Mr Davis, using Mr Satvilker's normal email account, effectively vetoed any proposal to use it, saying this:

> Dear Taff

> Please send £42,645.66 Balance to Vantage E Trader account asap.
>
> As we will have to cancel all traffic otherwise.
>
> Rgds
>
> Sales Jonathan Davies

190. In response to this, it appears the Appellant did two things. It actually transferred £86,946.94, referenced "Final invoice 26.06.14 till 30.06.2014", from its Vantage eTrader account to that of Labeltec on the same day (within 40 minutes after receiving £86,246.03 into that account from Sands under the same reference), ignoring HMRC's warning letter, and it transferred £32,000 from its UK bank account to Labeltec's Vantage eTrader account, which was credited to it the following day, 3 July. In addition, less than 15 minutes after Labeltec's email, at 15:13, Mr Kainth replied as follows:

> Dear Jonathan
>
> We have released a payment of £32,000
>
> Please ensure that the traffic is not cut off, we will send more as soon as possible.
>
> Regards
>
> Lord Avtar Singh Kainth
>
> Business Development Executive

191. Mr Davies replied at 15:28 on the same day from Mr Satvilker's normal email account as follows:

> Hi Taff
>
> Thanks for confirming release of payment.
>
> Please can you ensure all payments are made on time in future.
>
> And Until further Notice Please make all payments to our Vantage Etrader Account.
>
> Rgds
>
> Sales Jonathan Davies

192. This exchange clearly prompted the Appellant to review the state of account between the two companies, resulting in an email the following morning, 3 July 2014, at 08:24, from Mr Kainth to both Labeltec email addresses it held, reviewing the various payments and invoices between Labeltec and the Appellant, which showed a balance due from the Appellant to Labeltec of £9,999.99, stating that a payment of £7,599.99 was being made that day, which would leave a balance of £2,400 outstanding, which Mr Kainth said would be withheld until "FULL data for the two invoiced periods" was provided, as "we cannot reconcile anything with our customers if we do not get this information". In fact, however, the Appellant's bank statements disclose that it made a single payment of £9,999.99 to Labeltec's Vantage eTrader account on 3 July (oddly not quite matching a £10,000 receipt shown into that account on the statements provided by Labeltec).

193. This does not appear to have satisfied Mr Davies at Labeltec, who emailed back on the morning of 3 July, stating that as £10,645 of the payments received had been allocated as a deposit against the amounts that would fall due for the period from 30 June to 7 July 2014, that amount was still outstanding. This was followed up by a further email one hour later, in which Mr Davies said that the previous statement should be disregarded and in fact there was an outstanding amount of exactly £10,000 due on the 30 June invoice, and he asked that it be paid

to Labeltec's Vantage eTrader account. In reply, Mr Kainth confirmed that the £10,000 had been sent, and that "a deposit will be paid as soon as we receive one from our customer, it may be wise to limit the traffic so as not to expose yourself too much". He also asked for confirmation that future payments could be made to Labeltec's UK clearing bank. This confirmation was refused by email on the same day from Mr Davies, saying that Labeltec "only accept payments on to Vantage E Trader, I've emphasises this to you many times. We would need a deposit for today, To keep the traffic Open, Please Advice regarding deposit payment on Vantage E Trader, Account.". Ms Pereira replied (still on 3 July) at 12:06, attaching a copy of the warning letter from HMRC and saying "We cannot risk the company's position where it concerns HMRC. We will not be making any future payments to Vantage eTrader." After one further attempt from Mr Davies to persuade them, this appears to have brought the trading relationship between the Appellant and Labeltec to an end.

194. In spite of the fact that the parties both clearly assumed, during the course of the above exchanges, that Labeltec was still supplying airtime to the Appellant up to at least 3 July, there does not appear to have been any further invoicing (or indeed contact of any sort) in relation to the airtime from 1 to at least 3 July that was being supplied to the Appellant by Labeltec.

195. Thus, in aggregate, the Appellant received payments totalling £294,825.55 in respect of two invoices issued to Sands totalling £295,241.57 and it paid to Labeltec £351,722.33 in respect of the two invoices issued to it by Labeltec totalling £351,722.32. Sands received payments totalling £295,918.13 from "numerote", compared to the invoice amount due of £294,433 (see [178] above). Furthermore, the various payment entries illustrate that the money originated from Numerotec in Bulgaria, flowed largely through Sands, the Appellant and Labeltec and then either back to Numerotec or to another Vantage eTrader account called "kaywinel", which Mr Satvilker had been told was the account for Airluxe Limited, its replacement UK domestic supplier (which we are satisfied was a hijack trader, the actual company of that name with the VAT registration number which appeared on the invoices addressed to Labeltec having no knowledge of any of the transactions concerned, being a carpet and underlay supplier in Cornwall).

196. The Appellant's profit on the two invoices it issued was £917.37, representing a gross margin of 0.745% (on the first) and £1,222.26, representing a gross margin of 0.714% (on the second). There was no evidence of any negotiation of either its purchase or sale prices. In a normal commercial transaction such action would appear highly unusual. Mr Kainth was obviously not present to provide any explanation.

Subsequent denial of input VAT and conclusion

197. On 15 December 2015 HMRC wrote to the Appellant denying it input tax totalling £58,620.39 incurred in its purchase of airtime from Labeltec and raised an associated assessment. The decision was confirmed (with some amendment to correct some errors in the original) in a statutory review letter dated 17 February 2016 (though an amended assessment was also issued, the original assessment seemingly not having been notified to the Appellant).

198. We are satisfied that the purported purchases by the Appellant could be traced back directly to the fraudulent issue to Labeltec of VAT invoices in the name of Airluxe Limited by a person or persons unknown. We therefore find that the Appellant's two purchases from Labeltec were connected to a VAT fraud perpetrated by such person or persons.

199. The question then arises as to whether the Appellant knew or ought to have known of that connection to fraud. We can see no basis upon which, given those of the above facts that were known to it at the time, the Appellant could have regarded these transactions as being normal commercial transactions.

200. In the overall circumstances set out above, it is quite clear to us that the Appellant either knew or ought to have known of the connection to fraud. It had dealt with an individual about whom it knew effectively nothing, whose VAT number had not even been verified to it by HMRC, in connection with a highly specialised field about which that individual clearly knew nothing. Its customer was content to pay it significant deposits in advance of the supposed supplies, which it was required to pass on to its supplier. Its own financial risk was minimal, in that the vast majority of the cash it paid over to its supplier was funded in advance by its customer. The artificiality of the supposed trading is illustrated by the fact that even though the trading relationship was cut off (due to the problems over payment) half way through the third week of trading, there was no evidence of any attempt by the Appellant's customer to obtain any payment for the supplies which had by then already supposedly taken place. In the absence of any due diligence documentation supplied by the Appellant, we are not satisfied that any due diligence was ever carried out on either its customer or its supplier but even if it had been and it had obtained the documents it claimed by way of due diligence, that would make no difference to our view: it is quite clear that Mr Satvilker knew absolutely nothing about VoiP or trading in airtime and this would have been quite apparent to the Appellant.

Facts relating to periods 06/12 to 01/13 - appeal reference TC/2015/06390 – despatch of mobile phones to Polish purchasers

Introduction

201. We deal with this appeal out of sequence from a chronological point of view because its nature is qualitatively different from the other appeals mentioned above. Instead of a more usual "Kittell style" appeal against a denial of input tax, it is an appeal against an assessment for output tax under the principle emerging from the CJEU case of *Mecsek-Gabona*, summarised at [14] to [27] above.

202. This appeal concerns HMRC's assessment of the Appellant to output VAT totalling £4,716,789.12 in respect of sales, purportedly by way of zero-rated despatches, of mobile phones to three companies registered for VAT in Poland. The basis of HMRC's decision was the extension of the classic "Kittell" principle to disallow zero-rating of supplies made by way of intra-EU despatches of goods in a situation where, according to HMRC, the transactions were connected with tax fraud perpetrated in another Member State by the Appellant's immediate customer, the Appellant failed to take any reasonable steps to prevent itself from being involved in that fraud and it knew or should have known that its despatches were connected with that fraud.

Summary of Appellant's EU despatches of mobile phones and iPads from February 2012

203. The Appellant started trading in mobile phones, iPads, computer peripherals, software and games consoles in early 2012. The first period in respect of which HMRC have denied zero-rating is 06/12, but a brief account of the Appellant's trading in such items throughout 2012 is needed in order to provide context.

Invergit - zero-rating not challenged in this appeal

204. In January 2012, the Appellant raised three sales invoices to Invergit Sp. z o.o. ("Invergit"), a company registered for VAT in Poland, for the supply of Intel processors. These goods were sourced from a company registered for VAT in another EU member state and were to be delivered direct to Deira Sp. z o.o. ("Deira"), a warehouse based in Poland. On that basis, as the goods were at no time in the UK, the supplies of them were outside the scope of UK VAT. Deira featured heavily in the remainder of the Appellant's trading with Polish customers in 2012.

205. In February 2012, the Appellant raised twelve further sales invoices to Invergit, starting to supply it with mobile phones, computer games consoles and iPads. Only two of these

comprised goods sourced from a UK VAT registered trader, the remainder being sourced from companies registered in other member states for VAT.

206. In March to May 2012, the Appellant sold further mobile phones and iPads to Invergit, such that its total sales rose to at least €6,161,392.50. Beyond checking the validity of Invergit's Polish VAT number on 26 January, 3 April, 8 May and 20 June 2012, it is not clear what (if any) due diligence the Appellant carried out on Invergit. No particular reason was given as to why the Appellant had ceased to trade with Invergit.

207. HMRC subsequently sought information from the Polish VAT authorities about Invergit when investigating a different UK trader. They were informed that Invergit had declared no intra-community transactions, was a missing trader (having failed to make returns), its address was a "virtual office" and it had been assessed for Polish VAT because it had "issued invoices which did not support real turnover". It had been incorporated on 21 October 2011, registered for VAT on the same date and its VAT number had been cancelled on 18 October 2012. It was "suspected" of tax fraud.

Newfound - zero-rating not challenged in this appeal

208. In April and May 2012, the Appellant invoiced mobile phones and iPads to a value of €5,295,550 to Newfound Sp. z o.o. ("Newfound"), a company registered for VAT in Poland. With further sales made in September 2012, its total invoicing to Newfound was at least €7,922,250. Beyond checking the validity of Newfound's Polish VAT number on 7 May and 20 June 2012 (and claiming also to have done so on 2 and 4 April 2012, though no copy of any such checks was included in the papers before us) it is not clear what (if any) due diligence the Appellant carried out on Newfound. In a letter dated 19 March 2013, Mr Kainth informed HMRC that the Appellant had "received an email from Newfound requesting trading facilities", and that their contact was one Shakil Kabir.

209. HMRC subsequently sought information from the Polish VAT authorities about Newfound when investigating a different UK trader. They were informed that Newfound had submitted VAT returns until the second quarter of 2012; it had not declared any intra-community transactions in them. It was suspected of MTIC activity, operating from a "virtual office". It had been incorporated on 13 July 2011, registered for VAT on 20 July 2011 and its VAT registration had been cancelled on 27 September 2012.

Nectel - zero-rating disputed in this appeal

210. The Appellant started to trade with Nectel Sp. z o.o. ("Nectel") in June 2012, having ceased to trade with Invergit and Newfound in May. The first transaction for which HMRC received documentation from the Appellant was on a zero-rated sales invoice issued by the Appellant dated 12 June 2012, for 960 iPhones at a total price of €491,328. This invoice was addressed to Nectel at the same address in Warsaw as had been given by Invergit. The last transaction with Nectel was in October 2012. During the period of trading, the Appellant sold mobile phones and iPads to Nectel to an invoice value of over €21.2 million on 54 separate invoices. HMRC have denied zero-rating on all 54 invoices, the resulting VAT liabilities forming part of an overall global VAT assessment for £4,716,789.12 (as originally issued on 13 August 2015 and adjusted on 13 October 2015).

211. Subsequently, on reviewing the documentation prior to the hearing, Mr Bycroft noticed that in respect of a number of the Appellant's invoices to Nectel, the underlying goods did not appear to have been present in the UK at any relevant time, accordingly any supply of them by the Appellant would have been outside the scope of UK VAT. Mr Bycroft's witness statement laconically observed that since these transactions (along with a number of invoices addressed by the Appellant to Volumenix and one invoice addressed to Cigma – as to both of which, see below) "were not liable to UK VAT, further adjustment of the amount of the assessment will

be necessary in due course". No detail of the proposed adjustment was given to us. In the circumstances, rather than issue a decision in principle and then require a further hearing to finalise the relevant amounts, we have carried out our own detailed analysis of the individual transaction documents to arrive at final figures. Appended to this decision is a list of all the invoices (covering the supplies to Nectel, Cigma and Volumenix[6]) identifying those where we consider there is insufficient evidence to demonstrate that any supplies made by the Appellant in respect of them were within the scope of UK VAT. In doing so, we have noted that Mr Kainth clearly had some understanding of the scope of the UK charge to VAT and that sales outside that scope did not even require to be reported to HMRC but these transactions had still been included in the Appellant's returns (the invoice documents suggesting they were believed to reflect zero-rated despatch transactions); nonetheless, the evidence demonstrated that the supplies in question were in fact outside the scope of UK VAT.

212. As can be seen, in the case of Nectel, this reduces the VAT in respect of which the *Mecsek-Gabona* principle can potentially apply down to £2,261,377.55 (we were not able to ascertain, from the papers before us, precisely how much of HMRC's original assessment was attributable to supplies to Nectel, but as our exercise excludes approximately £1.125 million of VAT, it appears to have originally been in the region of £3,387,000). The 21 invoices to which we consider there is insufficient evidence to apply the *Mecsek-Gabona* principle are shown in the "Excluded (Credit note or OST)" column in the Appendix, along with a reference to a €1,000 credit note issued against another invoice.

213. The Appellant claimed to have carried out Europa VAT checks on Nectel on 22 and 23 May 2012 before its first trade with Nectel, but the only copy of such a check included in the documents before us was dated 20 June 2012 (by which time the Appellant had already traded with Nectel three times). Officer Bycroft had been unable to trace any copy of either of the earlier claimed checks and we find that no earlier checks had been made, though we should emphasise that even if they had, it would not affect our overall conclusions.

214. Later Europa checks dated 10 September and 29 October 2012 were also obtained (the last being dated 11 days after the Appellant's last trade with Nectel on 18 October 2012). The 10 September 2012 Europa check showed a different address for Nectel, however the subsequent invoices of the Appellant continued to be addressed to Nectel at its original address, apparently without comment. There was no evidence before us that the Appellant had visited Nectel or any individual involved in it, or sought any trade or credit references on the company or its Director.

215. Nectel was incorporated and registered for VAT in Poland on 4 February 2012. It appears that the only due diligence on Nectel carried out by the Appellant was the receipt of a standard form letter of self-introduction, undated and unsigned, describing Nectel as "an international importer and exporter for electrical goods ranging from the latest computer consoles to the very latest in mobile phones and computer hardware technology". This letter also provided bank and contact details as well as Nectel's Polish VAT registration number. Whilst unsigned, it was written over the name "M A Osman, Director" and accompanied by some further documents. First, there was a notarised copy of a Swedish passport in the name of Mohamed-Deq Abi Osman; then there was a copy of an undated Share Sale Agreement in English and Polish (which, by reference to other material, appears to have been entered into on 23 March 2012) under which the same individual, with an address in Bolton, purchased 100 shares in Nectel, apparently representing the entire share capital; then there were some further official-looking documents in Polish. To us, the latter documents were of unknown meaning or significance and there is no evidence before us that the Appellant understood them or even knew what they

[6] The other two Polish traders are referred to in more detail below.

were. In an email dated 24 January 2013, David Taylor on behalf of the Appellant said this, after referring to those attached documents:

> During our dealings with them, which I believe were almost entirely via email and Skype, 3 people contacted us M.A. Osman, Alonso Cortez and Alonso Celio.

216. HMRC records showed Mr Osman in Bolton as having been employed as a clinical support worker by BUPA from October 2010 to July 2014. No further detail about those individuals was in evidence before us, and we infer none was supplied to HMRC by the Appellant or obtained by the Appellant. The Appellant displayed no apparent curiosity that a VAT registered trader in Poland should be owned and managed by an individual in Bolton.

217. HMRC made a number of requests of the Polish VAT authorities for information concerning Nectel. The dates on which the various enquiries were raised and answered cannot be clearly discerned from the documents. However, one of the responses contains the following text:

> Audit proceedings were conducted at Nectel. As a result of these proceedings it was established that the company did not run any business activity at the indicated address… It has just pretended that such business activity was conducted there. Address of our trader's seat is a "virtual office". During tax audit it was established that the company was just issuing and introducing VAT invoices into circulation, which do not document real sales. The trader submitted only VAT return for 1Q2012 and declared "zero" amounts. It has never submitted Recapitulative Statement. After analysis of documents received from British tax administration it was established that the goods originating from Turkswood Limited and declared on invoices for Nectel were supplied to warehouses of Diera Sp z o.o. and Dor-Cel Sp z o.o. In Poland. Turkswood Ltd issued 28 invoices at the total amount of 11.678.328,50 EUR, for Nectel. Turkswood Ltd put a mark-up from 1 to 9-10 EUR to a price of one Apple iPhone. Costs of transport were borne by your trader. According to information received from Diera Sp z o.o. the services were made on the basis of individual orders transferred via email. Conditions of cooperation with Nectel were established with Alonso Celio. Diera rendered services connected with goods' acceptance and release. The goods were not priced and scanned. According to the documents the goods from Nectel Sp z o.o. were transferred among others to… and…*[details omitted]* Next, the goods were sold to…*[details omitted]* The above-mentioned companies are suspected of participating in MTIC fraud. In reality the goods did not leave a warehouse. After electronic receipt, the documents of release from warehouse were issued and then the document of goods' acceptance into a warehouse was issued. Subsequent recipient again released the goods in a form of electronic order sent on behalf of the next recipient. Dor-Cel Sp z o.o. rendered for Nectel services of goods' acceptance into a warehouse, goods' storage and checking. The goods were checked and IMEI codes were scanned. The goods did not leave warehouse as it was described in the above-mentioned case. During conducted proceedings it was established that Nectel issued in total 137 false VAT invoices, determining fictitious supplies of goods at the net amount of 153.260.186,44 PLN[7]. It declared VAT in these invoices at the amount of 35.249.839 PLN. It should be mentioned that in this practice took part two other British companies:…*[details omitted]*, which issued 42 invoices for

[7] Over the relevant period, the exchange rate fluctuated around 4 to 4.3 Polish Zlotys to the Euro. Applying a broad average rate of 4.15, this figure equates to approximately €36.9 million, significantly in excess of the value of supplies invoiced to Nectel by the Appellant over the period of their trading relationship.

> Nectel Sp z o.o., and … *[details omitted]*, which issued invoices for Nectel for mobile phones for the total amount of 1.007.700 EUR…

218. This response also contained a statement that Nectel had been deregistered on 5 July 2013, the reason given for this being: "No contact with trader. The trader did not submit VAT returns."

219. HMRC were clearly conscious of the need to establish the existence of a link between the Appellant's supplies to Nectel and the apparent VAT fraud committed by that company. In a further request to the Polish VAT authorities, they said this:

> In order to deregister Turkswood Ltd, HMRC needs to be able to directly link this company to assessed tax losses in other member states Have tax losses been assessed or raised against your trader or its Officers? If so, have these assessments been raised against trades with Turkswood?

220. In response, the Polish VAT authorities somewhat dodged the question:

> Answering your questions regarding probable tax losses evaluated towards our taxpayer please be informed that during executed tax proceedings it was established that Nectel Sp z o.o totally issued 137 "false" VAT invoices determining fictitious supplies of goods for net amount 153.260.184,44 PLN, in which it declared value of VAT for 35.249.839,00 PLN. These invoices determine activities which actually were not made. Please notice that Turkswood Ltd issued for Nectel Sp z o.o. 28 invoices for total amount of 11.401.738 EUR. It has to be stated that the above mentioned evaluation also concern transactions with Turkswood Ltd.

221. HMRC made one further attempt to follow up this point in a further information request to the Polish VAT authorities, including the following:

> We have recently received Policy advice which means that we would like some further information regarding your investigation into the activities of Nectel Sp. z.o.o. We are aware that for legal reasons you may not be able to supply the information requested but we have been advised to ask for it as it would greatly enhance our evidence against the UK traders who have traded with Nectel Sp. z.o.o. 1. Please provide details of any tax losses assessed against Nectel Sp. z.o.o.. 2. If tax losses have been assessed, how much of these losses have been assessed against trades with UK traders? 3. Can you supply copies of any letters sent to Nectel Sp. z.o.o. Regarding unpaid VAT or non-submission of returns? Can you please send us any additional information that you are able to provide which would help HMRC demonstrate that Nectel Sp. z.o.o. is a MTIC suspect trader.

222. The Polish VAT authorities played a straight bat in response:

> We are not able to provide you with more information than this sent to you in the above mentioned replies. Summarizing please be informed that there were conducted audit proceedings in the company Nectel, as its result it was established that the company did not in fact run business activity at the indicated address: Al. Jerozolimskie 96, 00-807 Warszawa, it only gave the appearance of reality of the activity there. Our taxpayer's seat so-called "virtual office" – known to the local tax office as lent to many companies as "contact box". During audit it was established that the company only issued and entered into circulation VAT invoices which did not document real sale. Answering to your questions concerning tax losses estimated towards our taxpayer please be informed that on 17.06.2013 the Head of Fiscal Audit Office in Bydgoszcz issued a decision No.: UKS0491/W2P1/42/55/12/95/025 that Nectel Sp. z.o.o. issued totally 137 "empty" VAT invoices describing

> fictitious supplies of goods (for the period 05/2012 - 08/2012) at net amount of 153.260.184,44 PLN, where it stated VAT at the amount of 35.249.839,00 PLN. These invoices concern activities which in fact were not made. The taxpayer submitted VAT return only for 1Q/2012 declaring "zero" amounts. It has never submitted recapitulative statement. On 05.07.2013 because of the fact that the company stopped submitting VAT return and because of no contact, Nectel Sp. z.o.o. Was deregistered from VAT taxpayers' register and from VAT EU taxpayers' register.

223. Thus whilst no direct link was specifically confirmed by the Polish VAT authorities between the supplies made to Nectel by the Appellant and Nectel's issue of "empty" VAT invoices, they did confirm that no VAT return was ever made to them by Nectel which included details of the acquisition VAT which it ought to have accounted for on the supplies to it.

224. In the nature of things when a trader goes missing and does not provide any cooperation to the VAT authorities, it is not possible to build up a completely clear and certain picture of its activities. There is no explanation in the papers as to how or why the Polish VAT authorities believed that the Appellant had issued only 28 invoices to Nectel for a total amount of €11,401,738 (or €11,678,328,50) when the Appellant's own records disclose the issue of at least 54 invoices to a total value of over €21.2 million. We consider however that on a balance of probabilities Nectel was engaged in VAT fraud throughout the period June to October 2012. Furthermore, since the Polish VAT authorities found that Nectel "only issued and entered into circulation VAT invoices which did not document real sale", we consider on a balance of probabilities that all its purchases from the Appellant were connected to that VAT fraud.

225. The questions that then arise are whether the Appellant knew or should have known of that connection to VAT fraud, and whether it took every reasonable step within its power to prevent its own participation in that fraud.

226. These two questions appear to us to be inextricably linked. A trader can hardly be blamed for failing to take steps to avoid participation in a fraud if it neither knew nor ought to have known of the existence of that fraud; and if a trader knew (or ought to have known) of a fraud, then almost by definition the only appropriate step to take in order to avoid participation in it would be to refrain from carrying out the deals which result in such participation.

227. In the absence of any "smoking gun" which clearly demonstrates that the Appellant had actual knowledge of Nectel's fraud, it is necessary to examine the circumstances leading up to and surrounding the trades in order to draw inferences as to what the Appellant knew or should have known.

228. The documents produced by HMRC included officer Bycroft's analysis of when payments were made in respect of the first month of trading between the Appellant and Nectel. This purported to show that Nectel paid the Appellant between two and six days after the raising of the sales invoice. On examination, however, the set of bank statements attached to this analysis was clearly incomplete and only showed receipt of one payment by the Appellant from Nectel, a payment of €51,100 received on 13 June 2012 (the first invoice from the Appellant to Nectel, in the sum of €491,328, having been issued on 12 June 2012). Fortunately, in our detailed examination of the documents we came across by chance a more complete copy of the statements elsewhere, as a result of which we are prepared to accept the accuracy of officer Bycroft's analysis. It showed that the Appellant initially allowed credit of nearly €500,000 on its first sale to Nectel, then conducted a running account on which, during the course of the first month of trading, it routinely allowed Nectel credit of many hundreds of thousands of Euros, peaking at just under €1 million. It would not appear to us to be normal commercial practice to advance credit of such magnitude to a company about which the Appellant knew as little as it did of Nectel, especially when the Appellant's own accounts showed its total net

worth on 31 December 2011 as being £72,188. We were not referred to any detailed information in the bundles to show how or when the Appellant made payments to its suppliers, but generally it appears that it paid its suppliers out of its own funds before receiving payment from its Polish customers.

229. Various further documents received by HMRC from the Polish VAT authorities were said to demonstrate close involvement of the Appellant in an overall trading scheme involving Nectel, Invergit and various other companies with which the Appellant was apparently known to have other links. The copies of this material in our bundles did not support this assertion, either from inadequate explanation or through being only partially copied, we could not tell which. We therefore decline to draw any adverse inferences from this material.

230. Office Bycroft had prepared a "matched purchase/sales daybook" supposedly showing all the Appellant's transactions with Nectel, but this was only half copied in our bundles and was therefore effectively useless as we could make no sense of it. The same copying error rendered the deal sheets and some of the explanatory content of the deal packs similarly largely useless.[8] In any event, unless some clear link could be established between the traders involved in the supply chains leading up to the Appellant and Nectel (which we certainly could not discern from the papers before us), it appeared to us that details of those chains were unlikely to assist us in reaching a decision on the issues before us. The only significant information we were able to derive from the material before us was that the Appellant did appear to conduct all its appeals on a "back to back" basis at very low gross margins (an average of 1.28%) and without being left with any stock, but beyond Mr Kainth's general (untested) assertion that there would have been a significant amount of prior negotiation and discussion, perhaps lasting two weeks or so, leading up to each deal (which was entirely unevidenced in the papers before us) there was no evidence before us as to how the deals were negotiated.

231. In the circumstances, it is quite clear to us that even if the Appellant did not know of the VAT fraud which Nectel was conducting in Poland using the goods supplied by the Appellant (and we strongly suspect that it did), it ought to have done. As such, it should clearly have avoided participating in that fraud by simply not trading with Nectel at all. It failed to do so.

Cigma - zero-rating disputed in this appeal

232. The Appellant's first two sales to Cigma Sp z o.o. ("Cigma"), a company registered for VAT in Poland, were invoiced on 26 June 2012, for 190 and 640 of the same specification iPhone 4Ss. The 190 phones were sold at €506 each and the 640 were sold at €510 each. From that time up until the last invoice issued by the Appellant to Cigma on 5 September 2012, the Appellant invoiced a total of over €5.9 million to Cigma in respect of supplies of mobile phones, across 14 sales invoices. HMRC appear to have denied zero-rating on all 14 invoices, the resulting VAT liabilities forming part of the overall global VAT assessment for £4,716,789.12 referred to above. Cigma itself had only been incorporated on 24 April 2012 and registered for VAT in Poland with effect from 3 May 2012.

233. In view of our findings about the extent to which the supplies to Nectel by the Appellant were outside the scope of UK VAT, and the fact that officer Bycroft referred in his witness statement specifically to one of the Appellant's invoices to Cigma to which this analysis applied but appeared somewhat vague about whether there might be other such deals, we felt it necessary to carry out the same detailed investigation of all the deal packs relating to the sales to Cigma in the documents before us as we had in respect of Nectel. Our findings are summarised in the Appendix to this decision. As can be seen, in the case of Cigma, this reduces the assessments in respect of which the *Mecsek-Gabona* principle can apply down to 7 invoices

[8] Mr Mandalia did at least arrange for a full set of complete copies of the deal sheets to be provided to us after the hearing, which provided some assistance.

giving rise to a potential VAT liability of £617,068.42 (we were not able to ascertain, from the papers before us, precisely how much of HMRC's original assessment was attributable to supplies to Cigma, but as our exercise excludes approximately £319,000 of VAT, it appears to have originally been in the region of £936,000). The 7 invoices to which we consider there is insufficient evidence to apply the *Mecsek-Gabona* principle are shown in the column headed "Exclude (OST)".

234. HMRC made a number of requests to the Polish VAT authorities for information about Cigma. The first of these was on 25 July 2012, prompted by the Appellant's verification of Cigma's VAT number with HMRC on 28 June 2012; the response was to the effect that Cigma could be regarded as "suspected", and "included in a group of risk in relation to MTIC activity". After trading with Cigma had ceased and HMRC were investigating the position, they raised further enquiries, seeking to ascertain whether a link could be established between the Appellant's supplies to Cigma and the tax losses caused by that company in Poland. Cigma was clearly subject to a very detailed investigation in Poland – at one point the Polish authorities referred to 32 information requests having been made to other member states about it. As a result of their investigations, the Polish VAT authorities said this:

> Summing up, we inform that audit proceedings for period from April to September 2012 were carried out against Cigma in relation to accuracy of taxable amounts declared and accuracy of VAT calculations and VAT payments. It was established that the company did not really run a business activity at the address ul. Solec 81B MA-51, 00-382 Warszawa; there were only appearances of the business activity. Our taxable person's seat is so-called "virtual office" – known to the local tax authority as rented to many companies as "contact box". In the course of the audit, it was established that the company was involved in the mechanism of fictitious supplies of goods which consisted in making intra-community acquisitions of goods for the sake of appearances and issuing VAT invoices for domestic contractors which did not support transactions. Replying to your questions regarding tax losses assessed against our taxable person, please be informed that on 21.03.2014 Head of Fiscal Audit Office in Lublin issued ruling UKS0691/W3P5/42/55/12/97/025 in which it was established that in total Cigma Sp. z o.o. issued 257 false VAT invoices supporting fictitious supplies of goods (for period from April to September 2012) in net amount of 208.859.539 PLN in which they indicated VAT in the amount of 48.037.694 PLN. The amount of not paid VAT indicated on invoices (despite the fact that the invoices documenting activities which were not actually made) is a measurable loss of state budget. On 08.07.2013 Cigma Sp. z o.o. was crossed off VAT-EU taxable persons' register due to failure to submit VAT returns.

235. The Polish VAT authorities also responded as follows to a question from HMRC seeking to ascertain whether any direct link could be established between the Appellant and Polish VAT losses:

> It was found out that our trader issued invoices for sale of goods to 4 domestic entities (Apox Spólka z o.o., Rovaniemi Trading Spólka z o.o., Nectel Spólka z o.o. and Newfound Spólka z o.o[9].). At the current stage of proceedings the invoices issued to Apox Spólka z o.o. and Rovaniemi Trading Spólka z o.o. for the total gross amount of 257,975,971 PLN (including output VAT:

[9] The Appellant had of course already traded with Nectel and Newfound itself; it had also checked the VAT number of Rovaniemi (presumably with a view to potentially trading with it) in February, April, May and June 2012. According to the Polish VAT authoritkes, the chairman of Apox was found to be an individual resident in Bolton, and according to its own records it had traded with Implementia, Volumenix, Rovaniemi and Nectel, all of which feature elsewhere in this decision.

> 48,239,401 PLN) were obtained. As regards asked questions, currently it is not possible to connect univocally *[sic]* tax losses revealed at our taxpayer with supplies from the UK trader (expectation for additional documentation from Regional Prosecution Office in Bydgoszcz, ongoing analysis of documentation of forwarding warehouse kept by Diera Sp. z o.o.). Assessed VAT losses according to documents gathered up to now (amounts in PLN), (calculated both on the basis of payments made to the UK contracting party and on the basis of invoices received in replies of the UK tax administration): TURKSWOOD Ltd. - on the basis of payments made 5,622,147 PLN, - on the basis of invoices received within exchange of information 5,354,382 PLN.

236. Thus, whilst the Polish VAT authorities were clearly satisfied that Cigma was responsible for VAT fraud on a very large scale, the information available to them at the time was only sufficient to enable them to draw a clear link between that fraud and supplies from the Appellant to an invoiced value of around €1.35 million.

237. Bearing in mind that the Appellant's invoices to Cigma totalled more than €5.9 million, the obvious question is whether HMRC have established that the remainder of the Appellant's supplies to Cigma were connected to VAT fraud carried out by it.

238. In passing, we note that two of the four Polish customers of Cigma identified by the Polish VAT authorities were themselves also direct customers of the Appellant (Newfound and Nectel), and the authorities had been unable to obtain copies of any invoices issued to them by Cigma. To our mind, this is unlikely to have been a coincidence and affords evidence of some degree of communication and cooperation between the Appellant and a network of fraudulent Polish traders.

239. In all the circumstances, in a situation where Cigma was found by the Polish VAT authorities to be involved in wholesale VAT fraud on the scale referred to above and all information about its activities was gleaned entirely from third parties (the company itself being uncontactable), we consider it extremely unlikely that any of the supplies made to it by the Appellant were used by it for the purposes of any legitimate business. On a balance of probabilities, we are satisfied that all the Appellant's supplies to it were connected to its fraudulent activities.

240. The question that then arises is whether the Appellant knew or should have known of that connection to VAT fraud, and whether it took every reasonable step within its power to prevent its own participation in that fraud.

241. On 25 June 2012, the Appellant had obtained a Europa check on the validity of Cigma's Polish VAT number. In that check, the business address of Cigma was given as being the same as that of Invergit and Nectel, yet the Appellant issued its invoice to an entirely different address in Warsaw, as set out in Cigma's letter of self-introduction (see below), without further comment or enquiry.

242. According to the Appellant, it had received an approach from Cigma "requesting trading facilities". Its contact there had been one Alim Nawaz. Some documentation was supplied showing that Mr Nawaz had become the president of Cigma's management board and acquired some shareholding in the company on 18 June 2012 (just one week before the first invoice was issued to Cigma by the Appellant). A copy of a passport for Mr Nawaz was supplied (illegible in our bundle). Apart from a bland letter of self-introduction in English, various official-looking documents in Polish were supplied, whose meaning and significance is unknown. The Appellant subsequently undertook two further Europa checks which validated Cigma's Polish VAT number on 16 August and 10 September 2012.

243. No evidence of any site visit, trade references or financial credit checks undertaken by the Appellant on Cigma or Mr Nawaz appear in our bundle and we accept Mr Bycroft's testimony that none were ever received by HMRC. From HMRC's PAYE records, it appeared that Mr Nawaz was in paid employment in the UK up to the end of 2011, then there is no further record of him until he claimed job seekers allowance in August 2013.

244. An analysis of the Appellant's bank account with HSBC and the invoicing and shipping documents revealed that the Appellant had released to Cigma the goods comprised in its first two invoices (totalling €315,440) before receiving payment for them. It then continued to allow a debt to build up on its running account with Cigma to as much as €583,900 during its first week of trading with it. In subsequent trading, that figure went as high as €1,312,000, but by the end of the relationship it had been overpaid by €57,900; there was no explanation of this credit balance, or evidence of any attempt by Cigma to recover it. All this, for a company whose latest reported net worth was £72,188, appears extremely uncommercial.

245. As in the case of Nectel, the only significant information we were able to derive from the deal packs before us was that the Appellant did appear to conduct all its appeals on a "back to back" basis at very low gross margins (an average of just below 1% in this case) and without being left with any stock, but beyond Mr Kainth's general (untested) assertion that there would have been a significant amount of prior negotiation and discussion, perhaps lasting two weeks or so, leading up to each deal (which was entirely unevidenced in the papers before us) there was no evidence before us as to how the deals were negotiated. As to the earlier deals, there cannot have been lengthy prior negotiation, as Mr Nawaz's involvement in Cigma only started a little over a week before the first deal was invoiced by the Appellant.

246. In the circumstances, it is quite clear to us that even if the Appellant did not know of the VAT fraud which Cigma was conducting in Poland using the goods supplied by the Appellant (and we strongly suspect that it did), it ought to have done. As such, it should clearly have avoided participating in that fraud by simply not trading with Cigma at all. It failed to do so.

Other overseas mobile phone trading during June 2012 to February 2013

247. Apart from the trading referred to above, during the period from June to September 2012 the Appellant supplied mobile phones/iPads in much smaller quantities to two Czech companies (Alecto and Ravetone), to a total value of approximately €1.2 million. Then, in October 2012 as trade with its other EU customers wound down (it only made approximately €1.3 million of supplies to Nectel in that month), it started trading with another Polish company, Implementia (making supplies to the value of approximately €5.5 million in just two months, October and November 2012). As trading ceased with Implementia in November 2012, it started trading with Voluminex (see below) and another Polish company, Ringo (with which it traded for just three months, supplying goods to a value of approximately €2.4 million). As its trading with Voluminex wound down (see below) in January 2013, it then moved on to another Polish customer, Pavo, to which it supplied goods to a value of over €9 million in January and February 2013[10]. All these companies (Other than Alecto, on which we had no information) disappeared without accounting to their local VAT authorities for the VAT on the invoices which they issued to their own customers.

248. The clear pattern emerging is a series of short-term customer relationships with fraudulent traders, with no obvious reason why this should have been the case. As is mentioned below, the Polish VAT authorities unearthed various links between many of these companies, which leads us to the inference that the Appellant was simply moving from one entity to another within a single co-ordinated web of VAT fraud. If the Appellant had been initiating those moves itself, the inescapable conclusion would have been that the Appellant was involved in

[10] We understand some or all of these transactions to be the subject of a separate appeal.

that co-ordination, with full knowledge of the underlying fraud. If it was merely responding to a series of independent invitations to start trading with yet another unknown foreign company, in the absence of any explanation for its obvious willingness to do so on multiple occasions, it seems to us that at the very least the Appellant must have been enthusiastically closing its eyes to the likelihood of its involvement in underlying fraud. Whilst this overall pattern must obviously form part of the background of our overall assessment of the Appellant's trading, however, we are still required to make individual assessments of the particular circumstances surrounding each set of transactions in which it involved itself.

Volumenix – zero-rating disputed in this appeal

249. The Appellant's first three invoices to Volumenix Polska Sp. z o.o. ("Volumenix"), another company registered for VAT in Poland, were issued on 30 November 2012, in a total sum of just over €1 million. Those invoices referred to 740 Samsung i9300 phones and 1,580 iPhone 4S phones. From then until the last invoices were issued by the Appellant to Volumenix on 4 January 2013, it issued a total of 23 invoices to a total value of nearly €10.7 million.

250. It was not clear on the face of the documents precisely which invoices HMRC had sought to assess for standard rate VAT by inclusion in the global assessment for £4,716,789.12 referred to above. As mentioned above, officer Bycroft referred to 13 of the 23 invoices addressed to Voluminex which he considered ought to be regarded as outside the scope of UK VAT on the basis that the underlying goods had not been in the UK at any relevant time, and it is not clear how many of these 13 invoices had been included in the original assessment. After a detailed examination of the individual deal packs (for the same reasons as are set out at [233] above), we agree that there is insufficient evidence to show that these invoices should be subject to UK VAT. A list of all the invoices issued by Volumenix, showing those 13 invoices (in the column headed "Exclude (OST)", is included in the Appendix to this decision.

251. As we have already said, it is unclear on the face of the documents how much of HMRC's original assessment related to the sales to Volumenix. All we can say with certainty is that after carrying out the checking exercise referred to above, we consider there is sufficient evidence only to show that supplies to a value of €5,575,080 comprised in ten of those invoices are potentially subject to assessment under the *Mecsek-Gabona* principle. Applying the appropriate exchange rates, this means that, as shown in the Appendix, there is a potential VAT liability of £898,293.24 under that principle in respect of these supplies.

252. Voluminex was incorporated in Poland on 1 January 2011 and registered for VAT in Poland with effect from 30 September 2011.

253. The Appellant's first contact with Voluminex was on 23 November 2012, when an email was received from it requesting trading facilities. This was accompanied by a bland undated and unadressed letter of self-introduction signed by an unnamed director of the company. Voluminex described itself as "an international Importer and Exporter for electrical goods such as Computer equipment and components and Mobile Phones, and we are always looking to develop and grow our range in other markets worldwide."

254. The Appellant obtained, with that letter, about 20 pages of official-looking documents in Polish of unknown meaning or significance. It also received a copy of a share purchase agreement (in both Polish and English) dated 13 November 2012 under which a Mr Tarik Nourani (according to a copy identity card provided, a 22-year old French citizen with an address in a suburb of Paris) bought the entire issued share capital of Volumenix from the formation agent for 1 Zloty (the formation agent, an RSM company, declaring that Volumenix had no assets or obligations).

255. The Appellant obtained a credit reference report on Volumenix on 27 November 2012. This showed that its declared main activity was "Wholesale of textiles", that its credit rating was "Not rated", that its president (and sole director) was one Bartosz Milaszewski and that it was a wholly owned subsidiary of a company called "KZWS Spolka Doradztwa Podatkowego S.A." There was no historical or current financial information for it. On the same date, for reasons which are unclear, the Appellant obtained a credit reference report on a company called "RSM Poland Spolka Doradztwa Podatkowego S.A.", which showed financial information up to 2008, but gave a credit reference of "Not rated", due to "the lack of information or very severe condition (i.e. a direct threat of bankruptcy)". Voluminex was shown as one of its subsidiaries, as was a company called "Implementia Polska Sp z o.o.", which, as mentioned above, was itself a customer of the Appellant briefly from 9 October to 6 November 2012, during which time the Appellant sold it 12,721 mobile phones to an invoice value of €5,437,270.

256. On 29 November 2012 (the day before it issued its first invoice to it), the Appellant carried out a Europa check to verify Voluminex's Polish VAT number. There is no evidence of any other VAT check being carried out on Voluminex by the Appellant before commencing to trade.

257. In spite of Voluminex's unsatisfactory financial standing, the Appellant allowed it from the outset to build up substantial debt. In respect of its first three sales invoices dated 30 November 2012 for a total of €1,031,700 (in respect of which the Appellant issued instructions to the warehouse holding the goods to release them to Volumenix on 29 and 30 November), the Appellant only started to receive payment on 4 December 2012, and the balance was not settled until 6 December; in the meantime, on 4 and 5 December the Appellant had issued further invoices to a combined value of €820,430 and confirmed the release to Voluminex of the €513,000 of the goods to which the first of them related on 3 December. As at close of business on that date, therefore, the Appellant had given unconditional credit to Voluminex, a company of no financial standing and which the Appellant had first encountered less than two weeks earlier, of well over €1.5 million. The remainder of its dealings with Voluminex showed similar characteristics. Again, in the context of a company of the size of the Appellant, this appears highly uncommercial.

258. The Polish VAT authorities investigated Voluminex and issued two VAT liability decisions on its activities, dated 22 and 30 June 2014. They set out a great deal of detail which had been discovered about the activities of Voluminex and other traders closely related to it. In summary, they included the following.

259. Voluminex operated from a virtual office, at which it had no presence beyond a mail forwarding service. It could not be contacted. There was no record of it having any employees or other place of business. Its French owner avoided all contact with the authorities and there was no record of him having ever been to Poland.

260. Voluminex submitted nil VAT returns for the first three quarters of 2012, and no VAT return thereafter. No books or records could be found, but by tracing back from other traders to whom it had issued invoices, and by reference to bank account details obtained direct from banks, a picture of its activities could be built up.

261. 79 invoices issued by it in the last quarter of 2012 were obtained, reflecting supplies to two other Polish traders, Sailforce Sp z o.o ("Sailforce"). and Apox Sp z o.o ("Apox"). Apox had previously been identified to HMRC as customers of both Nectel and Cigma.

262. Voluminex had concealed its two active bank accounts from the tax authorities, having only informed them of one account which was inactive. Payments were made into those two concealed accounts by Apox, Sailforce, Fazer Sp z o.o. ("Fazer") and AGX Sp z o.o ("AGX"),

in the total amount of €58,462,500 between 26 November 2012 and 6 February 2013. When funds were received into its accounts, they were generally transferred out on the same day to various foreign entities, including the Appellant. There was no apparent justification (in the invoices seen) for many of the payments made to Voluminex.

263. Apox (whose chairman was an individual in Bolton) rendered a VAT return for the fourth quarter of 2012 showing a VAT liability of approximately €3.8 million but this was never paid. The employee at Apox who was responsible for raising its sales invoices was given all her instructions by Skype by the chairman and another individual using the same account, but the video feed was always off so she never saw them.

264. An individual who was responsible for production of sales invoices at another closely involved Polish company was given all her instructions by Skype in the same way; she was then told she would be doing the same role for Sailforce in November/December 2012, but she believed the individual instructing her did not change. Another individual had a very similar experience. The chairman of Sailforce, when interviewed, described himself as a "dummy", who knew nothing of the company or its business. He had been contacted by someone he had worked for in England and had agreed to open bank accounts for Sailforce, giving all the documentation and account passwords to the "real" owner.

265. The individual identified as the chairman of AGX had been recruited in the same way by the same individual in the UK, to do the same sorts of things in relation to AGX on instructions from a cousin of the individual in question, based in Preston.

266. Numerous other incidents and connections pointed clearly to a centrally orchestrated web of fraud conducted from outside Poland.

267. The online banking of Voluminex was operated by computers based at IP addresses in London, Manchester, Maidenhead, Dubai and Ajman (also in the United Arab Emirates). One of the IP addresses was also used to log onto bank accounts used by AGX, Sailforce and Pavo (with whom, it will be remembered, the Appellant dealt in early 2013). According to the invoices known to have been issued to and by Voluminex, it made a loss on its trading in mobile phones, before taking account of its failure to account for VAT.

268. The essence of the conclusions reached by the Polish VAT authorities can be summed up in this quote from the first report referred to above:

> Upon examination of gathered evidence it was established that in the fourth quarter of 2012 the company VOLUMENIX POLSKA operated as one of the links in fraudulent chain transactions, within which:
>
> - it did not pursue any actual business activity and pretended to be a value added tax payer;
> - it undertook fraudulent deliveries of goods simulating intra-Community purchases of goods and issuing to domestic entities VAT sale invoices which did not document the actual business turnover or actual course of business operations;
> - as an objective of "*activity*" it did not chose economic profit but profit resulting from unpaid value added tax;
> - it did not pay any output tax indicated in 79 invoices introduced into legal transactions referred to in Article 108 of the Act on Value Added Tax at the total amount of 21,897,326 PLN.

269. Then again, in the same report:

> Summarising the aforementioned findings it is obvious that the company VOLUMENIX POLSKA was involved in fraudulent business activity…[it] complied only with formal requirements which allowed it to register business activity and report registration to competent bodies. The purpose of such actions was to obtain the confirmation of registration as an active VAT payer, which allowed [it] to produce fraudulent VAT invoices.

270. A similar conclusion in relation to the first quarter of 2013 was reached in the second report, in which Voluminex was assessed as liable for a further 18,094,418 PLN, almost all in respect of 49 bogus VAT invoices issued to Sailforce (another two being issued to a Polish company called OPD), on which it never accounted to the Polish authorities for the VAT.

271. It is clear to us on the basis of the information contained in the two Polish VAT authority reports summarised above that Voluminex was engaged in wholesale VAT fraud on the Polish VAT authorities. It is equally clear that the Appellant's supplies to Voluminex were closely connected with that fraud.

272. The question then arises as to whether the Appellant knew or should have known of that connection and whether it took all reasonable steps to avoid participation in the fraud.

273. We consider on the basis of the evidence before us that, given the circumstances in which the Appellant commenced and continued to trade with Voluminex, on a balance of probabilities it must have been actually aware of the fraud it was participating in by reason of its supplies to Voluminex; in the unlikely event that it was not actually so aware, it undoubtedly should have been. In the circumstances it also follows that rather than take all reasonable steps to avoid participating in the fraud, the Appellant engaged enthusiastically in it from the outset.

SUBMISSIONS

274. Mr Mandalia argued, on the basis of the case law summarised at [10] to [27] above and the view which he invited us to take of the evidence, that we should find all the transactions of the Appellant to have been connected with the fraudulent evasion of VAT, that the Appellant knew or should have known of such connection in each case and (in the case of the *Mecsek-Gabona* appeal) that the Appellant had not taken all reasonable steps to avoid participating in the fraud, and that therefore the appeals must be dismissed. There was no need for the fraud to have been perpetrated by the Appellant's direct counterparty before its entitlement to recovery of input tax (or, as the case may be, zero-rating of despatches) could be denied.[11]

275. As mentioned at the outset of this decision, the Appellant did not take part in the substantive hearing of the appeal, accordingly its case must be gleaned mainly from two formal documents which it submitted to the Tribunal.

276. In its written "Response to Consolidated Statement of Case" submitted on 29 July 2016, the Appellant made no material submissions on the law to be applied by the Tribunal, beyond asserting that in their original denial of zero-rating for the supplies of mobile phones to Poland, HMRC had misunderstood the case of *Mecsek-Gabona*. Reliance was placed on the statements of the CJEU, in the stage of its analysis referred to at [18] above, to the effect that if the supplier "has produced the requisite proof and acted in good faith, it cannot be refused the VAT exemption on the ground that the purchaser did not transport the goods to a destination outside the Member State of despatch"; it was claimed that the Appellant had provided complete

[11] It was not totally clear whether this submission was intended to extend to the *Mecsek-Gabona* appeal, as at one point in his skeleton argument Mr Mandalia appeared to accept that the rule only applied to such an appeal where the fraud was perpetrated by the Appellant's direct customer. As the case was advanced on that basis in any event, we did not need to decide whether fraud by a later trader in the chain, after the Appellant's customers, could disqualify the Appellant from zero-rating in such cases. Clearly, insofar as this submission was addressed to the *Kittell* appeals, it was correct.

evidence of the transport of the goods, giving "total visibility and audit trail from start of the deal to finish". Whether or not that was the case, however, it clearly does not address or engage with the legal arguments put to the Tribunal at the hearing by Mr Mandalia, as referred to at [21] above. Our own view of the law, having heard Mr Mandalia's submissions, is as set out above.

277. In the Appellant's Skeleton Argument dated 4 April 2019, there were no further submissions on the law. The document was entirely taken up with assertions about matters which went to the factual issues of whether there was VAT fraud to which the Appellant's transactions were connected, and whether the Appellant knew or ought to have known of that connection. As those assertions were neither evidenced in the documents before us nor tested in cross-examination, we have been able to place little, if any, weight on them.

SUMMARY OF CONCLUSIONS

278. The issues which face us, in relation to each of the appeals, are as follows. In respect of the "*Kittell*" appeals against the denial of input tax (and associated assessments, where relevant), the issues we must decide are:

(1) whether the Appellant's purchases were connected with fraudulent evasion of VAT; and

(2) if such connection is established, whether the Appellant knew or ought to have known of it.

279. In respect of the *Mecsek-Gabona* appeal, the issues we must decide are:

(1) whether the Appellant's sales to its Polish customers were, in each case, part of a tax fraud committed by that customer;

(2) whether the Appellant knew or should have known that was the case; and

(3) whether the Appellant took every reasonable step within its power to prevent its own participation in that fraud.

280. In addition, we must be satisfied that the invoices in respect of which HMRC seek to impose liability under the *Mecsek-Gabona* principle reflect supplies which would properly be taxable in the UK if zero-rating is denied, in particular that they do not relate to supplies which are outside the scope of UK VAT under general principles.

281. In its skeleton argument, the Appellant neither accepted nor denied that its relevant purchases were connected with fraudulent evasion of VAT, or that its sales to its Polish customers were in each case part of a tax fraud committed by that customer. Its focus was more on the question as to why HMRC were seeking to penalise it rather than the perpetrators of any fraud. However, as was made clear in *Mobilx*, the loss of the right to deduction of input arises not as a penalty for fraud or negligence, but "because the objective criteria for the scope of that right are not met". The treatment of other participants in any chain of supply is therefore irrelevant. In respect of denial of zero-rating, similar observations apply: if participation in a fraud by a trader's overseas customer with actual or imputed knowledge is established, then the denial of zero rating on sales to that customer is not by way of penalty but because of the failure to meet the objective criteria for zero rating.

282. We have summarised, in respect of each appeal as we have considered it in detail above, our findings on the existence of (a) (in the case of the input tax denial appeals) a connection to fraudulent evasion of VAT and (b) (in the case of the zero-rating denial appeal) the existence of tax fraud by the Appellant's Polish customers and the part in that fraud played by the Appellant's sales to them.

283. We have found, in respect of the input tax denial appeals, that the Appellant's purchases were connected to fraudulent evasion of VAT (see [86], [118], [159] and [198]).

284. We have also found, in respect of each of the input tax denial appeals, that the Appellant either knew or ought to have known of the connection between its transactions and the fraudulent evasion of VAT (see [67], [99], [140] and [182] above).

285. We have found, in respect of the zero-rating denial appeal, that the various Polish customers of the Appellant were guilty of VAT fraud and the Appellant's sales to them were, in each case, part of such fraud (see [224], [239] and [271] above).

286. We have found, in respect of each of zero-rating denial appeal, that the Appellant either knew or should have known that its sales were part of its customer's VAT fraud and that the Appellant did not take every reasonable step within its power to prevent its own participation in that fraud (see [231], [246] and [273]).

287. The amounts to be assessed in respect of the Appellant's sales to Nectel, Cigma and Voluminex are however to be reduced from £4,716,789.12 to the aggregate sum of £3,776,739.22, as referred to at [211], [233] and [251] above, due to the extent of the transactions which we have found to fall outside the scope of UK VAT.

288. It follows that:

(1) appeal TC/2014/02268 is DISMISSED;

(2) appeal TC/2015/07093 is DISMISSED;

(3) appeal TC/2016/01295 is DISMISSED

(4) appeal TC/2016/01297 is DISMISSED; and

(5) appeal TC/2015/06390 is ALLOWED IN PART, to the extent of reducing HMRC's assessment from £4,716,789.12 to £3,776,739.22, in which reduced amount it is hereby CONFIRMED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

289. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 21 MAY 2021

APPENDIX

LIST OF POLISH TRANSACTIONS

Date	Invoice No.	Euro value		Exclude (Credit Note or OST)	Exchange rate	£ value	£ VAT	£ VAT Total
Nectel								
12/06/2012	10248	€ 491,328.00			1.2489	£393,408.60	£78,681.72	
18/06/2012	10252	€ 516,600.00			1.2489	£413,644.01	£82,728.80	
19/06/2012	10253	€ 512,000.00			1.2489	£409,960.77	£81,992.15	
21/06/2012	10254	€ 519,000.00			1.2489	£415,565.70	£83,113.14	
25/06/2012	10257	€ 258,300.00			1.2489	£206,822.00	£41,364.40	
26/06/2012	10259	€ 258,300.00			1.2489	£206,822.00	£41,364.40	
28/06/2012	10264	€ 414,400.00			1.2489	£331,811.99	£66,362.40	
29/06/2012	10265	€ 103,600.00			1.2489	£82,953.00	£16,590.60	
29/06/2012	10266	€ 259,000.00			1.2489	£207,382.50	£41,476.50	
03/07/2012	10267	€ 515,000.00			1.2391	£415,624.24	£83,124.85	
04/07/2012	10270	€ 278,100.00			1.2391	£224,437.09	£44,887.42	
05/07/2012	10271	€ 236,900.00			1.2391	£191,187.15	£38,237.43	
09/07/2012	10273	€ 515,000.00			1.2391	£415,624.24	£83,124.85	
10/07/2012	10274	€ 513,000.00			1.2391	£414,010.17	£82,802.03	
13/07/2012	10276	€ 513,000.00		€ 1,000.00	1.2391	£413,203.13	£82,640.63	
16/07/2012	10277	€ 669,500.00			1.2391	£540,311.52	£108,062.30	
16/07/2012	10279	€ 513,000.00			1.2391	£414,010.17	£82,802.03	
18/07/2012	10281	€ 257,000.00			1.2391	£207,408.60	£41,481.72	
18/07/2012	10282	€ 412,250.00			1.2391	£332,701.15	£66,540.23	
18/07/2012	10284	€ 204,000.00		€ 204,000.00	1.2391	£0.00	£0.00	
18/07/2012	10285	€ 206,000.00		€ 206,000.00	1.2391	£0.00	£0.00	
20/07/2012	10310	€ 313,430.00		€ 313,430.00	1.2391	£0.00	£0.00	
20/07/2012	10311	€ 499,800.00		€ 499,800.00	1.2391	£0.00	£0.00	
20/07/2012	10312	€ 516,000.00		€ 516,000.00	1.2391	£0.00	£0.00	
26/07/2012	10318	€ 740,600.00			1.2391	£597,691.87	£119,538.37	
27/07/2012	10319	€ 264,500.00			1.2391	£213,461.38	£42,692.28	
27/07/2012	10320	€ 237,375.00		€ 237,375.00	1.2391	£0.00	£0.00	
31/07/2012	10321	€ 158,700.00			1.2391	£128,076.83	£25,615.37	
31/07/2012	10322	€ 50,715.00		€ 50,715.00	1.2391	£0.00	£0.00	
31/07/2012	10323	€ 264,500.00			1.2391	£213,461.38	£42,692.28	
31/07/2012	10324	€ 310,800.00		€ 310,800.00	1.2391	£0.00	£0.00	
31/07/2012	10326	€ 318,000.00		€ 318,000.00	1.2391	£0.00	£0.00	
02/08/2012	10327	€ 48,300.00		€ 48,300.00	1.2738	£0.00	£0.00	
02/08/2012	10329	€ 208,600.00		€ 208,600.00	1.2738	£0.00	£0.00	
03/08/2012	10331	€ 91,770.00		€ 91,770.00	1.2738	£0.00	£0.00	
09/08/2012	10334	€ 210,000.00		€ 210,000.00	1.2738	£0.00	£0.00	
10/08/2012	10338	€ 265,000.00			1.2738	£208,038.94	£41,607.79	
10/08/2012	10339	€ 522,000.00		€ 522,000.00	1.2738	£0.00	£0.00	
15/08/2012	10341	€ 520,000.00		€ 520,000.00	1.2738	£0.00	£0.00	
15/08/2012	10342	€ 520,000.00		€ 520,000.00	1.2738	£0.00	£0.00	
17/08/2012	10344	€ 751,540.00			1.2738	£589,998.43	£117,999.69	
20/08/2012	10345	€ 264,000.00			1.2738	£207,253.89	£41,450.78	
22/08/2012	10347	€ 520,000.00		€ 520,000.00	1.2738	£0.00	£0.00	
22/08/2012	10348	€ 520,000.00		€ 520,000.00	1.2738	£0.00	£0.00	
23/08/2012	10350	€ 526,000.00		€ 526,000.00	1.2738	£0.00	£0.00	
30/08/2012	10428	€ 520,000.00			1.2738	£408,227.35	£81,645.47	
30/08/2012	10429	€ 520,000.00			1.2738	£408,227.35	£81,645.47	
30/08/2012	10430	€ 520,000.00			1.2738	£408,227.35	£81,645.47	
05/09/2012	10436	€ 514,000.00			1.2676	£405,490.69	£81,098.14	
05/09/2012	10437	€ 514,000.00			1.2676	£405,490.69	£81,098.14	
05/09/2012	10438	€ 514,000.00			1.2676	£405,490.69	£81,098.14	
08/10/2012	10447	€ 585,000.00			1.2424	£470,862.85	£94,172.57	
08/10/2012	10448	€ 257,400.00		€ 257,400.00	1.2424	£0.00	£0.00	
18/10/2012	10452	€ 475,000.00		€ 475,000.00	1.2424	£0.00	£0.00	
Totals:		**€ 21,226,308.00**			**£ Value:**	**£11,306,887.74**	**£ VAT:**	**£2,261,377.55**

Date	Invoice No.	Euro value		Exclude (OST)	Exchange rate	£ value	£ VAT	£ VAT Total
Cigma								
26/06/2012	10260	€ 96,140.00		€ 96,140.00	1.2489	£0.00	£0.00	
26/06/2012	10261	€ 326,400.00		€ 326,400.00	1.2489	£0.00	£0.00	
28/06/2012	10263	€ 515,000.00			1.2489	£412,362.88	£82,472.58	
03/07/2012	10268	€ 308,400.00		€ 308,400.00	1.2391	£0.00	£0.00	
16/07/2012	10278	€ 166,862.50		€ 166,862.50	1.2391	£0.00	£0.00	
17/07/2012	10280	€ 216,140.00		€ 216,140.00	1.2391	£0.00	£0.00	
25/07/2012	10317	€ 359,388.00		€ 359,388.00	1.2391	£0.00	£0.00	
06/08/2012	10332	€ 477,900.00			1.2738	£375,176.64	£75,035.33	
06/08/2012	10333	€ 529,650.00			1.2738	£415,803.11	£83,160.62	
15/08/2012	10343	€ 556,500.00			1.2738	£436,881.77	£87,376.35	
22/08/2012	10349	€ 520,000.00		€ 520,000.00	1.2738	£0.00	£0.00	
23/08/2012	10351	€ 792,000.00			1.2738	£621,761.66	£124,352.33	
31/08/2012	10431	€ 621,600.00		€ 2,400.00	1.2738	£486,104.57	£97,220.91	
05/09/2012	10440	€ 427,500.00			1.2676	£337,251.50	£67,450.30	
Totals:		**€ 5,913,480.50**			**£ Value:**	**£3,085,342.12**	**£ VAT:**	**£617,068.42**

Date	Invoice No.	Euro value		Exclude (OST)	Exchange rate	£ value	£ VAT	£ VAT Total
Volumenix								
30/11/2012	10497	€ 281,200.00		€ 281,200.00	1.2360	£0.00	£0.00	
30/11/2012	10498	€ 237,500.00		€ 237,500.00	1.2360	£0.00	£0.00	
30/11/2012	10499	€ 513,000.00		€ 513,000.00	1.2360	£0.00	£0.00	
04/12/2012	10500	€ 513,000.00		€ 513,000.00	1.2430	£0.00	£0.00	
04/12/2012	10501	€ 112,100.00		€ 112,100.00	1.2430	£0.00	£0.00	
05/12/2012	10502	€ 195,330.00		€ 195,330.00	1.2430	£0.00	£0.00	
06/12/2012	10503	€ 946,000.00			1.2430	£761,061.95	£152,212.39	
07/12/2012	10505	€ 679,890.00		€ 679,890.00	1.2430	£0.00	£0.00	
10/12/2012	10507	€ 513,000.00		€ 513,000.00	1.2430	£0.00	£0.00	
10/12/2012	10508	€ 372,330.00			1.2430	£299,541.43	£59,908.29	
12/12/2012	10510	€ 183,360.00		€ 183,360.00	1.2430	£0.00	£0.00	
13/12/2012	10514	€ 239,000.00		€ 239,000.00	1.2430	£0.00	£0.00	
13/12/2012	10515	€ 478,000.00			1.2430	£384,553.50	£76,910.70	
13/12/2012	10516	€ 301,140.00			1.2430	£242,268.70	£48,453.74	
14/12/2012	10517	€ 182,360.00		€ 182,360.00	1.2430	£0.00	£0.00	
17/12/2012	10518	€ 956,000.00		€ 956,000.00	1.2430	£0.00	£0.00	
17/12/2012	10519	€ 597,500.00			1.2430	£480,691.87	£96,138.37	
17/12/2012	10520	€ 516,240.00		€ 516,240.00	1.2430	£0.00	£0.00	
18/12/2012	10522	€ 597,500.00			1.2430	£480,691.87	£96,138.37	
04/01/2013	10531	€ 1,065,940.00			1.2270	£868,736.76	£173,747.35	
04/01/2012	10532	€ 119,500.00			1.2270	£97,392.01	£19,478.40	
04/01/2013	10533	€ 597,500.00			1.2270	£486,960.07	£97,392.01	
04/01/2013	10534	€ 478,000.00			1.2270	£389,568.05	£77,913.61	
Totals:		**€ 10,675,390**			**£ Value:**	**£4,491,466.22**	**£ VAT:**	**£898,293.24**

TOTAL VAT POTENTIALLY DUE re POLAND SUPPLIES UNDER MECSEK-GABONA:		**£3,776,739.22**