



**TC08177**

*VALUE ADDED TAX – Schedule 24 Finance Act 2007 - penalty for inaccuracy in VAT returns – personal liability notice on director – was there an inaccuracy in the VAT returns? – company buying and selling of alcohol held in warehouses in France and Germany – was place of supply the UK? – burden of proof on HMRC – held: not proven that place of supply was UK – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/02697**

**BETWEEN**

**MOHAMMED ZAMAN**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ZACHARY CITRON  
MR LESLIE BROWN**

**The hearing took place on 8-10 February 2021. The form of the hearing was V (video) on the HMCTS Video Hearings Service. A face to face hearing was not held due to public health concerns related to the coronavirus pandemic. The documents to which we were referred were nine lever arch files and an authorities etc electronic bundle of 214 pdf pages, prepared by the respondents.**

**Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.**

**The Appellant in person**

**Mr R Macleod, advocate, instructed by the Office of the Advocate General, for the Respondents**

## DECISION

1. The appeal concerned the validity of a personal liability notice (the “**PLN**”) making the appellant (“**Mr Zaman**”) liable for 100% of an ‘inaccuracy’ penalty (the “**penalty**”) of just over £1.7 million charged to Zamco Limited (“**Zamco**”), a company of which the appellant was sole director and shareholder.

### BACKGROUND TO THE APPEAL

2. On 30 May 2018 the respondents (“**HMRC**”) issued an assessment (the “**assessment**”) to Zamco for £1,929,592 in respect of under-declared VAT in the periods 02/16 to 08/17 (the “**relevant period**”). The assessment was on the basis that Zamco’s supplies of alcoholic goods in the relevant period took place in the UK and were therefore subject to VAT. Zamco did not appeal against the assessment.

3. On 23 October 2018, HMRC charged the penalty to Zamco, in the sum of £1,736,632.80, under paragraph 1 Schedule 24 Finance Act (“**FA**”) 2007, on the basis that inaccuracies in its VAT returns in the relevant period were deliberate and concealed, and disclosure had been prompted; the penalty range was therefore 50%-100%; a 20% reduction was given (5% for telling HMRC about it, 5% for helping them to understand it and 10% for giving them access to records). HMRC did not consider there were any special circumstances. Zamco did not appeal against the penalty.

4. On 26 October 2018, HMRC sent Mr Zaman the PLN, under paragraph 19(1) Schedule 24 FA 2007, as they believed Zamco was likely to become insolvent.

5. On 20 March 2019, HMRC sent Mr Zaman a review conclusion letter upholding their decision to issue the PLN.

6. On 30 April 2019 Mr Zaman notified an appeal against the PLN to the Tribunal.

### EVIDENCE

7. We had nine lever arch files containing

- (1) correspondence between the parties;
- (2) documents (such as purchase and sale invoices, warehouse documents, and emails from Zamco) (the “**documentation**”) provided by Zamco and Mr Zaman to HMRC relating to Zamco’s purchases and sales of alcohol in the relevant period;
- (3) Zamco’s bank statements;
- (4) responses by foreign tax authorities to enquiries made by HMRC about Zamco’s transactions.

8. We also had an email from Zamco’s accountant dated 3 February 2021 agreeing with Mr Zaman that Officer Begg of HMRC had said at one point in HMRC’s enquiries into Zamco’s transactions that Zamco’s UK tax affairs were “above board”.

9. We had witness statements, and heard oral evidence, from Officer Begg and from Mr Zaman.

### ISSUES BEFORE THE TRIBUNAL

10. The agreed issues before the Tribunal were:

- (1) whether Zamco’s VAT returns in the relevant period contained inaccuracies amounting or leading to understatement of liability to VAT (the “**inaccuracy**’ issue”); the issue was essentially whether all of Zamco’s supplies in the relevant period were in

the UK for VAT purposes – if so, its VAT returns contained such inaccuracies; if not, they did not;

(2) if Zamco’s VAT returns did contain such inaccuracies, whether the inaccuracies were deliberate on Zamco’s part (the “**deliberate’ issue**”); and

(3) if they were, whether the inaccuracies were attributable to Mr Zaman.

11. The Tribunal considered whether a fourth issue was also before it, namely whether the amount of the penalty (and so of the PLN) was correct.

## **INITIAL FINDINGS OF FACT AND SUMMARY OF RELEVANT EVIDENCE**

12. In this section we make initial findings of fact (where the evidence was either uncontested or quite clear, or both); in our discussion below, we shall make further factual findings on matters where the evidence was contested, or less clear, or both. To support those later findings, we also use this section to summarise relevant evidence.

### **Introductory factual findings**

13. Mr Zaman was the sole director and shareholder of Zamco. He also ran a take-away restaurant. Zamco operated out of small premises in Glasgow; it did not have premises to hold the large volumes of alcohol that, according to the documentation, Zamco bought and sold in the relevant period. Zamco had one part time employee, Shafik Ahmed.

14. Zamco was registered for VAT in the UK between June 2015 and October 2017.

15. Zamco was registered with HMRC under money laundering regulations as a “high value dealer” on 25 June 2016. This enabled it to accept cash payments in excess of €15,000 in exchange for goods.

16. HMRC rejected Zamco’s application to be registered under the Warehousekeepers and Owners of Warehoused Goods (“**WOWGR**”) Regulations 1999 in August 2016.

17. Despite not appealing either the assessment or the penalty, Zamco did not pay either.

### **Summary of Zamco’s purchases and sales as reflected in the documentation**

18. The documentation indicated that Zamco bought and, very soon afterwards, on-sold large quantities of alcoholic goods (beer and wine) during the relevant period and that in all but one of the transactions the alcohol was held in warehouses in France and Germany during the short period of time it was in Zamco’s ownership.

19. Zamco’s transactions during the relevant period, as evidenced by the documentation, can be summarised as follows:

(1) There were 397 invoices for purchases by Zamco, totalling over £12.2 million: over half of this (by value) was purchased from Harmsworth Distribution Ltd (“**HDL**”) (a UK company); the next largest supplier companies were Automenu (Slovenian) and Oviestro (Cypriot).

(2) There were 397 invoices for sales by Zamco, totalling over £12.5 million; the top four customer companies (making up about 80% of the total amount) were EDS (French) (137 invoices totalling over £5.2 million), Dany Direct (French) (46 invoices, nearly £2 million), Syntaqs Logistics (Hungarian) (69 invoices, £1.6 million), and Phaekox (Cypriot) (43 invoices, £1.3 million).

(3) Based on this documentation, therefore, Zamco made about £0.3 million on sales of about £12.5 million – a 2-3% margin.

(4) There were 382 “back to back” transactions where all the alcohol purchased from one supplier was sold to one customer.

(5) There were 11 purchases from Licores Nueva Indalica (“**Licores**”) (a Spanish company), and 14 sales to Maxi (a French company), both in same period of one week in April/May 2016, in which alcohol was not bought and sold “back to back”. HMRC’s analysis of these transactions found that some products were purchased but not sold; and some products were sold but not purchased.

(6) At the time of Zamco’s purchase, the alcohol was kept in, or sent by Zamco’s supplier to, a warehouse in France or Germany in each purchase and sale, apart from one: alcohol purchased from Pretz Trading (Cypriot company) and on-sold to AKM Trading Services Ltd (UK company), was in a UK warehouse (Edwards Beers and Minerals).

(7) No VAT was charged on any of the invoices, apart from the UK-warehouse purchase just mentioned (and the treatment of that UK purchase in Zamco’s VAT returns was not disputed.)

### **Cash movements from and to Zamco; discrepancies with the documentation**

20. The total amount paid in to Zamco bank accounts during the relevant period was £11,590,377. Amounts paid in were generally in round numbers; in Sterling; and were made in cash (as opposed to bank transfers) at UK bank branches. The documentation did not contain Zamco receipts issued to a purchaser corresponding to the amounts and dates of cash paid in.

21. The total amount withdrawn from Zamco bank accounts during the period was £11,590,791. The amounts of such payments did not match invoices or combinations of invoices in the documentation. There were also “shortfalls” as follows (where the invoices from suppliers exceeded payments made to those suppliers):

- (1) HDL: £589,424 (on sales of over £7.1 million)
- (2) Oviestro: £65,824 (on sales of over £2.1 million)
- (3) Automenu: £183,109 (on sales of over £1.6 million)
- (4) Licores: £1,521 (on sales of over £600,000)
- (5) Linesko (Cypriot company): £52,304 (representing all sales i.e. Linesko does not appear to have received any payments from Zamco).

22. The documentation contained no records reconciling invoices to cash payments; Mr Zaman said such records were kept on his computer but became inaccessible due to a computer failure.

23. Across the whole of the relevant period, there was a shortfall between (i) Zamco’s cash payments as reflected in bank statements and (ii) invoice totals according to the documentation: the shortfall was about £1 million as regards Zamco’s purchases, and about £700,000 as regards Zamco’s sales. This suggested, if the documentation was complete and accurate, that Zamco had unpaid debts (which it did not pursue) and unpaid liabilities (for which it was not being pursued).

### **Zamco’s customers**

24. Every one of Zamco’s customers was deregistered for VAT in their home country at some time after their purchases from Zamco (as reflected in the documentation); one customer, Vanlies, was deregistered for VAT prior to its purchases from Zamco (as reflected in the documentation).

25. Information provided by foreign tax authorities in response to HMRC’s enquiries about the “top four” customer companies noted at [19(2)] above included the following:

(1) EDS: Its warehouse was closed when French tax authorities tried to contact it subsequent to the relevant period. The relevant database did not show intracommunity acquisitions of goods from Zamco. Data collected from authorised warehouses in northern France did indicate that EDS acquired large quantities of alcohol between November 2015 and May 2016, but Zamco is not shown as the supplier. EDS did not file French VAT or tax returns. Immediate suspension of its VAT number was requested in September 2016.

(2) Dany Direct: VAT-deregistered in January 2018; ceased trading in September 2018. It never filed a VAT return or profit or loss statement. However, it did carry on business (near Calais) and paid French excise duties.

(3) Syntaq Logistics: VAT-deregistered in June 2017; the address for it was a service address where no activity was conducted. The individual entitled to sign on behalf of the company had a UK address.

(4) Phaekox: VAT-deregistered in October 2017 – it submitted no VAT returns. The Cypriot tax authorities suspected that Phaekox was involved in fraudulent transactions but had no evidence of the type of fraud in which it was involved.

26. Information provided by foreign tax authorities in response to HMRC’s enquiries about Zamco’s smaller customers included the following:

(1) D&T (French company) – put into liquidation subsequent to the relevant period; never filed a tax return; VAT-deregistered in June 2017.

(2) Gallineo (French company) – VAT-deregistered in June 2018; its address was only a mailbox when the French tax authorities enquired subsequent to the relevant period.

(3) Maxi Distribution (French company) – VAT-deregistered October 2018; was only a mailbox in Calais when the French tax authorities enquired subsequent to the relevant period; considered a “missing trader”; never paid VAT.

(4) Polat (French company) – VAT-deregistered in July 2016. Never filed VAT returns or profit and loss account; considered a “missing trader”.

(5) Reveras (French company) – VAT-deregistered in October 2016. Considered “clandestine” by the French tax authorities; struck off subsequent to the relevant period; had defaulted on its tax obligations.

(6) Trapero (Cypriot company) – VAT-deregistered in March 2017; its director was a UK resident; considered a “missing trader”.

(7) Vanlies (Belgian company) – VAT-deregistered in August 2016 – bankrupt since 10 November 2015. The Belgian authorities said it was impossible that the company acquired wine or other goods in 2017 in the UK.

(8) West Drink (French company) – VAT-deregistered in September 2016.

### **The warehouses in France and Germany**

27. Information provided by foreign tax authorities in response to HMRC’s enquiries about the warehouses involved in Zamco’s transactions included the following:

(1) Some warehouses had been VAT-deregistered by the time enquiries were made:

(a) AOE France (French company) – filed VAT returns from August 2014 to October 2016; VAT-deregistered in October 2016.

(b) Ariane Logistik (German company) (“**Ariane**”) – VAT-deregistered in October 2017; subsequent to the relevant period, its manager told the German tax authorities that it had not heard of Zamco (even though, according to the documentation, Ariane was involved in 116 Zamco transactions totalling some £3 million); the manager said that Ariane did deal with HDL (and invoiced them for storage and turnaround of beer exports); but Ariane did not know of Phaeox or Gallineo, Zamco’s customers.

(c) Eurostock Nord (French company) – VAT-deregistered in April 2018; was under judicial liquidation when contacted by the French tax authorities after the relevant period.

(d) Tamaz France (French company) – VAT-deregistered in June 2017; it was a listed warehouse operator; its manager was a UK national; it had three employees; it was under judicial liquidation when contacted by tax authorities subsequent to the relevant period; it was “very unfavourably known” to the French authorities: an employee had issued fictitious documents accompanying goods whose taxes have been paid and were destined for French territory; alcohol released by it for consumption in France was destined for a company near Calais with no real activity; numerous containers loaded at Tamaz and normally destined for ‘cash and carry’ near Calais were being transported illegally to Zeebrugge; “the fraudulent nature of Tamaz’s activities is without doubt”, according to the French authorities.

(e) Houston Storage (French company) – VAT-deregistered July 2017; it never paid VAT or corporate tax.

(2) Some of the warehouses had not, however, been VAT-deregistered:

(a) Import Export Fonderies De Wimille (“**IEFW**”) (French company) – was still operating and provided the tax authorities with documents such as receipts on behalf of Zamco, deliveries requested by Zamco, and invoices for service delivery and excise duties. Included in documents provided were:

(i) 7 pages showing over 100 receipts of alcohol from Licores between April and November 2016

(ii) 11 pages showing over 200 deliveries of alcohol to AOE France Distribution and Maxi Distribution in April and May 2016

(iii) examples of transfer documents provided by IEFW to the tax authorities included:

(A) a one-page email from Zamco (Mr Zaman) dated 27 April 2016 asking for transfer of specified alcohol to Licores and Maxi Cash n Carry Duty Paid;

(B) corresponding delivery notes of IEFW showing Maxi Distribution at an address in Calais as the destination; and

(C) corresponding “unique transport documents” [CMR] showing Maxi Distribution in Calais as the consignee.

The example documentation included receipts showing charges by IEFW to Zamco for receiving, handling, delivery.

(b) RM Trading – was still operating and provided the tax authorities with documents mentioning Zamco in receipt notes, transfer notes and delivery notes (and email instructions from Zamco):

(i) a “mandate to be under bonded agent in RM Trading” signed by Mr Zaman on behalf of Zamco

(ii) transfer notes in respect of specified alcohol issued by RM Trading on dates in April 2016 showing Licores as “old owner of the goods” and Zamco as “new owner of the goods”; emails of the same dates from Licores to RM Trading and to Zamco, asking for transfer of specified stock to Zamco

(iii) emails from Mr Zaman on behalf of Zamco to email addresses at RM Trading and IEFW asking for specified stock to be transferred to Zamco’s account; Mr Zaman added: “We will arrange our own transport”

(iv) transfer notes in respect of specified alcohol issued by RM Trading on dates in April and May 2016 showing Zamco as “old owner of the goods” and AOE France Distribution as “new owner of the goods”; emails of the same dates from Mr Zaman on behalf of Zamco to RM Trading asking for transfer of specified stock to France Distribution “for the account of Beers R US on behalf of Maxi Distribution” (one email says that they (Maxi Distribution) had arranged their own transport to collect); other emails from Zamco asked for the specified stock to be transferred to Les sens des affaires; another email from Zamco asks for transfer of specified stock “from the account of Zamco to France Distribution for the account of Polat Sarl”; CMR international consignment notes of the same dates, showing RM Trading as the sender and AOE France Distribution as the consignee

(v) The French tax authorities answered HMRC’s questions as follows:

(A) *Does RM Trading charge its services to Zamco?* The French authorities did not find any invoice addressed to Zamco – rather, deliveries to Polat and Maxi Distribution were invoiced to “the owners of the goods” – Vanlies BVBA for Polat, and Licores, Hallspec Trades Ltd and Maxi Distribution for Maxi Distribution.

(B) *Can the warehouse receive these quantities of goods?* The French authorities said RM Trading’s warehouse had a surface of about 5,500 square metres, so it could receive the goods.

(C) *Is there evidence that these goods were stored in the warehouse?* Citing the software of RM Trading and other documentation, the French authorities said “there is nothing to show that these goods were not stored in RM Trading’s warehouse”.

(D) *Are the documents relating to these requests for transfers of goods kept by RM Trading?* The French authorities replied that merchandise owners contact RM Trading by email to give instructions on the destination to be allocated to the goods; RM Trading then issues simplified accompanying documents to “materialise” the payment of duties and issue of the goods duty paid from its excise warehouse.

(E) *Who organises the transport of goods deliveries?* The French authorities replied that this results from a directive from the principal, namely the owner of the goods. They then set out the names of the transporting companies for the goods transferred to Maxi Distribution and Polat.

(c) Les Vins du Tunnel (French company)

28. Payments from Zamco's bank accounts indicate that only three warehouses were paid by Zamco, almost all for alcohol duty: Edwards Beers and Minerals (the UK warehouse); IEFW; and Cotrama Logistique. The reply from the French authorities regarding RM Trading included an unpaid invoice summary.

### **Zamco's suppliers**

29. Information provided by foreign tax authorities in response to HMRC's enquiries about Zamco's suppliers included the following:

(1) Jassim Ltd (UK company): documents obtained by HMRC from Jassim Ltd dated January 2016 shows Zamco as customer, a third party supplier, and Les Vins du Tunnel as "transfer bond" and "customer bond"; the third party supplier's invoice to Jassim Ltd states "delivered to your account at Les Vins du Tunnel"; Jassim Ltd confirmed the six sale transactions to Zamco were made "underbond" in IEFW; it provided copies of bond transfers and cash receipts for sales.

(2) Automenu – was VAT-deregistered in August 2019.

(3) Licores – was both supplier and customer – VAT-deregistered May 2018. In July 2017 the Spanish tax authorities told HMRC that Licores was active, an intermediary in the purchase and sale of alcohol since 2015, and its business was limited to operating as two French tax warehouses (IEFW and RM Trading). They said Licores bought alcohol from the French warehouses and sold it to its customers. They said that Licores became aware of Zamco through IEFW and other warehouses they trade with. Licores told the Spanish authorities that all payments by Zamco were made by bank transfer. Licores said they traded with Zamco in Sterling because they bought the alcohol in this currency. The documentation given to the Spanish authorities included "transfer notes" issued by RM Trading showing Licores as "old owner of the goods" and Zamco as "new owner of the goods".

(4) Linesko – was VAT-deregistered in July 2017

(5) Oviestro – was VAT-deregistered October 2017. Cypriot tax authorities told HMRC that Oviestro sold goods under bond to Zamco (and so did not have any "transportation documents"). Oviestro said the transactions were in Sterling because the stock was purchased in Sterling.

(6) Tinte Drankenhandel BV (Dutch company) – not VAT-deregistered. Dutch authorities said that it traded in Sterling more often; credit invoices were not followed by repayments; Tinte did not have an account at Tamaz.

(7) HDL – Ian Tuppen of HDL answered HMRC's questions as follows (June 2017):

(a) *How HDL supplied Zamco:* this was sometimes within bond, sometimes bond to bond and, on a very small number of occasions, outside duty suspension with local duty paid.

(b) *Instructions provided to warehouses to release goods from HDL accounts to Zamco:* release notes were always provided to Edwards Bond (copied to Brunel) listing the goods to be dispatched and their rotation numbers.

(c) *Instructions provided to the EU warehouses:* mostly given verbally and confirmation given once actioned.

(d) *Why some invoices to Zamco show duty payments:* in a small number of cases, goods were released to Zamco local duty paid, at Zamco's request.



(e) *Payment terms:* goods were supplied to Zamco on a credit basis; payments were generally received during the month following the issuance of invoices; Zamco remitted payments in tranches and these were allocated on a FIFO basis.

30. HDL had records of 42 sales to Zamco in August 2016, with “movement paperwork” to customers (all but one of which was a customer of Zamco in another deal) – but Mr Zaman said these purchases and sales did not take place. The documents for these sales resembled the documentation of the other transactions.

31. Zamco’s due diligence on customers consisted of checking the existence of the legal entity; sometimes the VAT number was checked as well.

#### **Further details about Zamco’s transactions as reflected in documentation**

32. The purchase invoices for Zamco’s initial purchases detailed alcohol only – they did not include excise duty or “incidentals” such as handling costs. All of Zamco’s own sales invoices had this pattern. Some purchase invoices raised by Licores, HDL and Automenu included excise duty or “incidentals”; in nearly every case, the exact amounts were included in the corresponding sales invoices raised by Zamco. Excise duty was included in five of the transactions – even though the purchase of goods within an excise warehouse under bond should not have attracted excise duties.

33. In a number of transactions, the warehouse involved in the sale differed from the warehouse used in the purchase e.g. goods within the IEFW French warehouse purchased from Oviestro were sold to EDS (a French company) in the Eurostock or AOE France French warehouses. According to a letter from Zamco dated 24 August 2016, stock was sent from Oviestro to EDS (direct) to save extra expense.

34. In a number of transactions, the destination of the sale appeared to be the customer’s address (and so is different from the warehouse used in the purchase). From the 8/16 quarter, this became more common for customers EDS, West Drink, D&T, Gallineo and Maxi (all French companies).

35. In a number of transactions, the destination of the sale was an entity (in a warehouse) other than the purchaser e.g. sales to Maxi moved from the IEFW French warehouse to the account of Beer R Us in the AOE France French warehouse.

36. In the 8/16 quarter, a number of the purchases from HDL moved from the TMT or IEFW French warehouses to Ariane, the German warehouse; the customer was Syntaqs Logistics or Trapero. The other sales to Trapero moved to another German warehouse, VIP Bonded. In most of these deals the documentation included an ‘ARC number’ – this is used in warehouse to warehouse movements. HMRC’s check of these numbers confirmed the movements of goods from TMT or IEFW to Ariane or VIP Bonded as appropriate. In that quarter, other purchases from HDL moved from TMT to the addresses of customers West Drink or Maxi. In these transactions the documentation included what appeared to be an ‘ARC number’; but HMRC’s check of these numbers revealed no matching administrative document.

37. From the 11/16 quarter, many purchases from HDL started within the Ariane warehouse; the customers being Syntaqs and Phaekox. Those within Ariane had a release note from HDL to the Zamco customer and a stamp saying “Released on behalf of Zamco Ltd”.

38. From the 2/17 quarter, many purchases from HDL had warehouse paperwork with the stamp “Released on behalf of Zamco Ltd”

39. In the 5/17 quarter, purchases from HDL ceased; Automenu became a main supplier to Zamco; the sole customer was Dany Direct; Zamco was not mentioned in any warehouse or movement paperwork – only the purchaser, Dany Direct, was mentioned.

## **Seizure of cash from Zamco employee and forfeiture under Proceeds of Crime Act**

40. On 10 May 2016 Mr Ahmed's car was stopped by police in the West Midlands and £70,000 cash found in the boot of the car was seized; a paying-in book for a Zamco bank account was also found in the car; the seized cash was later forfeited pursuant to an order of the magistrates court under the Proceeds of Crime Act 2002 dated 20 January 2017 – the court was satisfied that the cash was obtained “by or in return for unlawful conduct, namely money laundering”.

41. James Flood, an officer of HMRC, provided information in writing dated 6 September 2016 to the court in support of HMRC's application for forfeiture of seized cash, including the following account of material found on Mr Ahmed's mobile phone:

“- Extensive text message conversations between Mr Ahmed and the user of mobile telephone numbers attributed to variations of the contact ‘Ian’ (i.e. Ian, Ian.2, Ian.16) concerning the ongoing trade in significant quantities of alcoholic beverages (apparent articulated lorry loads of consignments of mixed beers and wines) including requests for purchase prices etc

- Further text message communications between Mr Ahmed and ‘Ian’ demonstrates that the former is taking instructions from the latter in respect of the registration of businesses in preparation for trade in the alcohol sector (including Zamco Ltd). ‘Ian’ directs Shakil Ahmed in respect of what documentation is required to trade alcohol products, what communications should be sent to suppliers on the continent to make their activities appear legitimate and what Due Diligence they have to be seen to conduct on trading partners in order to satisfy the current Alcohol Regulations enforced by HMRC.

- The content of one text message received from the contact ‘Ian’. On 02/02/2016 was simply ‘Ian Richard Tuppen 22/02/1961’. Enquiries have established that an Ian Richard Tuppen with the same date of birth was arrested by HMRC in 2015 as part of Operation Bash, an ongoing criminal investigation concerning the fraudulent evasion of excise duty on alcohol, specifically related to diversion fraud. Further names saved with the contacts list of [Mr Ahmed's phone] are known to the Operation Bash investigation team as members of the same organised criminal group (OCG) as Ian Tuppen.

- Also present within the data from [Mr Ahmed's phone] was a number of text messages providing UK postcodes which were accompanied by either a token numbers or a password and often by a 5 figure amount. It is suspected that these are the locations of previous cash collections undertaken by Shakil Ahmed in the furtherance of his exploits within the illicit alcohol market as token numbers and/or passwords are a favoured method of identification used by OCGs to ensure that a commodity, in this case cash, is passed to the correct individual or group at an illicit handover.

- Further text messages recovered from [Mr Ahmed's phone] provide usernames and passwords for ‘pretty good privacy’ (PGP) communication profiles. PGP is a secure communication platform, the use of which is favoured by OCGs when the making arrangements for illicit handovers due to the high level of encryption that the service offers.

- In September of 2015 a series of text messages were exchanged between Shakil Ahmed and the user of telephone number [X] regarding an alleged unpaid debt of £40k owed to Mr Ahmed. The content of the message, received by Shakil Ahmed from the third party, was ‘So you were gonna sell the Vodka in your off sales, I will (make) the licencing board aware of what you are upto, and customs, the very least that will happen is you would get

investigated. I have been down here 3 days, you will get 12.5k dropped at your off sales this afternoon and, that's it.' This is again indicative of Mr Ahmed's ongoing involvement in alcohol fraud.

- In a text message sent to the device on 08/01/2016 the content is seen to be '1.34 -11 = 1.23\*90000 = 110.700€'. This is clearly a rate of exchange to be offered for the transfer of £90k GBP to Euro. Open source research indicates that the GBP/Euro spot rate on 08/01/2016 was between €1.32 and €1.34 and therefore the rate offered by Mr Ahmed was significantly lower than that which could have been easily obtained from legitimate foreign exchange providers. This suggests that the transaction concerned the transfer of criminal property, likely for the purchase of consignments of illicit alcohol, which could not be converted via the traditional channels due to the origins of the funds and the purpose of the exchange."

42. When asked at the hearing what his response to the May 2016 cash seizure was – and whether the allegations made by HMRC in relation to it caused him to reassess Zamco's business - Mr Zaman said he was upset and confused by the cash seizure; and that he did not understand why the cash had been seized. He instructed a lawyer to contest the forfeiture of the cash in the magistrates court. He said the change he made to Zamco's business was to start to require customers to bring cash to Zamco, rather than having Mr Ahmed collect it. He did not, however, raise concerns, or stop trading, with HDL, even though Mr Tuppen was alleged by HMRC in the seizure proceedings to be connected with organised crime.

#### **Zamco's interactions with HMRC**

43. HMRC officers met with Mr Zaman at Zamco's premises on 4 May 2016. According to HMRC's notes, Mr Zaman told them that Zamco was selling "duty suspended" alcohol in "bond to bond trading"; customers and suppliers were found via the "underbond" website; and the goods were held in France. HMRC requested documents and some were provided on 24 May 2016.

44. HMRC had a follow-up meeting with Zamco on 2 June 2016. Questions were asked about the documents provided, included the "due diligence packs". According to HMRC's notes, Mr Zaman told the officers that he employed a "courier" in England named Shakil Ahmed – he was employed for 16 hours a week to collect cash which had been brought into the country. Mr Zaman demonstrated to the officers how he used the "traderunderbond" website.

45. An HMRC officer visited Zamco on 21 July 2016 to discuss its WOWGR application. Zamco's business plan was discussed; Mr Zaman's use of the "underbond" website was referred to several times in HMRC's note; as was the role of Mr Ahmed in "scouting" for business; the HMRC officer noted that he thought Zamco's accountant was "most likely coaching" Mr Zaman as regards Mr Zaman's answers to the officer's questions.

46. HMRC informed Mr Zaman on 25 August 2016 that Zamco's WOWGR application had been rejected. HMRC's letter said that in reaching their decision the following had been taken into account:

- (1) the proposed business is not commercially viable or has significant credibility issues
- (2) Zamco provided information which contradicted information already provided.

47. Mr Zaman questioned the above in an email to HMRC dated 26 August 2016. The HMRC officer responded on 30 August 2016 that "when I checked the information you provided during our meeting with information already held by HMRC there were numerous discrepancies. Also the reliance on one website, a small band of suppliers & customers with no evidence of further interest does not appear viable".

48. HMRC wrote to Zamco on 23 November 2016, saying that they were concerned that its business could be at risk of involvement in supply chains that were connected with fraud, and arranging a compliance check visit, which took place on 7 December 2016. According to HMRC's meeting notes, Mr Zaman said that Zamco's only employee, Mr Ahmed, met customers and suppliers and collected cash payments; he did this work part time. Mr Zaman said that Zamco did not issue receipts for cash received. The HMRC officers told Mr Zaman that Zamco could be aiding the diversion of alcohol by being a link in the chain. They told him that Zamco needed to improve its due diligence beyond VAT and company certificates and passports. HMRC's note said this under the heading "Conclusion/Credibility":

"Mohammed Zaman did not give the impression he fully understood the regime he was trading in. He was vague in his answers and did not present a knowledge of his deals I would expect from an individual in control of all aspects of his business. He required prompting from the visiting officers and occasional guidance from his accountant.

Taking his history of interest in MTIC type trading and his displayed lack of knowledge it is possible he may not be the controlling mind behind the trading activities."

49. Various documents were requested by HMRC following the meeting.

50. There was another visit by HMRC officers to Zamco on 8 March 2017. HMRC's note of the meeting had the same comments under the heading "Conclusion/Credibility" as did their note of the previous meeting. Various documents were requested by HMRC in follow up to the meeting.

51. HMRC sent a notice to provide information and produce documents to Zamco on 26 May 2017.

52. HMRC wrote to Zamco on 27 June 2017 requesting certain documents.

53. HMRC sent a further notice to provide information and produce documents to Zamco on 11 August 2017.

54. There was a further visit by HMRC officers to Zamco on 13 October 2017. According to HMRC's meeting notes, Mr Zaman said that the payment schedules requested by HMRC could not be provided because details had been recorded on his computer but the hard drive had become corrupted. HMRC's note said this under the heading "Conclusion/Credibility":

"Mohammed Zaman still did not give the impression he fully understood the regime he was trading in. He was vague in his answers, allowing the agent to speak, and did not present a knowledge of his deals I would expect from an individual in control of all aspects of his business.

Taking his history of interest in MTIC type trading and his displayed lack of knowledge it is possible he may not be the controlling mind behind the trading activities."

55. HMRC sent a further notice to provide information and produce documents to Zamco on 20 December 2017.

56. HMRC wrote to Zamco on 3 May 2018 saying, inter alia, that they "suspect that alcohol being sold in bond in Europe to missing traders is actually smuggled back into the UK; where it is sold and no VAT or duty is declared or paid. On the available evidence [HMRC] believe the cash deposits [made to Zamco] were actually derived from sales of alcohol made in the UK. As a VAT registered trader you are liable at 20%."

## **Mr Zaman’s response to request for further and better particulars (July 2020)**

57. Mr Zaman responded as follows, in July 2020, to certain of HMRC’s requests for further and better particulars:

(1) “The Zamco assessment was not appealed as we discussed with Mr Begg [the HMRC officer involved] as it didn’t matter whether the liability he assessed was £1,000 or whatever the company was not in a position to pay, therefore at that stage I believed I was removing administration from HMRC ...”

(2) “I did not consider the calculation of the PLN as I did believe the fact there is a PLN in the first place is erroneous ...” (in response to the questions, “Does the appellant challenge the calculation of the PLN (other than on the basis that the Assessment is challenged?)” and “If the calculation of the PLN is challenged, on what basis is it challenged?”).

## **LAW**

### **Law relevant to the PLN**

*References in what follows to “paragraphs” are to paragraphs of Schedule 24 FA 2007*

58. Where a penalty is payable by a company for deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer. Officer means a director (including a shadow director within the meaning of s251 Companies Act 2006) or a manager (paragraph 19).

59. A person may appeal against a decision to raise a PLN, and on such an appeal the tribunal may affirm or cancel HMRC’s decision: sub-paragraphs 15(1) and 17(1), read together with sub-paragraph 19(5)(e).

60. A person may appeal against a decision as to the amount of a PLN, and on such an appeal the tribunal may affirm HMRC’s decision or substitute for HMRC’s decision another decision that HMRC had power to make: sub-paragraphs 15(2) and 17(2), read together with sub-paragraph 19(5)(e).

61. If the Tribunal substitutes its own decision for HMRC’s, it may rely on paragraph 11 (see [68] below) to a different extent than HMRC, but only if the Tribunal thinks that HMRC’s decision in respect of the application of paragraph 11 was flawed (in the light of principles applicable in proceedings for judicial review (paragraph 17(3) read together with sub-paragraph 19(5)(e)).

### **FTT decision on ‘inaccuracy’ penalty appeals and unrepresented appellants**

62. Commenting on the way in which the legislation separately sets out (a) the right to appeal against a penalty, and (b) the right to appeal against the amount of a penalty, the Tribunal in *David Collis v HMRC* [2011] UKFTT 588 (TC) said (at [25]):

“Although set out in this way, there will be many cases, in fact it is likely to be common, where a taxpayer subject to a penalty will want to make an appeal under more than one of the heads of appeal available. In many cases taxpayers will be unrepresented, and will not make any distinction, based on para 15, in the nature of the appeal that is made. In such cases, in the interests of fairness and justice the tribunal should be slow to exclude any avenue of appeal available to an appellant purely on the technical nature of the appeal that has been made. Issues of liability and amount will often go hand in hand and should normally be considered in that way by the tribunal. Accordingly, if a tribunal affirms the decision of HMRC that a penalty is payable, it should normally go on to consider the amount of that penalty, including any decision

regarding the existence or effect of any special circumstances, and also any decision whether or not to suspend the penalty and any conditions of any such suspension.”

### **FTT decisions on whether the company penalty can be questioned on a PLN appeal**

63. Prior tribunals have decided that, on an appeal against a PLN, arguments can be brought against the underlying penalty, where that penalty has not been appealed by the company:

(1) In *Bell v HMRC*, the Tribunal agreed with Judge Kempster’s analysis in *Jason Andrew v HMRC* [2016] UKFTT 295 (TC) “and the conclusion that it cannot have been the intention behind the legislation to leave an unchallengeable company penalty” (at [160]).

(2) The Tribunal in *Hussain v HMRC* also agreed with this approach (at [12]), as did the Tribunal in *Jarvis v HMRC* [2020] UKFTT 54 (TC) at [24].

### **Law relevant to the penalty**

64. Under paragraph 1, a penalty is payable by a person (P) where

- (1) P gives HMRC a document including a company tax return and a VAT return;
- (2) the document contains an inaccuracy which amounts to, or leads to –
  - (a) an understatement of a liability to tax
  - (b) a false or inflated statement of a loss, or
  - (c) a false or inflated claim to repayment of tax; and
- (3) the inaccuracy was careless or deliberate on P’s part.

65. Under paragraph 3, inaccuracy in a document given by P to HMRC is

- (1) “deliberate and concealed” if the inaccuracy is deliberate on P’s part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)
- (2) “deliberate but not concealed” if the inaccuracy is deliberate on P’s part but P does not make arrangements to conceal it.

66. The normal rule is that potential lost revenue (“PLR”) in respect of an inaccuracy in a document is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy (paragraph 5).

67. For an inaccuracy involving a domestic matter, the penalty for deliberate but not concealed action is 70% of PLR; the penalty for deliberate and concealed action is 100% of PLR (paragraph 4). However, where P discloses an inaccuracy, HMRC must reduce this to a percentage that reflects the quality of his disclosure (but not below a minimum of 35% or 50% in the case of prompted disclosure for 70% and 100% penalties respectively) (paragraph 10). “Quality” includes timing, nature and extent. A person discloses an inaccuracy by

- (1) telling HMRC about it;
- (2) giving HMRC reasonable help in quantifying the inaccuracy; and
- (3) allowing HMRC access to records for the purpose of ensuring the inaccuracy is fully corrected.

Disclosure is “prompted” unless made at a time when the person making it had no reason to believe that HMRC had discovered or were about to discover the inaccuracy. (paragraph 9)

68. If they think it is right because of special circumstances, HMRC may reduce a penalty (paragraph 11).

#### **Cases relevant to the ‘deliberate’ issue**

69. In *Auxilium Project Management Ltd v HMRC* [2016] UKFTT 249 (TC) at [63], the Tribunal stated its view that “a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. The question is not whether a reasonable taxpayer might have made the same error or even whether this taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time.”

70. Concluding its consideration of the meaning of the expression “deliberate inaccuracy” in a document given to HMRC (in s118(7) Taxes Management Act 1970), the Supreme Court recently said (in *HMRC v Tooth* [2021] UKSC 17 at [42]):

“It may be convenient to encapsulate this conclusion by stating that, for there to be a deliberate inaccuracy in a document within the meaning of section 118(7) there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement or, perhaps, (although it need not be decided on this appeal) recklessness as to whether it would do so.”

#### **Law relevant to the ‘inaccuracy’ issue: place and time of supply of goods**

71. VAT is charged on taxable supplies of goods in the UK by taxable persons: s4 Value Added Tax Act 1994 (“VATA”).

72. Section 7 VATA applies for determining whether goods are supplied in the UK. The most relevant sub-sections to the facts here may be summarised thus:

- (a) If the supply of the goods does not involve their removal from or to the UK, they are treated as supplied in the UK if they are in the UK – and otherwise are treated as supplied outside the UK – s7(2);
- (b) Where the supply involves the removal of the goods to the UK by or under the directions of the person who supplies them, they are treated as supplied in the UK – s7(4)(a).

73. Sub-section 6(2) VATA applies for determining the time when a supply of goods is to be treated as taking place, as follows (most relevantly to the facts here):

- (a) If the goods are to be removed, at the time of the removal;
- (b) If the goods are not to be removed, at the time when they are made available to the person to whom they are supplied.

74. These rules are derived from the principal VAT directive (2006/112/EC), which provides:

- (1) Where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply took place (Article 31);
- (2) Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins ... (Article 32);

- (3) The place of an intra-Community supply of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends (Article 40);
- (4) ‘Supply of goods’ shall mean the transfer of the right to dispose of tangible property as owner (Article 14(1)).

### **Burden and standard of proof**

75. As this is a penalty appeal, HMRC bear the burden of proof to show that the PLN was validly issued. The standard of proof is the ordinary civil standard, being the balance of probabilities.

### **PARTIES’ ARGUMENTS**

76. On the ‘inaccuracy’ issue, HMRC’s statement of case said this:

“5.3 The Appellant’s position throughout the enquiry was that Zamco carried on the business of buying and selling beers and wines. However, Zamco provided no evidence that the supplies took place outwith the United Kingdom. Substantial amounts of cash were deposited in Zamco’s bank accounts in the United Kingdom. Those cash deposits were all in sterling. They did not correspond to any of the invoices which the Appellant exhibited to Officer Begg.

5.4 In those circumstances, on the balance of probabilities, Zamco was making supplies of goods on which it should have charged VAT ...”

77. On the potential fourth issue of quantum of the penalty (and so of the PLN), HMRC submitted that [25] of *David Collis* should not be applied here: Mr Zaman was given the opportunity to raise arguments as to quantum as part of HMRC’s request for further and better particulars before the hearing, and he declined to do so. Nor did Mr Zaman raise the issue in his cross examination of Officer Begg at the hearing.

78. On the ‘deliberate’ issue, HMRC did not demur from general proposition that deliberate is a subjective test; but submitted that it was relevant to consider what Mr Zaman “should have” known (in line with *Kittel* case law).

79. Mr Zaman’s position was:

- (1) Zamco was trading bond to bond abroad
- (2) Zamco did not charge VAT to its customers; nor did its suppliers charge VAT to it
- (3) Since there was no VAT involved, there should be no assessments
- (4) Mr Zaman did nothing deliberately wrong
- (5) HMRC have failed to show that Zamco was trading in the UK; all they have showed is that cash was deposited with Zamco at bank branches in the UK
- (6) Officer Begg could not say where in any detail Zamco was trading in the UK.

### **DISCUSSION**

#### **The ‘inaccuracy’ issue**

80. The question here is the place of supply of Zamco’s alcohol sales for VAT purposes. This depends on whether the goods were “removed” (i.e. dispatched or transported) to the UK (by Zamco or under its directions) as part of Zamco’s sales. If they were, then the place of supply was the UK. If the goods were not so “removed” to the UK, then the place of supply is their physical location at the time they were made available to the buyer.

81. To determine this issue we must weigh up the evidence, including:



- (1) Mr Zaman's evidence that the goods were in warehouses in France and Germany at the point of sale;
- (2) the documentation, which broadly supports the conclusion that the goods were in warehouses in France and Germany at the point of sale;
- (3) the fact that Zamco did not appeal the assessment, which was raised on the basis that the place of supply was the UK;
- (4) the fact that payment for Zamco's sales was made by deposit of Sterling cash at bank branches in the UK;
- (5) the fact that one of the warehouses, and two of Zamco's counterparties, had UK connections e.g. a director resident in the UK (see [25(3)], [26(6)] and [27(1)(d)] above);
- (6) text messages from Mr Ahmed's phone that HMRC alleged (before the magistrates court) were indicative of his involvement in the illicit alcohol market.

82. We must also consider if relevant inferences about the place of supply can properly be made from all the circumstances.

***Weight to be placed on Mr Zaman's evidence as regards the place of supply***

83. We would be wary of putting significant weight on Mr Zaman's evidence about the place of supply (or indeed other matters) unless (i) corroborated by evidence we consider credible or (ii) clearly in line with "common sense" and what we consider inherently likely. The reasons for our scepticism are that we did not find Mr Zaman's oral evidence wholly "open" and forthcoming. He gave short answers to key questions e.g. about relationships with customers and how he developed Zamco's business – but then could not provide details. For example, he said he spoke to EDS (a major customer) on average every other day – but could not recall the name of the person he spoke to there because it was too long ago (in 2016 and 2017). Asked to describe his business relationship with Zamco's largest customers (such as EDS, Dany and Phaekox), Mr Zaman simply said they were traders in beer and wine – and provided no further detail. When asked how mark ups on the goods were agreed and negotiated, Mr Zaman simply said they were "variable". In his responses both to HMRC prior to the appeal and at the hearing, on various oddities in Zamco's business – why, for example, its customers paid very large sums in cash – he gave either curt answers ("perhaps they wanted to save bank charges") or simply said he "didn't know". Our impression was that we were being given "minimum" information; questions were not being answered fully.

84. There was also inconsistency in Mr Zaman's evidence:

- (1) when cross examined by Mr Macleod on the second day of the hearing, Mr Zaman said he never met Zamco's customers in person; but in answering questions from the Tribunal on the next day, Mr Zaman said he did meet customers, in the UK (although it was Mr Ahmed who more regularly met suppliers and customers);
- (2) Mr Zaman had told HMRC in October 2017 that Zamco kept records reconciling invoices with bank statements, but these were unavailable due to the hard drive on his computer having become corrupted. During the hearing, Mr Zaman said (when cross examining Officer Begg) that the computer had caught fire. Under cross examination himself by Mr Macleod, Mr Zaman modified this to saying that smoke started to come out of the computer.

85. Due to the above, we did not have confidence that Mr Zaman was always telling the "whole" truth to the best of his recollection.

### ***Weight to be placed on the documentation as regards place of supply***

86. The documentation was extensive and generally supported a finding of the alcohol being in warehouses in France and Germany at the time of supply by Zamco – in the sense that it indicated the involvement of at least one such warehouse in the transactions and did not indicate that the alcohol involved was either in the UK when owned by Zamco or transported to the UK as part of Zamco’s sale. However, the evidential value of the documentation was not definitive, for the following reasons:

- (1) it was not complete: for example, there were no cash receipts issued by Zamco on payment by customers;
- (2) there were discrepancies between the documentation and the movements in Zamco’s bank accounts: see our findings at [21] and [23] above;
- (3) there was cause for scepticism about the *bona fides* of many of the legal entities in the supply chain: a large number were VAT-deregistered following the relevant period (which indicated they went out of business and may have been involved in illicit activities) and some were suspected by local tax authorities of being involved in illicit activities.

87. We would note, however, that the documentation, together with Mr Zaman’s evidence, was the only evidence for the undisputed (and important) fact that Zamco was buying and selling alcohol (and so for the fact that the money moving through Zamco’s bank accounts was consideration for such taxable supplies by Zamco). Hence the documentation cannot be simply dismissed or ignored.

### ***Weight to be placed on fact that Zamco did not appeal the assessment***

88. We find that the reason Mr Zaman did not cause Zamco to appeal either the assessment or the ‘inaccuracy’ penalty was not that he accepted their validity - but rather that he was not concerned about Zamco’s being sued and potentially rendered insolvent (as Zamco had little money, and Mr Zaman believed he was protected by limited liability). We make this finding based on Mr Zaman’s evidence, which in this respect we found to be entirely plausible and consistent with a somewhat “brazen” approach to legal formality and propriety (and moreover was not challenged by HMRC).

89. Given the above finding, we do not put evidential weight on the fact that Zamco did not appeal the assessment, in deciding the ‘inaccuracy’ issue: the fact is not informative as to the place of Zamco’s supplies, which is the underlying issue.

### ***Our findings as to the general circumstances of Zamco’s business***

90. We find a number of oddities about the business Zamco carried on:

- (1) customer payments to Zamco were made entirely in cash – this strikes us as unusual and suspicious, given the large sums involved;
- (2) the three points we make at [86] above as to why the documentation cannot be relied on as definitive evidence;
- (3) the fact that one of Zamco’s main suppliers, HDL, held documents for 42 similar transactions with Zamco (which Mr Zaman said did not take place);
- (4) it was not clear what value Zamco was “adding” in the supply chain, given its lack of experience and expertise in the business and the fact that it held the goods for very short periods of time;
- (5) the seizure of £70,000 in cash from the business and its forfeiture by the magistrates court on grounds that the cash was obtained by or in return for money laundering;

(6) Mr Zaman’s evidence was that Mr Ahmed dealt with Zamco’s purchasers more regularly than he did – this struck us as odd, as Mr Ahmed was a part-time employee who had the role of picking up deliveries of cash by customers;

(7) Zamco’s cursory “due diligence” on its customers.

91. Based on the above, as well as the text messages found on Mr Ahmed’s phone in May 2016, we find it likely that there was illicit activity in the supply chains with which Zamco was involved. On the evidence before us, however, we are unable to say with specificity what (apart from money laundering) the illicit activity was, or exactly where in the supply chain it took place: we note Mr Ahmed’s text messages showed communication with Mr Tuppen who, HMRC said, had been arrested in 2015 on suspicion of involvement with inward diversion fraud – but this is insufficient in our view to make a finding that Zamco’s role in the supply chains in 2016-2017 was to arrange or oversee the smuggling of the alcohol into the UK. Rather, based on all the evidence, it seemed likely to us that the purpose of Zamco’s involvement in the supply chains was to “cover up” or obscure illicit activity elsewhere in the supply chain (but that Zamco itself was not the initiating or driving force in the illicit activity). We note such a finding is consistent with impressions of Mr Zaman formed by HMRC at meetings during and just after the relevant period: see [48], [50] and [54] above.

***Conclusions as to place of supply and the ‘inaccuracy’ issue***

92. On the basis of the documentation and the fact that Zamco had no premises in the UK to store the goods, we find, on the balance of probabilities, that the goods were either present in, or moved to, a warehouse in France or Germany at the point at which they were acquired by Zamco.

93. In making this finding, we have taken account of the fact that some of the documentation and evidence, whilst indicating the involvement of a French or German warehouse, does not indicate the involvement of Zamco (e.g. the evidence that Ariane had not heard of Zamco). In our view, the more likely explanation for this is not that the goods were never held in the warehouses, but rather that Zamco’s role was so insubstantial that it could be “short-circuited” out of the documentary record (i.e. transactions were recorded as between Zamco’s supplier and Zamco’s purchaser, or even a party further down the supply chain). This also, in all likelihood, saved Zamco being charged fees by the warehouse (an explanation given by Mr Zaman which we accept given its plausibility and consistency with Zamco’s minimal substantive role in the supply chain).

94. This finding as to the location of the goods upon Zamco’s acquiring them, means that the place of Zamco’s own onward supplies was the UK only if, on the balance of probabilities, the evidence presented indicates that the goods were removed to the UK from the French or German warehouse prior to, or at, the point at which Zamco on-sold them, by Zamco or under its directions.

95. The facts that (i) payment was made by delivery of cash to the UK, and (ii) a few counterparties had UK connections, are in themselves insufficient to persuade us, on the balance of probabilities, that the goods made their way from French and German warehouses to the UK at, or before, Zamco on-sold them – they are not facts relating to the location of the goods. Similarly, our finding, by inference from the circumstances, that there was illicit activity somewhere in the supply chains, is not specific enough to persuade us of the likelihood that the illicit activity was smuggling into the UK at or before the point of Zamco’s sale. Rather, given the insubstantial role of Zamco in the supply chain, we find it more likely that “nothing at all” happened to the goods during the very short period of Zamco’s ownership: and so, given that Zamco acquired them in French and German warehouses, the likelihood is that they remained there up to and at the point of Zamco’s onward sale. As found at [91] above, we think it likely

that Zamco's role in the supply chain was one of "covering up" or obscuring illicit activity, rather than itself doing something more active such as organising smuggling into the UK.

96. We thus find that it has not been proven, on the balance of probabilities, that the alcoholic goods in question were removed to the UK by Zamco or under its directions; and so, for the same reason, it is not proved that the place of supply of all of Zamco's supplies in the relevant period was the UK, such that its VAT returns in that period contained inaccuracies. Given the burden of proof on HMRC, this means that we have to allow the appeal – and, strictly speaking, need not consider the other issues in this appeal. However, as we were presented with evidence and submissions relating to the 'deliberate' issue, we shall go on to consider it and other issues, on the theoretical basis that there is an error of law in our finding on the 'inaccuracy' issue.

### **The 'deliberate' issue**

97. Applying the tests for deliberate inaccuracy in *Auxilium* and *Tooth* (which we find consistent), the question is whether Zamco knew its VAT returns were inaccurate (because the place of supply was the UK) and intended that HMRC rely on that inaccuracy. (We do not accept HMRC's submission that the "should have known" limb of the test in *Kittel* is relevant: we are not here concerned with applying *Kittel*). It is clear that Mr Zaman was the controlling mind of Zamco: and his evidence was that he did not, subjectively, know the supplies gave rise to VAT, as he considered that the place of supply was outside the UK, as the goods were held in warehouses in Germany or France. However, for reasons given at [83-85] above, we place limited weight on Mr Zaman's evidence. We therefore need to look at all the facts and circumstances, and decide whether inferences can be drawn as to Zamco's state of mind as its VAT returns were filed.

98. Noting (i) the oddities in Zamco's business as set out at [90] above, and (ii) our findings, by inference, as to the illicit activity in the supply chains (at [91]), it seems to us unlikely that Mr Zaman was unaware of the fact (which we assume for this part of the discussion) that the alcohol was transported to the UK from the French and German warehouses at, or before, the point of, Zamco's onward sale. The significance of the 'oddities', in our view, is chiefly that they were obvious enough to prompt Mr Zaman, as the owner of the business, to ask questions of his counterparties and find out what was "going on". The fact that Mr Zaman was quite content to have Zamco continue to trade, in the face of these oddities, indicates to us, on the balance of probabilities, that he knew, at least in outline, the nature of the illicit activity that were going on in the supply chain – and if this included smuggling into the UK at or before the point of Zamco's sale, he would have been aware of this. The fact that Mr Zaman, as Zamco's controlling mind, had this knowledge, and yet Zamco submitted its VAT returns on the basis that the place of supply was outside the UK, means that the inaccuracies in the VAT returns (assumed for the purposes of this part of the discussion) were deliberate on Zamco's part.

99. In coming to this finding, we have considered Mr Zaman's evidence (confirmed in an email from Zamco's accountant) that HMRC told them in the course of their enquiries that Zamco's UK tax affairs were "above board" – this evidence does not however, affect our view of Zamco's state of knowledge.

100. The third issue is whether the inaccuracies in Zamco's VAT returns (assumed for this part of the discussion) were attributable to Mr Zaman. We find that they were.

101. In our view, issues of quantum should be considered by the Tribunal, for the reasons given in *David Collis* at [25]: Mr Zaman was unrepresented, and his response to HMRC's request for further and better particulars was no more than to say that he had not considered issues of quantum (because he objected to the PLN as a whole). However, on the evidence before us, we would affirm HMRC's decisions on quantum: Zamco made arrangements to conceal the inaccuracy (assumed for this part of the discussion) by providing the

documentation, which made no mention of the movement of the goods to UK; any disclosure of that inaccuracy was prompted; and HMRC's reductions for disclosure of that inaccuracy were rightly quite small as Zamco did little to tell HMRC about that inaccuracy, or to give them reasonable help in quantifying it, or to allow HMRC access to records for the purpose of ensuring that inaccuracy was fully corrected. Moreover, HMRC decision not to reduce the penalty because of special circumstances was not, in our view, flawed.

#### **CONCLUSION**

102. The appeal is allowed, for the reasons summarised at [96] above: HMRC's decision as to Mr Zaman's liability embodied in the PLN is cancelled.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

103. 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.

**ZACHARY CITRON  
TRIBUNAL JUDGE**

**Release date: 24 June 2021**