



Neutral Citation: [2023] UKFTT 00405 (TC)

Case Number: TC08810

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, 88 Rosebery Avenue, London

Appeal reference: TC/2016/07066

VAT - denial of input tax relying on Kittel principle from a scrap metal merchant – whether knew or should have known of connection to fraudulent evasion of VAT – held – Appellant knew of the connection to fraudulent evasion of VAT – appeal dismissed

Heard on: 23 to 30 January 2023

Judgment date: 03 May 2023

Before

**TRIBUNAL JUDGE JEANETTE ZAMAN
TRIBUNAL MEMBER SONIA GABLE**

Between

PPX METAL MANAGEMENT LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Jonathan Kinnear KC, counsel, instructed by Mezzle Law

For the Respondents: Howard Watkinson, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. PPX Metal Management Ltd (“PPX”) appeals against HMRC’s decision notified on 10 November 2016 to deny PPX’s right to deduct input tax on purchases of scrap metals in the VAT periods 11/14, 02/15, 05/15, 08/15 and 11/15 (the “relevant periods”) on the basis that these transactions were connected with the fraudulent evasion of VAT and PPX knew or should have known that this was the case (relying on the principle in *Kittel*) (the “Denial Decision”).

2. That Denial Decision affected £3,571,232 of input tax claimed in the relevant periods. This amount has since been amended to £3,570,441.99. The input tax denied for each of the relevant periods (as amended) is:

- (1) 11/14 – £499,120.07;
- (2) 02/15 – £228,357.75;
- (3) 05/15 – £1,308,777.81;
- (4) 08/15 – £1,335,743.91; and
- (5) 11/15 – £338,349.43 (less credit notes for 05/16 of £139,906.98 allowed in 11/15).

3. The Denial Decision denied the right to deduct input tax on 659 transactions (the “Transactions”) by PPX, which (as described further below) were purchases from 11 suppliers, each of whom were agreed to be fraudulent defaulters (the “Defaulting Suppliers”).

4. HMRC’s primary case was that PPX knew that the Transactions were connected with the fraudulent evasion of VAT. In the alternative, HMRC’s case was that PPX should have known that the Transactions were so connected, because they permitted of no other reasonable explanation.

5. PPX rejected these submissions, and gave notice of appeal to the Tribunal on 30 November 2016. PPX’s submissions included that

- (1) the transactions were part of PPX’s regular trading as a wholesaler of scrap metal, and did not stand out as different,
- (2) whilst acknowledging that its due diligence had deficiencies, denied that further due diligence would have resulted in the required means of knowledge, and
- (3) drew attention to the level of investigations which had been undertaken by HMRC to reach the conclusion that the Defaulting Suppliers were fraudulent.

6. The sole director of PPX from incorporation and throughout the relevant periods was Paul Pearce, who gave evidence to the Tribunal.

7. On the basis of the facts as found and for the reasons set out in detail below, we have concluded that PPX knew that the Transactions were connected with the fraudulent evasion of VAT and dismiss the appeal.

RELEVANT LEGISLATION

8. Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT (the “2006 Directive”) provide as follows:

“**Article 167**

A right of deduction shall arise at the time the deductible tax becomes chargeable...

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT, which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person..."

9. Article 273 of the 2006 Directive provides that "Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers".

10. The above provisions are reflected in UK domestic legislation by ss24 to 26 Value Added Tax Act 1994, which provide as follows:

"24 Input tax and output tax

(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say –

(a) VAT on the supply to him of any goods or services;...

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him...

(2) Subject to the following provisions of this section, "output tax", in relation to a taxable person, means VAT on supplies which he makes...

(6) Regulations may provide –

(a) for VAT on the supply of goods or services to a taxable person... to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;...

25 Payment by reference to accounting periods and credit for input tax against output tax

(1) A taxable person shall –

(a) in respect of supplies made by him...

account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

26 Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies...) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business –
...

(b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;...”

AUTHORITIES ON LOSS OF ENTITLEMENT TO DEDUCT INPUT TAX

11. The European Court of Justice (the “CJEU”), in its judgment in the joined cases of *Axel Kittel v Belgium and Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2008] STC 1537, confirmed that taxable persons who “knew or should have known” that the supplies in which input tax was incurred were connected with the fraudulent evasion of VAT would not be entitled to claim a credit in respect of that VAT input tax in the manner described above:

“44. The Court drew the conclusion, at paragraph 51 of *Optigen*, that transactions which are not themselves vitiated by VAT fraud constitute supplies of goods effected by a taxable person acting as such and an economic activity within the meaning of Article 2(1), Article 4 and Article 5(1) of the Sixth Directive where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge.

45. The Court observed that the right to deduct input VAT of a taxable person who carries out such transactions likewise cannot be affected by the fact that, in the chain of supply of which those transactions form part, another prior or subsequent transaction is vitiated by VAT fraud, without that taxable person knowing or having any means of knowing (*Optigen*, paragraph 52).

46. The same conclusion applies where such transactions, without that taxable person knowing or having any means of knowing, are carried out in connection with fraud committed by the seller.

...

51 ... traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing the right to deduct the input VAT.

52. It follows 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.

...

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 ... 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...

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.

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

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

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'.

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.

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."

12. In *Mahagében kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* and *Peter David v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* (C-80/11 and C-142/11) [2012] STC 1934 the CJEU gave additional guidance:

"53 According to the Court's case-law, traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT (see *Kittel and Recolta Recycling*, paragraph 51).

54 On the other hand, it is not contrary to European Union law to require a trader to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion (see, to that effect, Case C-409/04 *Teleos and Others* [2007] ECR I-7797, paragraphs 65 and 68; *Netto Supermarkt*, paragraph 24; and Case C-499/10 *Vlaamse Oliemaatschappij* [2011] ECR I-0000, paragraph 25).

55 Moreover, in accordance with the first paragraph of Article 273 of Directive 2006/112, Member States may impose obligations, other than those provided for by that directive, if they consider such obligations necessary to ensure the correct levying and collection of VAT and to prevent evasion.

56 However, even though that provision gives the Member States a margin of discretion (see Case C-588/10 *Kraft Foods Polska* [2012] ECR I-0000, paragraph 23), that option may not be relied upon, according to the second paragraph of that article, in order to impose additional invoicing obligations over and above those laid down in Chapter 3, headed 'Invoicing', of Title XI, headed 'Obligations of taxable persons and certain non-taxable persons', of that directive and, in particular, Article 226 thereof.

57 Furthermore, the measures which the Member States may adopt under Article 273 of Directive 2006/112, in order to ensure the correct levying and collection of the tax and to prevent evasion, must not go further than is necessary to attain such objectives. Therefore, they cannot be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT, which is a fundamental principle of the common system of VAT (see, to that effect, inter alia, *Gabalfriša and Others*, paragraph 52; *Halifax and Others*, paragraph 92; Case C-385/09 *Nidera Handelscompagnie* [2010] ECR I-0000, paragraph 49; and *Dankowski*, paragraph 37).

58 As regards the national measures at issue in the case in the main proceedings, it must be noted that the Law on VAT does not prescribe specific obligations, but merely provides, in Paragraph 44(5), that the taxation rights of the taxable person indicated as the purchaser in the invoice may not be called into question, provided that that person has acted with due diligence in respect of the chargeable event, bearing in mind the circumstances under which the goods were supplied or the services performed.

59 In those circumstances, it follows from the case-law referred to in paragraphs 53 and 54 of the present judgment that determination of the measures which may, in a particular case, reasonably be required of a taxable person wishing to exercise the right to deduct VAT in order to satisfy himself that his transactions are not connected with fraud committed by a trader at an earlier stage of a transaction depends essentially on the circumstances of that particular case.

60 It is true that, when there are indications pointing to an infringement or fraud, a reasonable trader could, depending on the circumstances of the case, be obliged to make enquiries about another trader from whom he intends to purchase goods or services in order to ascertain the latter's trustworthiness.

61 However, the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to deduct VAT, first, to ensure that the issuer of the invoice relating to the goods and services in respect of which the exercise of that right to deduct is sought has the capacity of a taxable

person, that he was in possession of the goods at issue and was in a position to supply them and that he has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, second, to be in possession of documents in that regard.

62 It is, in principle, for the tax authorities to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud as well as to impose penalties on the taxable person who has committed those irregularities or fraud.

63 According to the case-law of the Court, Member States are required to check taxable persons' returns, accounts and other relevant documents (see Case C-132/06 *Commission v Italy* [2008] ECR I-5457, paragraph 37, and Case C-188/09 *Profaktor Kulesza, Frankowski, Józwiak, Orłowski* [2010] ECR I-7639, paragraph 21).

64 To that end, Directive 2006/112 imposes, in particular in Article 242, an obligation on every taxable person to keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities. In order to facilitate the performance of that task, Articles 245 and 249 of that directive provide for the right of the competent authorities to access the invoices which the taxable person is obliged to store under Article 244 of that directive.

65 It follows that, by imposing on taxable persons, in view of the risk that the right to deduct may be refused, the measures listed in paragraph 61 of the present judgment, the tax authority would, contrary to those provisions, be transferring its own investigative tasks to taxable persons.”

13. The *Kittel* principle has been clarified by Moses LJ in *Mobilx Ltd (in administration) v HMRC* [2010] EWCA Civ 517 at [30]:

“...the Court made clear that the reason why fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria which determine the scope of VAT and the right to deduct have been met.”

14. Considering further the extent of knowledge, Moses LJ stated:

“55. If HMRC was right and it was sufficient to show that the trader should have known that he was running a risk that his purchase was connected with fraud, the principle of legal certainty would, in my view, be infringed. A trader who knows or could have known no more than that there was a risk of fraud will find it difficult to gauge the extent of the risk; nor will he be able to foresee whether the circumstances are such that it will be asserted against him that the risk of fraud was so great that he should not have entered into the transaction. In short, he will not be in a position to know before he enters into the transaction that, if he does so, he will not be entitled to deduct input VAT. The principle of legal certainty will be infringed.

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, as the Chancellor concluded in his judgment in *BSG*: –

“The relevant knowledge is that BSG ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough.” (§ 52)

57. HMRC object that the principle should not be restricted to those cases where a trader has deliberately refrained from asking questions lest his suspicions should be confirmed. This has been described as a category of case which is so close to actual knowledge that the person is treated as having received the information which he deliberately sought to avoid (see Lord Scott in *Manifest Shipping Co Limited v Uni-Polaris Insurance Co Limited and Others* [2001] UKHL 1 and *White v White* [2001] 1 WLR 481 paragraphs 16 and 17, 486 E-G). HMRC seeks to rely upon the views of Lewison J in *Livewire and Olympia* [2009] EWHC 15 (Ch) (§ 85) and Burton J in *R (Just Fabulous) v HMRC* [2008] STC 2123 (§ 45) that:

“The principle of legal certainty must be trumped by the ‘objective recognised and encouraged by the Sixth Directive’.”

58. As I have endeavoured to emphasise, the essence of the approach of the court in *Kittel* was to provide a means of depriving those who participate in a transaction connected with fraudulent evasion of VAT by extending the category of participants and, thus, of those whose transactions do not meet the objective criteria which determine the scope of the right to deduct. The court preserved the principle of legal certainty; it did not trump it.

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*.

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.”

15. On questions of proof, Moses LJ stated:

“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.

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.”

16. At [83] Moses LJ stated that he could do no better than repeat the words of Christopher Clarke J in *Red12 v HMRC* [2009] EWHC 2563 (Ch):

“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.

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.”

17. Moses LJ then concluded:

“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. In *Mobilx*, Floyd J concluded that it was not open to the Tribunal to rely upon such large rewards because the issue had not been properly put to the witnesses. It is to be hoped that no such failure on the part of HMRC will occur in the future.”

18. In *Fonecomp Limited v HMRC* [2015] EWCA Civ 39 it was submitted that the words “should have known” (per Moses LJ in *Mobilx*) meant “has any means of knowing” (at [51]) and that the Appellant could not have found out about the fraud even if it made inquiries

because the fraud did not relate to the chain of transactions with which it was concerned. Arden LJ in the Court of Appeal (with whom McFarlane and Burnett LJJ agreed) said, at [51]:

“However, in my judgment, the holding of Moses LJ does not mean that the trader has to have the means of knowing how the fraud that actually took place occurred. He has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transaction to which his transaction is connected. The participant does not need to know how the fraud was carried out in order to have this knowledge. This is apparent from [56] and [61] of *Kittel* cited above. Paragraph 61 of *Kittel* formulates the requirement of knowledge as knowledge on the part of the trader that “by his purchase he was participating in a transaction connected with fraudulent evasion of VAT”. It follows that the trader does not need to know the specific details of the fraud.”

19. In *Davis and Dann Ltd v HMRC* [2016] STC 126, the Court of Appeal approached the “should have known” test on the basis of Moses LJ’s statement in *Mobilx* that it required that “the only reasonable explanation” for the transactions must have been connection to fraud. It was common ground in that case that what HMRC needed to show was that the only reasonable explanation for the transactions was that they were connected to a VAT fraud (at [4], citing *Mobilx* at [59]).

20. In *AC (Wholesale) Limited v HMRC* [2017] UKUT 191 (TCC) the Upper Tribunal concluded that the “only reasonable explanation” formulation was simply one way of showing that a person should have known that the transaction was connected to fraud:

“29...Moses LJ was clear that the test in *Kittel* was a simple one that should not be over refined. It is, to us, inconceivable that Moses LJ’s example of an application of part of that test, the ‘no other reasonable explanation’, would lead to the test becoming more complicated and more difficult to apply in practice. That, in our view, would be the consequence of applying the interpretation urged upon us by Mr Brown. In effect, HMRC would be required to devote time and resources to considering what possible reasonable explanations, other than a connection with fraud, might be put forward by an appellant and then adduce evidence and argument to counter them even where the appellant has not sought to rely on such explanations. That would be an unreasonable and unjustified evidential burden on HMRC. Accordingly, we do not consider that HMRC are required to eliminate all possible reasonable explanations other than fraud before the FTT is entitled to conclude that the appellant should have known that the transactions were connected to fraud.

30. Of course, we accept (as, we understand, does HMRC) that where the appellant asserts that there is an explanation (or several explanations) for the circumstances of a transaction other than a connection with fraud then it may be necessary for HMRC to show that the only reasonable explanation was fraud. As is clear from *Davis & Dann*, the FTT’s task in such a case is to have regard to all the circumstances, both individually and cumulatively, and then decide whether HMRC have proved that the appellant should have known of the connection with fraud. In assessing the overall picture, the FTT may consider whether the only reasonable conclusion was that the purchases were connected with fraud. Whether the circumstances of the transactions can reasonably be regarded as having an explanation other than a connection with fraud or the existence of such a connection is the only reasonable explanation is a question of fact and evaluation that must be decided on the evidence in the particular case. It does not make the elimination of all

possible explanations the test which remains, simply, did the person claiming the right to deduct input tax know that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT or should he have known of such a connection.”

21. The case law also indicates that it is necessary to guard against over-compartmentalisation of relevant factors, and to stand back and consider the totality of the evidence (*Davis and Dann*, and *CCA Distribution v HMRC* [2017] EWCA Civ 1899).

ISSUES

22. The denial of credit for input tax is based on the *Kittel* principle, and requires the following to be determined:

- (1) was there a fraudulent evasion of VAT;
- (2) if so, were PPX’s purchases on which input tax have been denied connected with that fraudulent evasion; and
- (3) if so, did PPX know or should it have known that its purchases were connected with that fraudulent evasion of VAT.

23. PPX’s purchases on which input tax had been denied were from 11 Defaulting Suppliers. PPX accepted (in its response to *Fairford* directions) that:

- (1) the deal sheets produced by HMRC accurately reflect the trading history of the goods bought by PPX; and
- (2) there had been a fraudulent VAT default at the start of each of the transaction chains.

24. The *Fairford* directions required PPX to state whether it accepted “(without making any admission of knowledge or means of knowledge)” that each of the transaction chains were part of an orchestrated overall scheme to defraud HMRC. PPX did accept this, adding that PPX did not understand HMRC to allege that any such scheme included any relationship between two or more of the transaction chains.

25. The only issue for us to determine is whether PPX knew or, in the alternative, should have known, that the Transactions were connected with the fraudulent evasion of VAT. Both parties agreed that Mr Pearce, as the sole director of PPX, was the controlling mind, or directing will and mind, of the company, and that it was his state of knowledge that was to be attributed to PPX.

26. The burden of proof is on HMRC, the relevant standard of proof being the balance of probabilities. In *HMRC v Citibank NA, E Buyer UK Limited* [2017] EWCA 1416 (Civ) the Court of Appeal held that satisfying the burden of proof in respect of the allegation that a taxpayer knew or should have known that its transactions were connected with the fraudulent evasion of VAT does not require HMRC to prove that the taxpayer (or those acting on its behalf) was dishonest or fraudulent. HMRC had made no pleading of dishonesty or fraud against either PPX or Mr Pearce.

EVIDENCE

27. We heard evidence from two witnesses, and had an extensive hearing bundle (which included copies of the visit reports, the due diligence obtained by PPX, additional material from PPX’s due diligence files and purchase invoices for the transactions).

28. For HMRC we heard evidence from Officer Judith Parton. Officer Parton’s witness statement was dated 4 December 2020 and adopted the witness statement of Officer David Lee (dated 1 May 2018), subject to providing various corrections and replacement exhibits in

relation thereto. Officer Lee had taken over responsibility for PPX on 6 September 2017 and he had prepared his witness statement “based on visit reports, copied documents and information held on a number of Departmental systems”. Officer Lee had later prepared a second witness statement dated 24 October 2019.

29. Officer Parton’s evidence included that:

(1) She had taken over responsibility for PPX at some time between 24 October 2019 and 4 December 2020.

(2) When adopting Officer Lee’s first witness statement she had reviewed that statement and its exhibits. Officer Parton had checked some matters on HMRC’s VISION system, to clarify records of what had been submitted (and we note that this is also apparent from her provision of exhibits to show, eg, date of receipt of VAT returns, which had not been exhibited by Officer Lee).

(3) Officer Parton had attended PPX’s premises three times as a note-taker, but there was no evidence that this was during any of the relevant periods.

(4) Officer Parton had no independent knowledge of the Transactions or events. As an officer of HMRC, she does have conduct of some traders (other than PPX) involved in the scrap metal industry.

(5) Officer Parton could not confirm that she had seen any of the sales invoices that had been uplifted from PPX nor any of PPX’s bank statements. She did confirm that records were said to have been uplifted from PPX’s premises in some of the visit reports, and that the information and documents required by the Schedule 36 notice which had been issued by HMRC on 12 August 2015 had been provided by PPX.

30. Neither Officer Parton nor Officer Lee had been the visiting officer to PPX, and neither had been involved in the making of the Denial Decision. Officer Parton’s evidence at the hearing was clear as she explained the scope of her involvement, but is necessarily limited in its usefulness, save that we have had regard to the documentation to which we were referred which was exhibited to the witness statements of Officer Parton and Officer Lee (notably the visit reports).

31. For PPX, we heard evidence from Mr Pearce, who had sworn three witness statements. We have considered his evidence carefully in the Discussion (as Mr Watkinson’s challenge to the accuracy and truthfulness of that evidence formed a key part of HMRC’s closing submissions). Mr Pearce was the only witness giving evidence before the Tribunal who had attended the various visits by HMRC to PPX. He had attended many of those visits alone, although he was accompanied by different employees at some of the later visits. Giving evidence, Mr Pearce accepted that the visit reports which had been prepared by HMRC and were produced in the hearing bundle (but had not been shared with PPX contemporaneously) were broadly correct. He could recall the meetings, but not specific details of what was said, and did not produce any notes himself. Mr Pearce’s evidence was that on some of the matters more had been said at the time, eg as to how deals were negotiated with purchasers. We recognise that the visit reports do not purport to be a verbatim record of the matters discussed such that there may well be areas where the notes are a summary of a more detailed discussion (although there are some sections of the reports where HMRC have recorded a “Q&A” discussion on specified suppliers) and accept that they are a broadly accurate record of those visits.

32. Mr Kinnear drew attention to the passage of time since the relevant periods, noting that none of the officers who had been the visiting officer to PPX during the relevant period were giving evidence. Mr Kinnear emphasised that Officer Parton was giving evidence effectively

third-hand on the matter – this was an evidential problem for HMRC, but also disadvantaged PPX as Mr Kinnear could not cross-examine officers who had visited PPX, been involved in the decision to deny credit or who were familiar (from their roles visiting and inspecting scrap metal merchants) with the scrap metal industry.

33. HMRC’s position was that there was a lack of contemporaneous documentation as to how the trading relationships with Defaulting Suppliers began and how the Transactions occurred. Mr Watkinson addressed the approach to the evidence, referring to:

(1) In *Wetton v Ahmed* [2011] EWCA Civ 610, the Court of Appeal stated that the trial judge was entitled to assess the credibility of a witness’s oral evidence by reference not only to contemporaneous documents but also by reference to the absence of those documents. Arden, LJ said at [14]:

“In my judgment, contemporaneous written documentation is of the very greatest importance when assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can be checked against it. It can also be significant if the written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences by its absence.”

(2) The observations of Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15] to [22], in particular, the conclusion at [22]:

“In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

(3) *Martin v Kogan* [2019] EWCA Civ 1645 where Floyd LJ (giving the judgement of the court) recorded at [88] that *Gestmin* is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed, before stating that “a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon *all* of the evidence” (emphasis in original). Further, where a party’s sworn evidence is disbelieved, the court must say why that is.

34. PPX submitted that these cases do not assist the Tribunal. In particular, Mr Kinnear cautioned against an approach to the evidence which effectively reversed the burden of proof.

35. We find these authorities helpful in reminding us of the need to consider and assess the credibility of witnesses, the potential difficulties with oral testimony, the documentary evidence and (if appropriate in the circumstances) the absence of documentary evidence.

36. Whilst we have not found it necessary to refer expressly to all of the submissions and evidence in this Decision, we have taken all such submissions and evidence into account when making our findings of fact and reaching our decision.

FINDINGS OF FACT

37. On the basis of the evidence before us, we find as follows. We have made further findings of fact in the Discussion.

Background and establishment of PPX

38. Mr Pearce had left the RAF when he was about 21, and started working at the same factory as his father in Derbyshire, melting metal down to be made into pipes and training as a metallurgist. He then took a job working on the weighbridge, dealing directly with scrap metal merchants who brought their scrap metal in for sale. The business closed its UK plant and he was made redundant.

39. Mr Pearce was then employed by Ward Recycling, which had been the main scrap metal supplier to his former plant, in around 2005. At that time Ward Recycling had two sites, and he became Weighbridge Manager. He was the first port of call for anyone seeking to sell their scrap metal, whether they were plumbers or those doing up their home. Mr Pearce held this role for several years, but wanted to go out as a buyer and have different responsibilities.

40. Mr Pearce was not able to move into such a role within Ward Recycling so he decided to leave and establish his own business. PPX was incorporated on 15 September 2011 and registered for VAT with effect from 26 September 2011 with a business classification of scrap metal trader/broker. Mr Pearce was appointed as a director from the time of incorporation, and has remained so throughout.

41. The business of PPX evolved:

(1) Mr Pearce's initial intention was to go out to scrap metal merchants, engineering firms, and others producing scrap, arrange for them to have a skip or bin on site (which would be provided by Ward Recycling), and he would arrange for collection and sale. He would be acting as a broker. He did start doing this, but business was slow.

(2) He was then approached by a plastics factory, which wanted everything on a large site cleared out. They didn't want to be provided with skips and do this themselves – they wanted PPX to come in and use its own employees. PPX did not have any premises of its own at this time – Mr Pearce was operating from his own home – but Mr Pearce employed two men (broadly friends of the family) to work with him. They set up what was effectively a site at the side of the plastics factory whilst they did the clear out. At that time, he would be offered very small loads (eg 10kg copper) by businesses which would see or hear of PPX operating there. This wasn't what Mr Pearce had set out to do, but he decided not to turn down these opportunities.

(3) When they had finished clearing the site at the plastics factory, by April 2012, PPX was very busy with a stream of electricians and plumbers selling small amounts of scrap to PPX, but could no longer remain at the plastics factory site as the job there had finished.

(4) PPX took a lease on its first site, Mansfield Woodhouse. This was a large space in a block of industrial units. They bought a weighbridge, that lorries would park on when coming to sell metals, and set up the site with bins for materials to be tipped onto.

(5) There was a small number of employees – Mr Pearce, the two he had employed for the job at the plastics factory, Helen in accounts and two from the local Job Centre

(who were provided for about eight weeks' work experience and would then move on, being replaced by another two). Some of those starting on work experience did stay on.

(6) The business expanded. The Mansfield Woodhouse site was not a traditional scrap yard, mainly in that it had a roof. This was not suitable for, eg steel, which is lower value and abundant. Sellers of steel would usually also have other, non-ferrous, metals, that were more valuable, and they wanted a one-stop shop. PPX took on another site about 10 miles away in Bulwell, and later a third site in Chesterfield.

(7) By the time of the relevant periods, PPX was trading from three sites – Mansfield Woodhouse, Bulwell and Chesterfield – and had around 20 employees. Its principal place of business was the site at Mansfield Woodhouse, and that is where the visits by HMRC took place over the years.

42. Mr Pearce had invested about £20,000 of his own savings into establishing the business at the beginning; but PPX had soon been effectively funded by its work for the plastics factory, where it would generally be paid within a week for materials it sold but didn't have to pay the factory that quickly. The profits of the company were reinvested on an ongoing basis.

Conduct of business

43. Mr Pearce had contacts with lots of scrap metal merchants throughout the UK. PPX also advertised locally, on billboards, yell.com, adverts on the side of buses and in London.

44. Some suppliers would turn up with a load of scrap metal they wanted to sell to PPX – the price would be negotiated with the weighbridge operator. Others would call for prices, although many of these did not turn into actual sales. PPX would not know if these callers were a genuine potential supplier, ie someone with scrap to sell, or perhaps competitors testing prices of other merchants. Materials for sale would always be brought to PPX's yard.

45. At the sites, suppliers would drive straight onto the weighbridge so metals could be weighed. They would then be directed where to tip off, whether for steel or to the non-ferrous store. Smaller loads would be directed to containers. Metals would then need sorting into different types, and would be processed whether, eg, by cleaning, stripping plastic coating from wires, cutting ends off pipes.

46. Mr Pearce's evidence was that:

(1) scrap metal merchants will tend to buy in small quantities, amalgamate these smaller loads and then sell in bulk. That is where they start to get better prices; and

(2) PPX would buy loads that others would reject, eg as too small, or too dirty/in need of processing and they would clean and process it. They could then amalgamate loads and achieve a sale, at a profit.

47. We accept that evidence.

48. Suppliers included VAT-registered businesses (not only metal merchants but also businesses which generate scrap as a result of their activities, eg plumbers) and those which are not VAT-registered. The latter include domestic customers and, we infer, small businesses whose turnover is such that they are not required to be registered for VAT.

49. PPX is not a member of the London Metal Exchange ("LME") but did pay for access to an app showing the prices, and therefore could see price movements as they happened throughout the day. They would also sometimes have a good knowledge of the prices some of their regular customers would pay. PPX would set the price they were prepared to pay to

suppliers. When they sold on, it was their customer which would set the price they were willing to pay.

50. PPX paid suppliers by bank transfer or cheque (no cash was paid after April 2012). Some suppliers were paid immediately, others later. The weighbridge team would write a ticket for the load which PPX bought from a supplier, which was passed to PPX's accounts team.

51. There was no documentation in relation to:

- (1) negotiation of prices,
- (2) written terms and conditions of business, or
- (3) provision of credit by suppliers to PPX.

52. PPX did enter into self-billing agreements with some suppliers for VAT purposes, including some of the Defaulting Suppliers.

Denial Decision

53. The Denial Decision denied PPX credit for input tax incurred on 659 Transactions with 11 suppliers during the relevant periods. These purchases by PPX were of different types and qualities of scrap metal – the largest number related to copper (whether 98% copper or copper granules), and there was a large disparity in the size of the individual Transactions (from £620.48 gross to £299,635 gross).

54. The Defaulting Suppliers in the Transactions, and which are accepted by PPX to be fraudulent defaulting traders, are:

- (1) MayX1 Ltd (“MayX1”);
- (2) London Project Interiors Ltd (“LPI”);
- (3) Fortified Recycling Ltd (“Fortified”);
- (4) Road Runner Buses Ltd (“Road Runner”);
- (5) Osgodby Investments Ltd (“OIL”);
- (6) Infinity Heavy Equipment International Ltd (“IHEI”);
- (7) Zeggo Ltd (“Zeggo”);
- (8) Yahya Estate Ltd (“Yahya”);
- (9) Bavalda Ltd (“Bavalda”);
- (10) Heritage Silver Ltd (“Heritage”); and
- (11) Green Deal Initiative Ltd (“GDIL”).

55. The first of these Transactions was on 1 September 2014, the last on 26 November 2015.

56. The fact of each of the Transactions having occurred, that they were connected to a fraudulent tax loss and that the fraudulent defaulter was in each case the immediate supplier to PPX were not disputed. We do not therefore recite in this Decision the details of each of these Transactions. We do refer to the period of trading, and net values involved, in the context of making findings as to the due diligence undertaken in respect of the Defaulting Suppliers.

57. More than 70% of PPX's total input tax claimed traced to the fraudulent evasion of VAT across the relevant periods:

VAT Period	Input tax claimed	Input tax traced to fraudulent VAT losses	% input tax traced to fraudulent VAT losses
11/14	£620,342.24	£499,120.07	80%
02/15	£399,893.71	£228,357.75	57%
05/15	£1,376,479.65	£1,308,777.81	95%
08/15	£1,416,436.60	£1,335,743.91	94%
11/15	£1,250,518.26	£338,349.43	27%
Total	£5,063,670.46	£3,710,348.97	73%

58. These percentages reflect only the percentage of input tax traced to fraud, ie are based on assessing the transactions from the 11 Defaulting Suppliers against all of the transactions with VAT-registered businesses. This is not the entirety of the business as PPX also bought scrap from domestic customers and businesses that were not VAT-registered.

59. During the relevant periods, PPX entered into around 25,000 transactions with more than 4,000 suppliers.

Contact with HMRC

60. We have set out below the range of contact between PPX and HMRC before, during and after the relevant periods.

Incorporation to 1 September 2014

Visit on 26 January 2012

61. The first visit by HMRC to PPX (leaving aside an unannounced visit which resulted in HMRC leaving the unannounced factsheets and contact details) was on 26 January 2012, by Officers Sarbjit Sidhu and Kate Andrews. That visit was to Mr Pearce's residential address (which was at that time the principal place of business) and the visit report includes:

(1) Mr Pearce had worked for Ward Recycling in Ilkeston for five years, he had started on the weighbridge and ended up visiting businesses to see if he could arrange for a bin to be dropped off and then collected when it was full. He then saw an opportunity as Ward Recycling was not competitive on certain grades of metal.

(2) He had set up PPX in September 2011. He went to businesses that he knew would produce waste, sourced a company to drop a bin off, and then arranged for it to be collected when full.

(3) Mr Pearce dealt in all metals; it was an early stage so he was offering a high price, getting less than 5% profit. He had funded purchases himself – expenses were a website and business cards. The only assets were a desk, computer, printer, a phone and himself.

(4) Introductions for selling were from Mr Pearce's contacts from his previous employment with Ward Recycling. For buying, this was cold calling and he had just started to advertise in yellow pages, Thomson and Google.

(5) Deals were mostly done over the phone. Payments (for both customer and supplier) were generally through BACS, with some cheques. He didn't check ID but did record all transactions. Officer Sidhu advised him to think about ID and advised that she understood the police have had an interest in the metals industry.

(6) Mr Pearce did not do any credit checks on customers or suppliers. Officer Sidhu said he needed to consider this for the future.

(7) He provided bank account details, was asked about third party payments and Officer Sidhu explained what they were. Mr Pearce said he wasn't aware he had ever done these and wouldn't do so if asked.

(8) Officer Sidhu explained that the visit had been required as Ward & Sherratt Ltd had requested clearance for PPX through Wigan, where a company can verify if a customer or supplier has a valid VAT number. It is one commercial check to verify if trading partners are legitimate. Mr Pearce said this made sense as Ward & Sherratt were withholding a payment to him and told him they were doing some checks; he asked if they would pay him once the enquiries were closed, and Officer Sidhu advised that HMRC do not tell traders to withhold payment so she couldn't say.

(9) Officer Sidhu said she would leave leaflets regarding MTIC fraud and Mr Pearce said he had never heard of it. HMRC gave an overview, explaining it had originated in mobile phones and computer chips but had moved into other commodities, one of which was metals. She explained that the leaflets gave background and steps he could consider to help protect himself, and reiterated the need to check out customers and suppliers and use the service offered by Wigan. Officer Sidhu went through the leaflets and handed over "How to Spot Missing Trader Fraud", Notice 726 and other leaflets. Mr Pearce said he needed to put some checks in place.

HMRC publications

62. The notice "How to Spot Missing Trader Fraud" sets out the warning:

"Be suspicious if your business or those you are dealing with show any of the following characteristics.

- Newly established or recently incorporated companies with no financial or trading history.
- Contacts have a poor knowledge of the market and products.
- Unsolicited approaches from organisations offering an easy profit on high-value/volume deals for no apparent risk.

...

- Entities trading from residential or short-term lease accommodation and serviced offices.

This list is not exhaustive – use your common sense and be suspicious."

63. It goes on to set out that if a trader does not conduct "intelligent risk assessment" including "know your customer" or ignoring adverse indicators a trader risks involvement in fraud.

64. Notice 726 sets out at section 6 on “Dealing with other businesses – How to ensure the integrity of your supply chain” examples of indicators that could alert a trader to the risk that VAT would go unpaid, and include:

“1) Legitimacy of customers or suppliers. For example:

- what is your customer’s/supplier’s history in the trade?

...

- does your supplier offer deals that carry no commercial risk for you – eg, no requirement to pay for goods until payment received from customer?

...

- does your supplier (or another business in the transaction chain) require you to make third party payments or payments to an offshore bank account?

...

- are they high value deals offered with no formal contractual arrangements?
- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc?
- can a brand new business obtain specified goods cheaper than a long established one?
- has HMRC specifically notified you that previous deals involving your supplier had been traced to a VAT loss and/or had involved carousel movements of goods?”

2) Commercial viability of the transaction

For example:

...

- is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- have normal commercial practices been adopted in negotiating prices? .
- is there a commercial reason for any third party payments?
- are normal commercial arrangements in place for the financing of the goods?

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

For example:

- Do the goods exist?

...

- Do the quantities of the goods concerned appear credible?

...

HMRC recommends that sufficient checks are carried out in each of these categories to make sure that you're not caught in a fraudulent supply chain.

6.2 Checks carried out by existing businesses

The following are examples of specific checks carried out by businesses that took part in the consultation exercise in 2003 when these rules were introduced. These may also help you to decide what checks you should carry

out, but this list is not exhaustive and you should decide what checks you need to carry out before dealing with a supplier or customer:

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

65. That same section then says on checks:

“6.2 Checks carried out by existing businesses

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

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

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

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

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

MTIC Awareness Letter on 1 February 2012

66. The meeting was followed up by HMRC writing to PPX on 1 February 2012 (the “MTIC Awareness Letter”), setting out the scale of losses to the Treasury caused by MTIC fraud and instructions for how to verify VAT numbers with Wigan.

67. That letter set out that:

(1) Although HMRC may validate a VAT registration, this “does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquiries in relation to proposed transactions”. It has always remained a trader’s own commercial decision whether to participate in transactions or not and transactions may still fail to be verified for VAT purposes.

(2) When making a check a trader should submit the potential customer/supplier’s VAT certificate, letter of introduction and certificate of incorporation.

Visit on 25 November 2013

68. The next visit to PPX was by Officers David Francis and Theresa Launder on 25 November 2013. That visit was to the Mansfield Woodhouse site and the visit report includes:

(1) Mr Pearce had explained the background to the establishment of PPX (including his time at Ward Recycling). He explained that one company, PAVIS, had asked him to oversee the sorting of metal before being put in the bins. He took this on, and while sorting metal at the side of the PAVIS premises, people were ringing him for prices. He bought scales and started that service. When the contract ended, he decided to get a site himself.

(2) They sold to Sims, EMR, TME and Long Eaton Alloys.

(3) Their suppliers included those who drove in (eg plumbers), Carwood and Alget.

(4) Officer Francis asked about checks on suppliers and Mr Pearce said he had used Wigan until he had asked for a check on Zinda Ltd (“Zinda”), and this resulted in Zinda calling him and swearing at him.

(5) Officer Francis explained the purpose of the Wigan facility and stressed it was not the only check to carry out and it was not HMRC giving permission to PPX to trade with the trader. The officer explained MTIC fraud, that the fraud had moved into areas including metals, and that input tax could be denied if transactions were traced to fraud. Mr Pearce was told to put in place as many checks as he could to make a sound commercial decision whether or not to trade.

(6) Mr Pearce said that since Zinda, with new businesses he goes to premises and takes pictures of the goods etc.

(7) Officer Francis issued various leaflets, explaining them, and they included “How to Spot Missing Trader Fraud” and Notice 726.

(8) Mr Pearce gave Officer Francis a tour of the site, including the weighbridge and scales system, how details from customers were processed, explained different grades of metal, differing prices and separation of materials.

Visit on 9 July 2014

69. Officers Farmer and Launder visited PPX on 9 July 2014. The background notes on the visit report record that HMRC’s systems showed that Wigan checks were being performed. The visit report then includes:

(1) When asked where PPX purchased from, Mr Pearce explained that they have skips which are placed at premises, they have a couple of suppliers who they buy from and they have the general public bringing metals to the door.

(2) They operate a computer system called Tornado that raises invoices, accounts for stock, retains ID documents and other items relevant to the police’s interest in metals transactions.

(3) Mr Pearce asked about the issues with fraud and how it would affect someone like PPX if he was doing Wigan checks. Officer Farmer gave Mr Pearce the background to MTIC and how HMRC address tax losses. The Officers explained the importance of due diligence and how HMRC work on a knowledge basis. Officer Farmer said he was aware that PPX had received a tax loss letter, which raises the bar as regards due diligence and that this is particularly relevant if PPX continued to purchase from that same source.

(4) Mr Pearce said that he had experienced delays in receiving a response from Wigan and the Officers explained that this may be due to HMRC making visits to the parties being cleared.

(5) Mr Pearce said that PPX’s only business to business supplier was MayX1.

(6) PPX now had a second site in Bulwell, which they opened in February 2014. There is a little more storage capacity.

Notices of Deregistration

70. PPX received a series of letters from HMRC notifying it that businesses had been deregistered for VAT (“Notices of Deregistration”, sometimes referred to in the visit reports as veto letters).

71. It received the following Notices of Deregistration, the dates below being the date on which the notice was sent to PPX rather than the date of deregistration:

- (1) 13 July 2012 – Ward & Sherratt Recycling Ltd,
- (2) 26 February 2013 – Ashton Grace Construction Ltd,
- (3) 10 May 2013 – ALG Resources Ltd,
- (4) 13 June 2013 – Global Metals Direct Ltd,
- (5) 14 June 2013 – Comspec Recycling Ltd,
- (6) 25 July 2013 – Towmasters Metals Ltd t/a Cooper & Cooper,
- (7) 18 February 2014 – Worksop Scrap Metal & Salvage Ltd, and
- (8) 6 August 2014 – Ikonik Solutions Ltd.

During VAT periods 11/14 to 11/15

Visit on 6 November 2014

72. Officers Launder and Anna Andersson-Hudson visited PPX on 6 November 2014, meeting Mr Pearce at the Mansfield Woodhouse site. The visit report includes:

- (1) At the beginning of that visit Officer Launder handed over a tax loss letter in relation to Carwood Commodities. Mr Pearce expressed concern, said he would not trade with them again and asked what it meant for him and his business.
- (2) The Officers referred Mr Pearce back to all the visits from HMRC, the discussions in relation to fraud within the metals trade, and the information notice and leaflets he had been given and advice on checks that he could carry out to mitigate the risk of dealing with traders who may be involved in fraud.
- (3) Mr Pearce asked if he was likely to get billed for a portion of the tax loss; Officer Launder advised him not at that time but that could change if there was a change in HMRC policy regarding metals.
- (4) Mr Pearce said he was using Spires' yard in Chesterfield.
- (5) Officer Hudson explained that PPX had been placed on the monitoring project due to its involvement in tax loss chains and that it would need to provide sales and purchase information to HMRC monthly, and Officer Hudson would visit the business every quarter.
- (6) PPX currently operates from three sites, and the office (with business records) was at Mansfield Woodhouse.
- (7) Mr Pearce described pricing policy as a minefield – how you make money is to pay less when you can, eg they can offer less to a one-off member of the public than they can to a business they think they will probably get more trade from. Sims sends a price list every day and they make judgements based on that. The price on the list is not always what they get from Sims, it is all based on what the LME is doing.
- (8) The main customers were Sims, EMR, Howarths, Carwood and Hawkswoods.
- (9) The suppliers were MayX1 and LPI.
- (10) PPX had made third party payments in the past for purchases from Vintro and MayX1, and Mr Pearce had been warned about them during the last visit. He said he will not be making any more.
- (11) Mr Pearce thinks he has been to most of his customers' premises. If he deals with a broker he would always check the goods. Officer Hudson told Mr Pearce about some of the checks he can do to mitigate the risks of trading in goods that originate from tax losses, as in Notice 726.
- (12) No stock control is done, as goods are moved on as quickly as possible.

Tax Loss Letters

73. At the visit on 6 November 2014 PPX was issued with a tax loss letter in respect of supplies from Carwood Commodities, informing it that these transactions had been traced to tax losses (a "Tax Loss Letter").

74. On 27 November 2014 HMRC sent a Tax Loss Letter to PPX in relation to supplies from GPSE Ltd, stating that a number of PPX's transactions commenced with a defaulting trader, resulting in a tax loss of £96,043.77. The letter then listed 15 purchase invoices

(between 16 February 2013 and 16 June 2013) which had been traced in transaction chains commencing with a VAT loss.

Notices of Deregistration

75. PPX received three further Notices of Deregistration in respect of its suppliers:

- (1) 21 November 2014 – Beachers Ltd,
- (2) 18 December 2014 – MayX1 Ltd, and
- (3) 18 February 2015 – TME Recycling Ltd.

Visit on 25 February 2015

76. Officers Hudson and Malcolm Green visited PPX on 25 February 2015. This was a monitoring visit, and Mr Pearce confirmed the background of the company (eg sole director, sites). The visit report includes:

- (1) PPX's VAT returns for 08/14 and 11/14 had not been submitted. Mr Pearce said the 08/14 return had been submitted half an hour ago and the 11/14 return would be submitted in the next fortnight. He was warned to expect penalties if the net VAT due on the late returns was more than the central assessment already paid.
- (2) HMRC had not received any monthly sales and purchase records from PPX as requested after the last visit.
- (3) Mr Pearce provided a list of PPX's employees.
- (4) Most of the records Officer Hudson had requested after the last visit had not been provided, and she went through the list. Mr Pearce asked that HMRC email a list of what was needed.

Visit on 24 June 2015

77. Officers Farmer and Launder visited PPX on 24 June 2015. That was the first meeting at which Mr Pearce had been accompanied, and he was joined by Tracey Coles. The visit report includes:

- (1) There was a discussion about documentation which had been requested by HMRC which Officer Farmer said had not been provided.
- (2) Ms Coles (who worked in the office) said she had started at PPX in October 2014 and she didn't know about Wigan checks and other due diligence.
- (3) There was a wall chart listing current suppliers and customers. Ms Coles asked what other checks she could do, and Officer Farmer explained that due diligence is a commercial consideration for a trader. Mr Pearce had previously been issued with a number of notices which gave suggestions and due diligence had previously been discussed.
- (4) Officer Farmer commented he would advise that PPX visit all suppliers, particularly before a first trade, and that they should be able to evidence this and any questions asked. Such questions could include have you put all VAT returns in, paid liabilities, have you received tax loss or veto letters.
- (5) Mr Pearce said the admin team had apparently stopped doing Wigan checks. The team had now devised a check list. Officer Farmer stressed that due diligence was intended to protect the company – Mr Pearce should consider the risks, make a commercial decision and act accordingly. PPX needed to do due diligence checks and

record the results. He should ask questions, record the answers and then consider his trading position.

(6) HMRC had previously issued due diligence information to Mr Pearce – he should re-read these. Officer Farmer reminded Mr Pearce that a Wigan check could generate an HMRC visit, but with a Europa check that wasn't going to happen.

(7) Officer Farmer referred to four veto letters that had been issued after looking at the PPX records. Mr Pearce said they were well after the event; the officer explained that this was because without a Wigan check HMRC had no idea PPX had traded with those parties.

(8) Mr Pearce said they were now doing credit checks on all companies.

(9) Mr Pearce said that if they received a tax loss letter, he would stop dealing with the counterparty.

(10) Officer Farmer said serious consideration should be given to veto letters and negative Wigan checks, and that Mr Pearce should look at the type of companies and see if that tells him something. He should consider asking about their trade history, product knowledge and that he should re-read the HMRC handouts.

(11) Mr Pearce said he believed the admin team have come up with a good list.

July 2015 Tax Loss Letters

78. HMRC sent Tax Loss Letters to PPX on 7 July 2015 (the "July 2015 Tax Loss Letters"). Those letters informed PPX that:

(1) 93 of its purchases from MayX1 in VAT periods 05/14-11/14 totalling £2.6m net had been traced to tax losses of £528k;

(2) 43 of its purchases from Fortified in VAT periods 08/14-01/15 totalling £549k net had been traced to tax losses of £110k;

(3) 157 of its purchases from LPI in VAT periods 08/14-01/15 totalling £3.5m net had been traced to tax losses of £702k;

(4) 44 of its purchases from Spire Recycling Ltd and OIL in VAT periods 05/14-11/14 totalling £248k net had been traced to tax losses of £50k; and

(5) that the tax losses identified to date in PPX's transaction chains totalled £1.51m.

Notices of Deregistration issued in March to August 2015

79. Between 26 March 2015 and 27 August 2015, PPX was sent nine Notices of Deregistration informing it that its suppliers had been deregistered for VAT:

(1) 26 March 2015 – Carwood Commodities Ltd;

(2) 11 June 2015 – Spire Recycling Ltd;

(3) 11 June 2015 – OIL;

(4) 11 June 2015 – Fortified;

(5) 11 June 2015 – LPI;

(6) 10 July 2015 – Road Runner;

(7) 30 July 2015 – Yahya;

(8) 6 August 2015 – KRN Holding Ltd; and

(9) 27 August 2015 – Zeggo.

Visit on 17 July 2015

80. Officers Hudson and Farmer visited PPX on 17 July 2015, and the visit (attended by Mr Pearce) lasted over four hours. The visit report includes:

(1) There was some discussion about sales to three specified customers. In the context of one of those customers, Officer Hudson asked about how PPX had been introduced to them and who supplied to PPX the nickel that it sold on to them. Mr Pearce explained that lots of nickel was added to a pile, it was not one purchase in and one purchase out; they were essentially amalgamated loads. Nickel was from different sources, it is scrap and can come from anywhere, mainly metal merchants.

(2) Mr Pearce negotiated the wholesale deals, where PPX are selling to customers. This included for deals done from the Chesterfield site. The manager at the Chesterfield site is Lee Burton. There had been thefts from the Bulwell site, and management was up in the air. Mr Pearce listed the staff working at the three sites, and said he tried to get round each site himself every day. Steve Carr was getting into a pricing role, and would probably deal with negotiations for wholesale deals in the future.

(3) The VAT return for 05/15 was overdue, and many of the records (which had been requested by email on 26 June 2015) had not been provided.

(4) They discussed self-billing, where PPX weigh the goods, raise an invoice and give a copy to the supplier. Mr Pearce said they need a self-billing agreement in place for suppliers, but acknowledged they had been slap dash and some had not been done. Officer Farmer referred to Notice 700/62.

(5) There was then a discussion on due diligence:

(a) Officer Farmer referred to the discussions at earlier visits.

(b) Officer Farmer said he had mentioned a few considerations Mr Pearce could put towards his checks, eg asking if VAT returns have been rendered and that the VAT due has been paid. Mr Pearce needs to retain evidence – he could ask in writing or prepare a questionnaire. Mr Pearce said he liked the idea of a questionnaire. Officer Farmer said it was about “protecting your business” and the more Mr Pearce did the better. Mr Pearce asked what if he asks questions and finds out, eg, they’ve had a Tax Loss Letter and done nothing – what does he do, does he not trade with them? Officer Farmer said he could only say that it is a business decision for PPX to make. They should be looking at a basket of due diligence information and making a decision.

(c) Mr Pearce asked about the Tax Loss Letters and how HMRC categorise a missing trader, saying three of the companies he can still contact. Officer Farmer said a Tax Loss Letter didn’t necessarily mean it was his supplier. Officer Hudson commented that traders have often failed to render numerous (or any) VAT returns. Officer Farmer said this is why HMRC advise PPX to be sure of who they are dealing with – people could be competitive because they are intending not to pay the VAT, and that it sometimes ties in with third party payments.

(d) Mr Pearce asked about the turn-around time for Wigan checks, and Officer Farmer said he couldn’t say and had previously mentioned the possibility that it would trigger a visit which would make any response take longer.

(e) Mr Pearce confirmed they do credit checks (after Fletchers went bust on them) and Companies House checks, confirming that these show any change of director. Officer Farmer said PPX should look for a total change of directors, change in main business address, trade class on the VAT certificate, bank account details on the VAT certificate matching that given to PPX.

(f) Mr Pearce was asked what PPX would do going forward, and he said he was going to visit traders and take photos, do a Wigan check, a questionnaire and a Europa check.

(g) Officer Farmer re-issued “How to Spot Missing Trader Fraud” and noted that Mr Pearce already had a copy of Notice 726 to hand.

(h) Officer Farmer then moved on to due diligence on traders PPX has dealt with – MayX1, Fortified, LPI, OIL, Spire and Road Runner. Mr Pearce was asked about how the suppliers were originally identified, checks that were made, whether he had visited them. Various points arose during those discussions in the context of each of the suppliers, and Officer Farmer told Mr Pearce:

(i) MayX1 – it was worth keeping notes of meetings with suppliers (including brief summary of what is discussed and agreed), they looked at the bank statement in the due diligence that was from a different bank than that on the VAT1, and addressed a third party payment that had been made.

(ii) Fortified – Mr Pearce could consider checking company websites and taking prints, it is always worth visiting sites and taking photos, would expect him to have met the director of the company whose ID was on file. The VAT certificate shows a different Barclays account to that paid by PPX and the letter of introduction includes a website he could have checked.

(iii) LPI – Officer Farmer said no Wigan check, no credit check, the VAT certificate gives a trade class of interior design, they couldn’t get the amount PPX had purchased by stripping buildings, so how are they getting it.

(iv) OIL – Officer Farmer said Mr Pearce could consider asking suppliers where they get the stock from and what due diligence they do. The addresses in the due diligence paperwork differ (two say Humberston, others Scunthorpe), this suggests they didn’t inform HMRC. The VAT certificate shows roofing activities and the two typed letters quote the VAT number incorrectly.

(v) Road Runner – Suggest he gets landline numbers as well as mobiles and test them.

(i) Mr Pearce explained that it is difficult to do contracts/written Ts and Cs or payment terms in this business. Deals worked by a supplier calling them saying they had a load, making phone calls to customers for a price, they would call supplier back offering them a price giving PPX a profit and then arrange delivery. All goods are inspected and weighed on receipt. Purchase values are generally decided after offering the goods for onward sale, considering the LME value and allowing for a profit. Self-billing invoices are completed and emailed to the supplier once the deal is agreed.

(j) Mr Pearce produced due diligence for new suppliers (including IHEI, Yahya and Zeggo). Officer Farmer asked if Mr Pearce had met the directors.

Notices of Deregistration issued in September and October 2015

81. PPX received three further Notices of Deregistration, in respect of Golden Corporation Ltd, Bavalda (on 16 October 2015) and Heritage (on 22 October 2015).

Visit on 27 October 2015

82. The next monitoring visit was on 27 October 2015, and Officers Hudson and Farmer met with Mr Pearce and Steve Carr. The visit report includes:

- (1) Mr Carr was described as being involved in the majority of the selling, but not involved much with buying.
- (2) HMRC had identified that in the 05/15 records there were 11 credit notes for supplies of copper from MayX1. Mr Pearce explained that this would have been “crap stock or price disagreements”. Credit notes would ideally be raised instantly, but with these ones they had been going through year-end procedures and realised they had not been done. There were five credit notes for supplies from LPI.
- (3) HMRC reminded Mr Pearce of the requirements for self-billing invoices.
- (4) Mr Pearce had said during the last visit that he had met IHEI and Stembridge at their premises, and had met Zeggo and Yahya. He had said he was intending a number of other visits the next week. Mr Pearce confirmed he didn’t think he had done any other visits.
- (5) Mr Pearce confirmed they had received the veto letters.
- (6) Officer Hudson asked about the due diligence and transactions with Heritage, Zeggo, IHEI, Yahya and Road Runner.
- (7) They discussed how PPX now did due diligence, referring back to the discussion at the last visit. Mr Pearce said they don’t do the questionnaire, Ms Coles goes through the due diligence and emails any questions, they go onto Companies House to check directors, ask questions from the results of the due diligence checks. They keep the answers on file. They do Europa checks once a week, Wigan checks when new, then periodically. Mr Carr said the credit checks they do show ratings and directors. Experian notify daily updates to them so they can see any changes.
- (8) HMRC reminded Mr Pearce that they must ensure their suppliers are legitimate. They explained that historically MTIC had involved phones and computer chips but was now more prevalent in metals, and there was a lot in the Sheffield area but it was all over the country.
- (9) Officer Farmer said that HMRC have no issue with metals from car boots as these people are not registered for VAT. They are concerned with bulk deals and large trades.

After relevant periods

83. After the end of the relevant periods, there was a visit by Officer Hudson and Denise Jolliffe to PPX on 8 February 2016, attended by Mr Pearce and Mr Carr. The background notes record that HMRC returned the 08/15 records and were seeking to collect the 11/15 records. The visit report includes:

- (1) Leon Ford does the majority of buying, Mr Carr deals with sales and Mr Pearce now has a mainly HR role, but it’s a small business and they can each deal with whatever is happening at the time. Mr Carr has the role of checking the LME and sends the updated prices to employees as and when they change, and keeps everyone informed of LME prices all day.

(2) For walk-in sales, some customers come in for a price before bringing in the material; and Mr Carr may get a phone call beforehand if it's a large amount (ie tonnes not kilos).

(3) Officer Hudson asked about the split between trade off the street and companies. Mr Pearce said the majority is bulk loads, which can be worth £30,000 compared with off the street at £300 for each customer through the doors. Mr Carr said there could be three suppliers for bulk compared with thousands for walk in trade. Mr Pearce said the bulk of trade in terms of numbers is from smaller sources, but in terms of value the bulk of trade is from other companies.

(4) Asked if PPX had always bought in bulk, and particularly before HMRC's visits, Mr Pearce said no, in 2011 the yard was for door-trade customers. They then hired a grab to get metal off other lorries in 2012-2013, and PPX then started with the vast amounts of bulk dealing.

(5) PPX does now actively seek bulk trade. In the past, it was whatever knocked on the door.

(6) As PPX started to do well, they could then show they were a bigger company and could attract bigger companies as customers. Turnover had grossly increased.

(7) Asked about the purchasing, and when they would pay the supplier, Mr Pearce said this varies dramatically, and they hold off paying as long as possible to get the money in first.

(8) Mr Pearce confirmed he had received the Tax Loss Letters for IHEI and Road Runner. Officer Hudson asked if there had been any changes to due diligence checks since PPX had received these letters. Mr Pearce said they had made changes over time due to meetings with HMRC, but not specifically since these letters.

84. PPX received further Tax Loss Letters in respect of transactions in the relevant periods and subsequent VAT periods.

Due diligence and transactions with Defaulting Suppliers

85. Before addressing the specific due diligence undertaken by PPX in relation to each of the Defaulting Suppliers, we make the following findings as to PPX's approach to due diligence:

(1) Mr Pearce accepted that he was responsible for all due diligence conducted by PPX, but he did not do it himself. Due diligence was conducted by the admin team, initially Helen (but she left in late 2014) and then Ms Coles (Mr Pearce's sister), who was employed by PPX from October 2014 (and had attended one of HMRC's visits).

(2) Mr Pearce could not recall if he ensured that the admin team had regard to the guidance given to him by HMRC, and he was not aware of any training being given to them. Taking account of Ms Coles' comments to HMRC at the visit on 24 June 2015, as well as the lack of evidence of any training or explanations having been given, we find that Mr Pearce made no attempt to ensure that the admin team were aware of or followed the guidance given by HMRC.

(3) The admin team not only collected the due diligence but also gave the green light to trade. Mr Pearce did not generally review the results of that exercise.

(4) Mr Pearce's evidence was that there were occasions where PPX had decided not to trade, giving an example of Stembridge Machinery. Stembridge was on the same

site as Carwood, and the yard manager of Carwood was listed as a director of Stembridge.

(5) Mr Pearce described his role in the due diligence exercise during the relevant period as minimal. We agree with that description.

(6) Mr Pearce's evidence was that:

(a) The key matter he and thus PPX wanted to be satisfied of as regards the bona fides of a trader was the arrival of the material to PPX's site (as it is expensive, and can't be created out of thin air). PPX would always check the materials – the quality went to price, eg painted copper pipes were 98% copper, not pure. We accept this evidence.

(b) The documentation regularly obtained by PPX by way of due diligence was the certificate of incorporation, VAT certificate, letterhead and director's ID. This was what PPX needed to conduct a Wigan check, and the Wigan check told HMRC who they were dealing with. PPX thus ensured that it was trading with someone with a "live and valid" VAT number, which was under the care and management of HMRC. We accept this evidence as to the documentation obtained, but address in the specific findings below and in the Discussion the documentary evidence as to Wigan checks and whether PPX ensured it was trading with someone with a "live and valid" VAT number.

(7) PPX entered into self-billing agreements with some of its suppliers, pursuant to which PPX would issue self-billed invoices for supplies made to them by the supplier, and agreed that the invoices would record the supplier's name, address and VAT number, together with all details which constitute a VAT invoice. The tickets issued by the weighbridge manager and given to the accounts team were used both for payment and to enable PPX to issue an invoice based on the actual load which had been received and priced.

86. As regards checking VAT numbers of suppliers:

(1) Mr Pearce had been told by HMRC in January 2012 to verify VAT numbers with HMRC's Wigan office – we refer to this as a "Wigan check". Making a Wigan check informs HMRC whom PPX is trading with, and can sometimes prompt HMRC to visit that trader before confirming the VAT registration number appears to be valid. In this regard:

(a) PPX did then make Wigan checks on some suppliers.

(b) They had stopped doing this by the time HMRC next visited PPX in November 2013, because of the experience – which they described to HMRC at that meeting – with Zinda. Zinda had stopped trading with PPX after a visit from HMRC which had been prompted by PPX requesting a Wigan check on Zinda.

(c) Mr Pearce's evidence was that PPX did then resume making Wigan checks on suppliers. There had, however, been a problem with the handover from Helen to Ms Coles. We assess this evidence in the context of the documentary evidence before us in relation to particular suppliers.

(2) PPX generally verified VAT numbers by conducting an online check using the European Commission's VIES service – we refer to this as a "VIES check", although it is referred to in the visit reports as a Europa check. Mr Pearce's evidence was that this would have been done before making a payment to a supplier, but PPX may not always have printed a copy for its files (as they had not realised at the time that printed

evidence may be expected to be produced years later). We find that the first VIES check which was conducted by PPX on each supplier was that with the earliest date which was printed and filed by PPX. We have reached this conclusion as Mr Pearce was not conducting these checks himself and cannot give direct evidence as to what was being done by the admin team, there is no documentary evidence of earlier checks having been done, or oral evidence of the person conducting the checks to this effect, and the files do contain copies of multiple checks with various dates, demonstrating that it was not the case that the admin team had decided that just keeping a copy of one check for each supplier was sufficient.

87. No credit checks were made on suppliers.

88. Mr Pearce's witness statements addressed PPX's dealings with each of the 11 Defaulting Suppliers, and as part of that set out what due diligence he said had been obtained by PPX at a particular date, generally the date of the first transaction with that supplier (eg 15 August 2014 for Road Runner). Mr Pearce accepted at the hearing that those lists of documentation were not correct – after receiving the Denial Decision PPX had sought to obtain more information on the suppliers, eg annual returns, financial statements and other filings at Companies House, and added that documentation to its due diligence files. The whole of those files had been exhibited to his witness statements. That explanation is clearly correct, not least because some of the documentation said to have been held by PPX at the specified date had not been filed at that time and could not have been obtained by PPX (eg Road Runner's annual return, listed as a document obtained by PPX at 15 August 2014, was not received by Companies House until 3 December 2015).

Road Runner Buses Ltd

89. Between 1 September 2014 and 29 May 2015 Road Runner supplied PPX with metals to the net value of £1.19m, predominantly comprised of copper, with a maximum net invoice value of £98k.

90. There was a question as to when PPX had first traded with Road Runner prior to the relevant periods. PPX's self-billed invoices, as recorded in the officer witness statement in relation to Road Runner, had invoice numbers consistent with supplies having been made on 18 February 2014, but Mr Pearce produced bank statements showing payments of these amounts on 19 February 2015. We find that it is more likely that the supplies had been made in February 2015, as whilst suppliers did provide metals on credit to PPX, the provision of credit for one year would be out of the ordinary for PPX and its transactions with Road Runner.

91. Mr Pearce's evidence in his witness statement was that he had met Carmelo Marino in around 2012/2013. He said that Mr Marino was a director of Road Runner and Olympus Bus & Coach Ltd, and they owned a fleet of buses which were unrepairable.

92. The explanations provided to HMRC during visits were:

(1) On 17 July 2015, Mr Pearce said in relation to Road Runner that:

(a) Road Runner came along at the same time as LPI and his contact was Melvin, but he couldn't remember his surname;

(b) he had visited Road Runner's business twice, at least three months ago and probably three months before that. On the second visit Melvin came out and they went to an Italian for a meal. There were buses on a tarmac area. On the first visit Dan the director of LPI was there and he looked at a load of wiring looms; and

- (c) Road Runner mainly delivered stock to PPX's Bulwell site.
- (2) On 27 October 2015, Mr Pearce said in relation to Road Runner that:
- (a) He had met Melvin from Road Runner, his surname was Carmello, the family was Italian, he knew them very, very well;
 - (b) Road Runner came to be a supplier to PPX because Dan Anderson of LPI and Mel are friends, they met at a meal; and
 - (c) Road Runner scrapped vehicles, they had sites in Essex, an industrial estate covered in buses. Road Runner ripped the engines out, and predominantly supplied bus scrap, which they mainly delivered.
93. Mr Pearce's evidence at the hearing was that he had first met Mr Marino and Mr Anderson at a Waste Management show in Birmingham; one had introduced him to the other at that event. He had then met with Mr Marino at Road Runner's premises.
94. The due diligence information which had been obtained by PPX by 15 August 2014 was:
- (1) certificate of incorporation dated 27 July 2010; and
 - (2) copy of Mr Marino's passport.
95. A self-billing agreement between PPX and Road Runner was dated 15 August 2014.
96. PPX had conducted a VIES check on the VAT number, the earliest of which produced to us was dated 18 November 2014. There were others printed on later dates. As noted above, we have concluded that this was the first VIES check that was conducted.
97. PPX did not have a copy of Road Runner's VAT certificate, and PPX did not check Road Runner's VAT number with Wigan. There were no credit checks.
98. PPX later obtained:
- (1) Road Runner's annual return, which lists Carmelo Marino as company director, and majority shareholder. This was a publicly available document, but was not received at Companies House until 3 December 2015; and
 - (2) Road Runner's accounts for the year ended 31 July 2014, which were not approved until 6 August 2015. The accounts showed fixed tangible assets of £510, its current assets as debtors (of £207,985) and cash (of £61,043), with creditors of £232,772.

MayX1 Ltd

99. MayX1 first supplied PPX on 12 May 2014, and between then and 4 September 2014 supplied it with metals to the net value of £2.6m, predominantly comprised of copper, with a maximum net invoice value of £101k. The transactions include loads of mixed copper, copper wire, copper granules. Mr Pearce agreed that the sales of copper granules in particular, ie copper which had been granulated by a machine, showed that MayX1 was trading in those copper granules. Whilst there were many transactions between MayX1 and PPX, it was only the transaction(s) on 4 September 2014, for two quantities of lead, that are within the relevant periods.
100. On 17 July 2015 Mr Pearce told HMRC in relation to MayX1 that:
- (1) three people came to PPX, Imran, the director, Max Lucas and Kashis Mubarak. Mr Pearce couldn't recall when that was, but MayX1 had offered him just under a tonne of bright wire (copper);

(2) he couldn't remember what checks he had made before trading but would check if he had any emails;

(3) he didn't visit MayX1's premises (which HMRC said were in Stockport) but met them at a Costa in Manchester. They came to PPX on a number of occasions but there were no notes of these meetings;

(4) there were no contracts or written terms and conditions between the two companies;

(5) PPX would never pay for goods without them being on the premises and inspected. The goods from MayX1 were always inspected. MayX1 usually delivered to the Bulwell site; and

(6) they did not receive individual payment instructions for each purchase, MayX1 did change details once, to an individual account.

101. MayX1 sent an email by way of introduction to Mr Pearce on 30 May 2014, providing:

(1) certificate of incorporation dated 3 June 2011;

(2) MayX1's VAT certificate, which described its business activity as "non-specialised wholesale trade", dated 30 May 2014, with an effective date of 3 February 2014;

(3) copy letterhead;

(4) copy of Imran Rashid's passport;

(5) copy BT bill for £30.88; and

(6) Santander account statement summary. The bank statement, for a one-month period, showed a balance brought forward of £0, £14,913 credits, debits of £69.

102. PPX requested a Wigan check on MayX1 on 2 June 2014. HMRC confirmed validity on 25 June 2014. That confirmation from HMRC is framed in the standard form, and includes:

"I can confirm that the information you supplied matches that held currently by HMRC and the VAT Registration listed below appears to be valid at this time.

This confirmation is not to be regarded as an authorisation by this Department for you to enter into commercial transactions with this/these traders. Any Input Tax claims you make may be subject to subsequent verification."

103. PPX and MayX1 signed a self-billing agreement on 25 June 2014.

104. PPX conducted a VIES check on 21 August 2014.

105. Documents later obtained by PPX included:

(1) annual report and accounts for the year ended 30 June 2012, describing the principal activity as wholesale of general goods, director was Imran Rashid Ahmed, turnover of £584,628;

(2) annual report and accounts for the year ended 30 June 2013, listing three directors, recording that Kashif Mubarak and Adnan Raja resigned during the period (on 24 March 2013 and 17 December 2012 respectively). The turnover had increased to £907,146. The report was approved on 10 February 2014;

(3) annual return received on 18 July 2014;

(4) undated Companies House print-out listing directors, showing Kashif Mubaraq had resigned on 16 January 2013; and

(5) annual report and accounts for the year ended 30 June 2014, approved on 7 August 2014.

106. The visit reports refer to PPX as having made a payment to a third party in respect of a supply from MayX1. That third party was World Trade Corporation. This was the only supplier where HMRC's case was that such a payment was made, and we make relevant findings of fact here. Mr Kinnear submitted that PPX accepted that only a single third party payment was made in the relevant periods; and Mr Pearce's evidence at the hearing was that this was factoring of invoices. Addressing the evidence:

(1) The visit report of 6 November 2014 referred to PPX having made third party payments in the past for purchases from Vintro and MayX1, Mr Pearce was warned about such payments during the previous visit and said he will not be making any more third party payments.

(2) There were no transactions with MayX1 after that visit.

(3) The visit report of 17 July 2015 includes a write-up of what was essentially a "Q&A" on various suppliers, one of which was MayX1. When asked if they received individual payment instructions for each purchase, Mr Pearce said no, they were just given the details once. MayX1 did change details once, he thought to an individual account. The officer referred to the due diligence folder containing a Santander company bank statement but said that PPX paid to a third account, which was identified as an HSBC account for World Trade Consultants.

(4) Officer Farmer, who had visited PPX, produced a list of the self-billed invoices issued to MayX1, showing dates, goods and amounts. That schedule specifies the account details for World Trade Consultants Ltd as the account to which payments were made.

(5) There is a ledger of transactions, recording purchase invoices, dates, details (sometimes this being the type of metal, others referring to a purchase payment being made). That ledger refers to BACS payments having been made, but does not specify bank account details to which the payment was made.

(6) There are no documentary payment instructions from MayX1 to PPX providing details of the bank account to which payment was to be made, or bank statements of PPX showing the making of the payments.

(7) Mr Pearce's oral evidence at the hearing was that this was factoring. This had not been mentioned at any time previously, most notably when he had the detailed discussion with officers during the visit in July 2015.

107. On the basis of the evidence, we are satisfied that HMRC have established that all payments made by PPX in respect of supplies by MayX1 were paid to the account of World Trade Consultants, albeit that only the supplies made on 4 September 2014 were during the relevant periods. We do not accept Mr Pearce's explanation that this was factoring of invoices by MayX1. He had not been told this by MayX1, this was speculation which was unsupported by any other evidence.

London Projects Interiors Ltd

108. Between 3 September 2014 and 13 April 2015 LPI supplied PPX with metals to the net value of £3.48m, predominantly comprised of copper, with a maximum net invoice value of

£198k. The first transaction was for ferro vanadium and stellite, which are specialised metals.

109. Mr Pearce has explained how PPX was introduced to LPI:

- (1) On 17 July 2015 at HMRC's visit Mr Pearce said in relation to LPI that:
 - (a) Dan Anderson was his contact at LPI;
 - (b) he originally found LPI because they were linked with Road Runner. Mel was Road Runner, Dan was LPI, he met them both at a waste show at the NEC;
 - (c) he had met Dan Anderson around 40 times when he had come to PPX with a number of loads and had also met up with him in London for coffee four to five months ago;
 - (d) PPX had not made any additional checks on LPI. When told by HMRC that no Wigan check had been done, Mr Pearce said he was shocked;
 - (e) he had not visited LPI's premises;
 - (f) he did not have any ID for Dan Anderson;
 - (g) LPI mainly delivered to PPX's Bulwell site; and
 - (h) Mr Pearce thought that LPI obtained the metals because inside the M25 prices for metals plummeted.
- (2) In his witness statement Mr Pearce set out that he had met Mr Marino of Road Runner and he introduced him to Daniel Anderson of LPI, which redesigned and refitted high end residential and commercial properties in London.

110. Mr Anderson had provided PPX with due diligence information in relation to LPI in July and August 2014. PPX had:

- (1) VAT certificate issued on 14 October 2013 with an effective date of 1 April 2013, showing a trade classification of specialised design activities and an address of Unit 17 Greenway Business Centre in Harlow Business Park;
- (2) certificate of incorporation dated 28 March 2013;
- (3) copy letterhead from LPI; and
- (4) barely legible copy passport – name and photo are not clear, but possibly that of Carmelo Marino.

111. A self-billing agreement was entered into on 1 September 2014.

112. There were several VIES checks, the first of which is dated 18 November 2014. There was no Wigan check.

113. PPX later obtained:

- (1) annual return dated 28 March 2015 received by Companies House on 25 April 2015, with a registered office in Rotherham and naming directors as Carmelo Marino and Stanley Wortham. Mr Anderson was not a director, but the shares at the date of the return were held by Daniel Anderson and Carmelo Marino;
- (2) accounts for the year ended 31 March 2014, which were filed on 30 December 2014, with a business address on Margate Road in Ramsgate, principal activity of building completion and finishing, showing a turnover of £276,956 and negative net assets; and

- (3) Company Check Report, with no information on credit status.

Fortified Recycling Ltd

114. Fortified first supplied PPX during the periods in issue on 24 September 2014, and between then and 9 December 2014, supplied it with metals to the net value of £535k, predominantly comprised of copper, with a maximum net invoice value of £66k.

115. The Tax Loss Letter dated 7 July 2015 in relation to supplies from Fortified which had been traced to a defaulting trader also included the details of four supplies in August 2014, albeit with apparently incomplete purchase invoice numbers.

116. Mr Pearce did not know how PPX and Fortified came to start trading with each other. He has given some explanation of his contacts at Fortified:

- (1) On 17 July 2015 at the PPX visit Mr Pearce said in relation to Fortified that:
 - (a) he could not remember how PPX traced Fortified and would look for any relevant emails;
 - (b) he had not visited Fortified's premises, but his drivers had collected from Fortified, so he knew that the yard was there;
 - (c) his contact at Fortified was a guy called Andy, whose surname he didn't know and who didn't own the company;
 - (d) he had never met the director, Arpad Vajai, whose proof of identity was in the due diligence file. Mr Pearce said the picture looked like Andy, it was bad due diligence and showed how often he looked at the pack; and
 - (e) Fortified had delivered to PPX and PPX had also collected from Fortified.
- (2) In his witness statement Mr Pearce said he believed Andy was a salesperson working at Fortified. In a subsequent witness statement he said he recalled meeting Barrie Myerscough, the director of Fortified, in a queue at Sims Metal Management Ltd in around 2011/2012, and they had exchanged numbers. In 2014 Mr Vajai of Fortified contacted PPX and told him that he and Mr Myerscough were running Fortified together.

117. Mr Pearce exhibited various due diligence information, but this was one of the suppliers where it was not clear which information PPX had at the time of the transactions. On the basis of both Mr Pearce's general explanation as to the documentation sought by PPX at the time, and specific evidence as to not having, eg, the change of address documents until later, we find that at the time of the transactions PPX had the following due diligence:

- (1) certificate of incorporation for Fortified Metal Recycling Ltd dated 16 November 2011 and Companies House change of name documents to Fortified Recycling Ltd dated 22 February 2013;
- (2) letter of introduction from Arpad Vajai to PPX dated 24 September 2014, describing it as a three year old scrap metal merchant based in the Sheffield area;
- (3) registration certificate from the Environment Agency;
- (4) VAT certificate, being an amended certificate which had been issued on 9 September 2014 with an effective date of 6 September 2012. The address was Unit 12, Norwood Industrial Estate in Sheffield, bank account number ending 2032 and trade classification of recovery of sorted materials; and
- (5) copy driving licence for Arpad Vajai.

118. The self-billing agreement between PPX and Fortified was dated 6 November 2014, and was signed on behalf of Fortified by "M Iqbal". Mr Pearce didn't know who this was; he noted that these agreements would have been signed on behalf of PPX by the admin team. Another version of this agreement has a manuscript note saying the contact is Arpad Vajai/Monty.

119. There are various VIES checks on Fortified, the earliest of which was dated 25 September 2014. PPX did not make a Wigan check.

120. PPX later obtained:

- (1) change of registered office address documents filed on:
 - (a) 23 May 2012 with a new address in Walsall,
 - (b) 18 March 2013 with a new address in Worcestershire,
 - (c) 22 April 2014 with a new address at Ascot House in Birmingham, and
 - (d) 6 August 2014, with a new address at College Road in Harrow;
- (2) annual return dated 14 August 2014 filed on 18 August 2014 naming the director as Arpad Vajai and the shareholder as Mr Vajai, also with the information that Barrie Myerscough had been the shareholder (of the same number of shares as now held by Mr Vajai) until 6 August 2014; and
- (3) abbreviated accounts for the year ended 30 November 2013, showing nil fixed assets and net current assets of £1,981.

Osgodby Investments Ltd

121. OIL made eight supplies to PPX between 26 September 2014 and 3 November 2014, with metals to the net value of £50k, with a maximum net invoice value of £11k.

122. On 17 July 2015 at the visit Mr Pearce said in relation to OIL that:

- (1) OIL was two Scottish guys, Raymond and Martin, he didn't know their surnames but did have mobile numbers;
- (2) PPX found OIL because the company was around when he was selling nickel;
- (3) PPX did not do any other checks and there was no Wigan check because the handover didn't go well, Ms Coles thought that the Europa check was the VAT check;
- (4) he did not visit OIL's premises, and OIL delivered each time;
- (5) he met OIL two to three times when they came to PPX with the loads and he also met them at Ollerton McDonalds once; and
- (6) the stock was delivered to PPX's Chesterfield site.

123. We accept that PPX had the following due diligence documents on 24 September 2014:

- (1) letter of introduction dated 15 September 2014, with an address on North Street in Scunthorpe;
- (2) certificate of incorporation on change of name from Hollingthorpe Property Ltd to OIL, dated 13 November 2000; and
- (3) VAT certificate issued on 15 November 2013 with an effective date of 28 October 2013, address at Church Avenue in Grimsby and trade classification of roofing activities.

124. PPX and OIL entered into a self-billing agreement dated 24 September 2014.

125. The first VIES check was conducted on 31 October 2014 and there was no Wigan check.

126. PPX later obtained:

- (1) an annual return filed at Companies House on 5 December 2014, showing the director was Martin Rasay;
- (2) abbreviated accounts for the year ended 30 November 2013, which name the director as Keith Collins, balance sheet showing no assets, but with creditors of £777, and notes stating that turnover was from roofing contracting work; and
- (3) notice of appointment of Martin Rasay as director on 15 September 2014, filed on 18 September 2014, his date of birth indicating he was 22 years old.

Infinity Heavy Equipment International Ltd

127. IHEI first supplied PPX on 2 March 2015, and between then and 4 September 2015 supplied it with metals to the net value of £8.5m, predominantly comprised of copper and nickel, with a maximum net invoice value of £250k.

128. As to the introduction:

- (1) Mr Pearce said during the visit on 17 July 2015 that he had met the director of IHEI at their premises.
- (2) During HMRC's visit to PPX on 27 October 2015 Mr Pearce said:
 - (a) Leon Ford (a buyer who worked at PPX) had sourced IHEI as a supplier;
 - (b) the contact at IHEI was "Caz" (Karem);
 - (c) he had met IHEI, but not been to the premises, although Leon Ford had but Mr Pearce was not sure if Leon had recorded details of the visit;
 - (d) IHEI were in demolition/construction. When Officer Hudson said they are registered as machinery hire, Mr Pearce said that they pull buildings down; and
 - (e) the metal from IHEI was delivered to PPX and IHEI arranged the transport.
- (3) In his witness statement Mr Pearce said that he seemed to recall that the initial introduction was due to IHEI offering plant and machinery hire and sales. Although PPX did not hire or purchase any of these machines, it did lead to IHEI supplying PPX with materials.

129. As at 2 March 2015 PPX held the following documents in relation to IHEI:

- (1) certificate of incorporation dated 9 January 2015 and company's articles of association;
- (2) minutes of the first board meeting, held on 9 January 2015, recording that Karan Singh Mata Nagra was appointed as director; and
- (3) copy of Mr Nagra's driving licence and passport.

130. PPX and IHEI entered into a self-billing agreement on 1 April 2015. That agreement contains IHEI's VAT number.

131. PPX later obtained:

- (1) annual return for IHEI, which was dated 9 January 2016 and filed on 17 May 2016. The company director is Karan Singh Mata Nagra, born in 1990; and

(2) Company Check Report, which did not show any credit status, cash or net worth figures.

132. IHEI was not VAT registered at the time at which they first supplied PPX, and did not apply to be registered for VAT until 21 May 2015. The first transactions with PPX (on 2 March and 21 April 2015) were for a total of £225k net of materials. As to the timing of the VAT registration:

(1) HMRC notified IHEI that it had been registered for VAT with effect from 1 May 2015 on 4 June 2015. The VAT certificate which was issued showed a trade classification of machining.

(2) There was no evidence as to when IHEI first informed PPX of its VAT registration.

(3) The effective date of the VAT registration was later backdated to 1 March 2015 to cover the sales which had been made by IHEI to PPX before 1 May 2015. HMRC had requested this change on 2 August 2016.

133. The purchase invoices which were produced before us all charged amounts in respect of VAT. Mr Watkinson submitted that IHEI had been charging VAT from the outset. As to this:

(a) We were taken to a purchase invoice dated 2 March 2015 for the first supply which was for a net amount of £24,196 plus VAT. There is a manuscript note stating that £55,421 was paid on 17 August.

(b) Mr Pearce's evidence was that PPX had initially issued invoices without VAT, but were told by HMRC that IHEI had been VAT-registered, that this covered the transactions with PPX and that PPX needed to re-do the purchase invoices.

(c) There was no documentary evidence of the original invoices, any cancellation or crediting of them, or any instruction from HMRC to re-issue. Furthermore, the VAT registration only had an effective date of 1 May 2015, not 1 March 2015, until August 2016 and the self-billing agreement, which authorised PPX to issue VAT invoices addressed to itself, was dated 1 April 2014.

(d) However, there is a VAT number on the purchase invoice to which we were taken (that dated 2 March 2015) and it is that number which was later issued to IHEI. We therefore accept that this purchase invoice, relating to a supply of materials in March 2015, was not issued until after 4 June 2015, the date on which HMRC informed IHEI that it had been VAT-registered.

134. On the basis of this evidence, we accept Mr Pearce's explanation that these invoices were issued by PPX after IHEI had been registered for VAT.

135. PPX conducted a Wigan check on 8 July 2015, and they received the confirmation that the number appears to be valid on 22 July 2015.

136. The first VIES check was made on 10 July 2015.

Zeggo Ltd

137. Zeggo first supplied PPX on 16 March 2015, and between then and 14 August 2015 supplied it with metals to the net value of £2.28m, predominantly comprised of copper and nickel, with a maximum net invoice value of £125k.

138. On 27 October 2015 Mr Pearce told HMRC in relation to Zeggo that:
- (1) he had met Hugh and Rob from Zeggo, Hugh was an old boy, a retired solicitor and it was his business;
 - (2) Zeggo had knocked on PPX's door;
 - (3) he had met Zeggo three or four times, they had had lunch together;
 - (4) he did not find out what Hugh and Rob's history in the metals trade was; and
 - (5) Zeggo delivered the metal to PPX's Bulwell site.
139. PPX held the following documents in relation to Zeggo as at 16 March 2015:
- (1) VAT certificate dated 5 August 2014 with an effective date of registration of 5 August 2014 which showed a trade classification of other retail sales not in stores, stalls or markets and an address of Princes Drive, Colwyn Bay;
 - (2) certificate of incorporation dated 13 September 2013 and application to register the company at Companies House naming Hugh Roberts as the director and with its articles of association; and
 - (3) bank details for an account at Barclays Bank.
140. The self-billing agreement between PPX and Zeggo was dated 1 March 2015, and signed by J Wilson on behalf of Zeggo.
141. PPX later received a letter of introduction from Stanley Wortham of Zeggo to PPX which was dated 9 June 2015.
142. Mr Pearce also produced documents (which we infer had accompanied the letter of introduction) showing various addresses – HMRC had acknowledged their online enrolment for VAT by letter to Brompton Avenue in Colwyn Bay, and confirmed company tax reference on 11 July 2014 to an address in Wellington Road in Rhyl.
143. PPX later obtained:
- (1) undated printout from Companies House naming Hugh Roberts as the director;
 - (2) annual return dated 13 September 2014, filed on 11 October 2014;
 - (3) Endole report, printed on 16 June 2015, stating no records for cash, assets, or turnover; and
 - (4) Company Check Report with no financial information.
144. PPX requested a Wigan check on 16 June 2015. HMRC replied on 25 June 2015 stating that they were unable to confirm this is a valid registration, adding that the failure was related to the information submitted and asking PPX to resubmit up to date copies of the required documents. HMRC did then confirm the VAT registration on 22 July 2015.
145. The earliest VIES check was made on 4 August 2015.

Yahya Estate Ltd

146. Yahya first supplied PPX on 8 May 2015, and between then and 9 June 2015, supplied it with metals to the net value of £1.43m, all of which was copper, with a maximum net invoice value of £93k.
147. The visit reports include some explanation of the background to this trading:
- (1) Mr Pearce said during the visit on 17 July 2015 that he had met Yahya – but he did not suggest that PPX had visited the company.

- (2) During the monitoring visit on 27 October 2015 Mr Pearce said:
- (a) he had met Ben, the director of Yahya, at PPX's Chesterfield yard on a number of occasions;
 - (b) Ben had worked in yards, then went out on his own, he thought that Ben had bought the company; and
 - (c) he had not checked the Yahya website, and the claim on it that Yahya owned a smelter was not true.
148. PPX had the following due diligence information at the time of trading:
- (1) VAT certificate dated 27 January 2015 with an effective date of registration of 10 January 2015, which showed a business activity of non-specialised wholesale trade;
 - (2) certificate of incorporation dated 13 September 2013; and
 - (3) undated and unaddressed letter of introduction which describes the business and states that they work effectively on a large scale and invest heavily into advanced processing equipment, and have a large metal recycling site.
149. PPX conducted a VIES check on 6 May 2015, before PPX started trading with them.
150. PPX requested a Wigan check on 23 June 2015, and HMRC confirmed that the VAT registration appeared to be valid on 7 July 2015.
151. PPX later obtained:
- (1) undated Companies House print, naming Ben Goddard, born in 1992, as appointed as a director on 19 January 2015. Mohammed Nakeeb had been appointed as director on 13 September 2013 but resigned on 19 January 2015;
 - (2) abbreviated accounts for the year ended 30 September 2015, the balance sheet showing net assets of £100 for both 30 September 2015 and 30 September 2014;
 - (3) Company Check Report on Yahya, which showed that it was a new company, with no financial information filed, no recorded telephone number, email address or contact person and that its business activity was the non-specialised wholesale of food, beverages and tobacco; and
 - (4) annual return received by Companies House on 8 June 2015.

Bavalda Ltd

152. Bavalda first supplied PPX on 14 August 2015, and between then and 12 October 2015 supplied it with metals to the net value of £110k (with £14k then credited back in October 2015), comprised only of copper, with a maximum net invoice value of £74k. The supplies in August 2015 were of copper grains, ie processed copper. Mr Pearce accepted that he would assume that Bavalda was selling wholesale.
153. Mr Pearce could not recall how PPX and Bavalda had been introduced, noting that he had been on holiday in August.
154. PPX had the following documents in relation to Bavalda:
- (1) VAT certificate dated 16 July 2015 with an effective date of 16 July 2015. The certificate showed an address of Perth Road, London. The certificate showed a trade classification of plastering;
 - (2) certificate of incorporation dated 30 June 2015; and
 - (3) copy driving licence of Arturas Skliutas, showing an address in Chigwell.

155. PPX made a VIES check on 14 August 2015.

156. On 17 August 2015 PPX requested a Wigan check. On 9 September 2015 HMRC notified PPX that the details provided by it in relation to Bavalda differed from those held by HMRC, and that Bavalda's VAT number could not therefore be validated. Bavalda sent PPX an updated VAT certificate, which had been issued on 14 September 2015 with the Chigwell address and describing the business activity as other building completion and finishing, and PPX forwarded this to HMRC for verification on 15 September 2015. HMRC replied on 23 September 2015 stating that they still awaited verification of Bavalda and asked PPX to re-submit after ten working days.

157. Ms Coles had followed up on the due diligence:

(1) Ms Coles asked Bavalda about the trade classification of plastering in an email of 14 August 2015, the same day that PPX first purchased from Bavalda, and Bavalda said that it had recently changed to demolition and construction.

(2) On 9 September 2015 Ms Coles emailed Bavalda asking for their new documents. She sent the updated VAT certificate she received to HMRC on 15 September 2015.

158. PPX later obtained

(1) a Company Check Report on Bavalda, which showed that it was new company, with no financial information filed, no recorded telephone number, email address or contact person and that its registered and trading addresses were the Chigwell address; and

(2) annual return dated 22 July 2015 which was filed on 27 July 2015 showing the Chigwell address, and the director was Arturas Skliutas.

Heritage Silver Ltd

159. Heritage first supplied PPX on 8 September 2015, and between then and 16 September 2015 supplied it with metals to the net value of £151k, comprised only of copper, with a maximum net invoice value of £62k.

160. Mr Pearce could not recall how Heritage and PPX had been introduced, nor was there any evidence (eg emails) as to how PPX obtained the initial due diligence documentation.

161. It is difficult to identify which documents were held by PPX at the time of trading and which it obtained subsequently (and Mr Pearce's evidence was that subsequent was after the Denial Decision). On the basis that PPX were not generally checking the Companies House website for filed accounts, annual returns and forms which had been filed at the time of trading, we infer that those that were in the bundle had been obtained afterwards. However, whilst there were more of the utility bills and bank statements than typically obtained, we do infer that these were obtained at the time of trading – this is based on the dates of them, the fact that the bank statement had been copied with the driving licence on the same screen and that they are not publicly available documents which can be searched for after the event.

162. We find that PPX had the following documents at the time of the transactions:

(1) VAT certificate issued on 1 July 2011 with an effective date of 12 February 2001, which showed a trade classification of wholesale of watches and jewellery and an address in Romford, bank account number ending 7401;

(2) certificate of incorporation dated 19 December 2000, and Companies Act certificate dated 26 September 2008, stating company's registered office in South Woodford;

(3) bank statement issued on 27 April 2015 addressed to the director of Heritage, stating account number ending 7803, with copy driving licence of Peter Shifrin on same page;

(4) utility bill dated 9 July 2015 addressed to Peter Shifrin of Heritage Gold, addressed to Romford;

(5) utility bill dated 11 April 2015 addressed to David Field in Harrow;

(6) "Corporate and Contact Information" document for Heritage showing an address of South Street, Romford, stating that both Mr Field and Mr Shifrin were directors and listing James Buchannon as dealing with trading; and

(7) copy driving licence of David Field.

163. PPX had conducted a VIES check on 4 June 2015, before they started trading with Heritage.

164. PPX requested a Wigan check on 5 June 2015, and HMRC confirmed on 18 June 2015 that the VAT number appeared to be valid.

165. PPX later obtained:

(1) annual return dated 19 December 2014 filed on 15 January 2015 showing registered office in Woodford Green, Barbara Shifrin was company secretary (service address of South Street in Romford), director Peter Shifrin at same address;

(2) abbreviated accounts for the year ended 31 March 2014 recording Mr Shifrin as director, the registered office in Woodford Green and net current liabilities (of £73k);

(3) Companies House change of address documents recording a new registered office as South Street, Romford on 25 April 2006, a PO Box number in Edgware filed on 25 June 2015, Mill Hill on 10 August 2015;

(4) record of appointment of David Field as director on 6 August 2015, filed on 10 August 2015, stating occupation as accountant; and

(5) record of resignation of Mr Shifrin on 10 August 2015

Green Deal Initiative Ltd

166. Between 7 September 2015 and 26 November 2015 GDIL sold metal to PPX with a net value of £2.7m, mainly comprised of copper bright wire but including some specialist metals, with a maximum net invoice value of £74k.

167. There was no documentation evidencing how they came to supply PPX.

168. We find, on the basis of what was supplied to HMRC, and Mr Pearce's evidence as to what PPX did obtain from suppliers, PPX had the following due diligence when it traded with GDIL:

(1) certificate of incorporation on change of name from Green Deal Initiative Ltd to Green Energy Initiative Ltd dated 20 June 2015, together with notice of relevant resolution;

(2) copy letterhead with bank details;

(3) Gas Safe registration certificate;

(4) Environment Agency certificate dated 29 June 2015;

(5) Green Deal advice certificate issued on 30 June 2015 and other Green Deal/health and safety certificates; and

(6) some photos said to be of GDIL's premises. Mr Pearce had not visited GDIL's premises, and he didn't know if anyone else from PPX had visited them (and thus could have taken the photos). Given the nature of the other documentation which PPX possessed, which appeared to have been provided by GDIL to PPX rather than obtained from other sources, we infer that these photos had been provided to PPX by GDIL.

169. PPX did not initially have a copy of GDIL's VAT certificate, as that was only issued on 19 November 2015, with an effective date of 1 April 2011 and business activity of electrical installation. There was no evidence as to when a copy of this was provided to PPX (although this must have been by 21 December 2015).

170. PPX conducted a VIES check on 21 December 2015.

171. PPX requested a Wigan check on that same date, but on 22 December 2015 HMRC said they were not able to confirm this was a valid registration and asked for PPX to resubmit up to date copies of the VAT certificate, letter of introduction (including details of the directors) and certificate of incorporation. A further request was submitted on 22 December 2015, but HMRC said on 29 December 2015 that they could not confirm the registration. The VAT number was validated by HMRC on 6 January 2016 following a further check on 5 January 2016.

172. No payments were made by PPX to GDIL until after 6 January 2016.

173. PPX later obtained:

(1) annual return dated 4 March 2015, filed at Companies House on 20 March 2015, naming Richard Moule as secretary, Robin Clarke, David Holliday and Verity Holliday, Danielle Lowe, Richard Moule as directors;

(2) Companies House print listing the directors;

(3) change of registered office address received by Companies House on 27 June 2016; and

(4) abbreviated accounts for the year ended 31 August 2014 and for the period 1 September 2014 to 31 March 2015. At 31 August 2014, GDIL had net liabilities of £107,705. The notes to those accounts record that its turnover was from the supply and installation of home insulation and energy saving products.

Filing of returns and provision of documents

174. We address here the timing of the provision of information to HMRC, as HMRC's case included that PPX often failed to file returns on time or provide requested information to HMRC in a timely manner.

VAT returns

175. PPX's VAT returns for 08/14 (which was not one of the relevant periods), 11/14 and 05/15 were submitted late:

(1) At the visit on 25 February 2015, HMRC said the 08/14 and 11/14 returns had not yet been submitted. Mr Pearce told HMRC that the 08/14 return had been submitted half an hour before the meeting, and the 11/14 return would be submitted in the next fortnight. However, HMRC checked VISION on 2 March and 10 March 2015, and on both dates the returns for 08/14 and 11/14 were not shown as submitted.

(2) At the visit on 17 July 2015, HMRC pointed out that the 05/15 return was overdue.

Provision of documents

176. PPX provided a lot of business records to HMRC. HMRC would take the original records from PPX at one of the visits (or at an agreed time and date) and return them the following visit, eg:

- (1) six boxes of records for 09/13 to 05/14, which were provided to HMRC at the visit on 6 November 2014;
- (2) sales and purchase records for 11/14 and 02/15 were provided on 4 June 2015. SAGE records for 11/14 were provided by email on 9 April 2015 and those records for 02/15 were provided on the visit of 12 May 2015;
- (3) two boxes of records for 08/15 were provided on 27 October 2015; and
- (4) the 11/15 records were provided on 8 February 2016.

177. We infer that HMRC took copies of these papers that were provided to them in hard copy before returning them to PPX. However, we do not have a complete picture of the information that was provided to HMRC as Officer Parton confirmed that she had reviewed the documents which had been exhibited to Officer Lee's witness statements and checked HMRC's electronic files for some documents but had not sought to check other material which was or might have been in HMRC's possession.

178. We have set out under Contact with HMRC above a summary of the discussions at some of the visits by HMRC. At those visits Mr Pearce did appear to be cooperative, answered questions about how PPX conducted business, tried to deal with questions about specific suppliers and sought to provide documents that were asked for by HMRC in the context of those discussions (eg lists of PPX's employees).

179. It is clear that there were delays in providing some of the information requested by HMRC:

- (1) At the visit on 25 February 2015 HMRC said they had not received any monthly sales and purchase records from PPX as requested after their last visit; and most of the other records which had been requested after the last visit had not been provided. Some of the records for 08/14 (but not bank statements) were provided at that time.
- (2) At the visit on 17 July 2015 many of the records HMRC had requested by email on 26 June 2015 were still outstanding. Those records related to 07/13, 10/13 and 04/14, ie prior to the relevant periods.
- (3) HMRC issued a Schedule 36 notice to obtain the 05/15 records on 21 August 2015. PPX then provided most of those records on 21 August 2015, with the SAGE records then being provided by email on 2 September 2015.

Finances of PPX

180. The financial statements of PPX record as follows (noting that the middle period is an 18-month period):

	Year to 31 August 2013	1 September 2013 to 28 February 2015	Year to 29 February 2016
	£		
Turnover	3,275,108	10,946,715	31,301,729
Cost of sales	2,906,207	10,004,677	30,300,745

Gross profit	368,901	942,038	1,000,984
Administrative expenses	223,784	799,763	827,017
Profit (after tax)	114,226	113,426	137,343

181. Looking at the administrative expenses of £799,763 in the period to 28 February 2015, the largest components are wages and salaries of £351,999, vehicle expenses of £122,055 and rent of £68,169. There was an increase in, eg, rates and water, light and heat, insurance, advertising.

182. The outputs figures from PPX's VAT returns are set out below:

Period	05/12	08/12	11/12	02/13	05/13
Outputs	108,281	76,750	318,040	536,172	737,517
Period	08/13	11/13	02/14	05/14	08/14
Outputs	1,288,327	1,313,138	721,960	747,157	3,098,068
Period	11/14	02/15	05/15	08/15	11/15
Outputs	3,110,206	2,009,485	6,899,212	7,091,426	6,266,534
Period	02/16				
Outputs	9,669,217				

DISCUSSION

183. We need to determine if HMRC have established, on the balance of probabilities, that PPX knew or should have known (in accordance with the *Kittel* principle and as explained further in *Mobilx*) that the Transactions were connected to the fraudulent evasion of VAT.

184. Mr Watkinson referred to:

(1) The contact between PPX and HMRC, as set out in the visit reports (with PPX having been warned of the risk of fraud since January 2012), the Notices of Deregistration and Tax Loss Letters received by PPX, and the discussions about the need for due diligence on its suppliers.

(2) HMRC's position was that there was an orchestrated scheme to defraud HMRC, and this had been accepted by PPX. In this context:

- (a) HMRC submitted that where a party's transactions are part of an overall scheme to defraud HMRC, that is probative of its state of knowledge as to whether its transactions were part of such a scheme, and thus connected with the fraudulent evasion of VAT. Where such a scheme exists, it is more probable than not that for the scheme to have worked, the parties involved must have been told from whom to purchase, what goods, when, at what prices, whom to pay and when.
 - (b) The fact of such a scheme in the individual case can give rise to the inference that PPX knew its role therein.
 - (c) HMRC were submitting that there was directed trading in that PPX was being told who to trade with.
- (3) HMRC said there were indicia that the transactions were part of an orchestrated scheme to defraud HMRC:
- (a) scale of the tax losses;
 - (b) replacement of defaulting traders – the general pattern is that when one defaulter was deregistered a new one was brought in to replace it;
 - (c) links between companies – links between some of companies cannot be explained by ordinary commerce. PPX's sites were in Mansfield Woodhouse, Bulwell and Chesterfield, yet five of the Defaulting Suppliers (Bavalda, LPI, Road Runner, IHEI and Heritage) had addresses in a small area of East London and Essex. There was a link between Road Runner and LPI, and between LPI and Zeggo (Stanley Wortham).
- (4) Mr Pearce was experienced in the trade, and it is not credible that he was duped as an innocent party in such a large number of transactions, by 11 suppliers, over a sustained period of time during which a large portion of PPX's turnover was driven by transactions connected to fraud. Mr Watkinson submitted that Mr Pearce's evidence was inaccurate or not truthful, and that we should be slow to accept it where it is not supported by documentary evidence.
- (5) HMRC relied on the same factors for their case that PPX knew and that it should have known that the Transactions were connected to fraud, and that this was the only reasonable explanation: awareness of the risk of fraud, the need for due diligence, that transactions had previously been connected to fraud, repeated connection with fraud, massive increase in turnover in the period and in gross profits, no financial risk to PPX as it was granted credit by suppliers with no apparent financial wherewithal, slow provision of information to HMRC, minimal due diligence (obtained only after trading started) which had glaringly obvious indicia that suppliers were not commercially credible.

185. For PPX, Mr Kinnear emphasised the serious nature of the allegations being made by HMRC, recognising that HMRC did not need to plead or prove dishonesty. He submitted that, as accepted by HMRC, HMRC bore the burden of proof and the Tribunal should guard against shifting that burden. Mr Kinnear submitted:

- (1) It is not sufficient for HMRC to prove a trader should have known that he was running a risk that he might be taking part in a transaction connected with fraud; it must be established he should have known that he was taking part in such a transaction.
- (2) Mr Pearce established PPX (having several years of experience in the trade by this time), and grew the business from his home to one operating over three sites. By

the time of the visit by HMRC on 25 November 2013, PPX had its own premises and plant (albeit leased), and Mr Pearce was completely open showing the operation to HMRC, explaining the business and pricing.

(3) There is no challenge to the existence of the scrap metal that was the subject-matter of the Transactions. It was delivered to PPX's yards and sold by them. There was nothing out of the ordinary in these transactions – there is no evidence that PPX obtained anything other than normal commercial profits, driven by the market. The prices were not inflated. If PPX were involved in the fraud, there is no evidence that PPX profited in any way from the VAT that was not accounted for to HMRC, of £3.57m, being diverted to it. It is absurd to suggest that Mr Pearce would involve PPX in a fraud of this scale, running the risk of input tax denials and criminal prosecutions without reward.

(4) The best form of due diligence is the evidence that a supplier produces the materials they say they have. There was nothing about the loads or the prices to arouse suspicion. Suppliers would turn up to PPX's premises, with the metal, seeking to agree the deal at the weighbridge. Waiting for checks at that stage would result in losing the business.

(5) HMRC are relying on the purchases by PPX being from traders who defaulted on their VAT liabilities. PPX has provided HMRC with all of its sales invoices, but HMRC has not relied upon them. This may be because, unlike some products (eg phones), particular scrap cannot be identified or traced (eg by serial numbers), but is instead often stored and sold having been amalgamated with other loads.

(6) The acceptance that there was an orchestrated scheme was not probative of knowledge. Mr Kinnear criticised HMRC's pleadings in respect of orchestrated schemes and contrivance, submitting that they lacked sufficient particularisation, but in any event the "scheme" as set out by HMRC goes no further (backwards or forwards) than PPX's purchases from the Defaulting Suppliers, and doesn't involve the same quantity of goods being repeatedly traded. HMRC has not established the source or the destination of the scrap, or the movement of money. The indicia relied upon by HMRC are not made out and in any event do not establish knowledge.

(7) Furthermore, there is no means of knowledge – suppliers were good to their word; and it was in this context that Mr Kinnear focused on the risk that HMRC were seeking to shift the burden of proof – PPX does not need to prove anything. In addition, the Tribunal needs to be mindful that it is required to assess what PPX should have known at the time of the transactions, not what HMRC had power to know or actually knew, and not what PPX could have discovered later. PPX was entitled to take comfort from the fact that HMRC had more information about the traders than PPX, and had not deregistered them.

(8) The facts of the Transactions – supply of metals, pricing, ability to realise a commercial profit – are all consistent with PPX conducting its trade without knowledge of the connection with fraud. HMRC have not pointed to any discernible difference between the Transactions that commenced with a defaulting trader and those that did not.

(9) It is accepted that Mr Pearce had a reasonable level of knowledge of the risk of fraud and the need for due diligence; and also that some of the due diligence could have been better (although it was not accepted that even if it had been better this would have provided means of knowledge).

(10) PPX laid bare its records to HMRC – it is evident from the visit reports that HMRC uplifted boxes of records, including purchase invoices, sales invoices, bank statements, and SAGE records of transactions.

186. Mr Watkinson and Mr Kinnear both made submissions as to the credibility of Mr Pearce, with Mr Watkinson submitting that we should treat Mr Pearce’s evidence with great caution where it was not supported by other contemporaneous evidence, an approach opposed by Mr Kinnear. Our approach to Mr Pearce’s evidence is important particularly in the context of assessing PPX’s attitude to due diligence, its dealings with the Defaulting Suppliers and the transactions it undertook with them. We have summarised first Mr Pearce’s evidence on these matters, before then considering some of the various factors relied upon by HMRC and setting out our conclusions in the light of all of the evidence and all of the submissions made by the parties.

Evidence of Paul Pearce

187. Mr Pearce had explained his own background, his experience at Ward Recycling, his decision to establish PPX, the initial intention that PPX would operate essentially as a broker in the scrap metal trade but the developments which led to him deciding to take on sites and buy/sell directly. That evidence was not challenged by HMRC, and we have accepted it in making our Findings of Fact.

188. Mr Pearce’s explanations as to his understanding of the risks relating to missing trader (or “MTIC”) fraud and what steps PPX was taking at that time included:

(1) On MTIC fraud, Mr Pearce had not previously been aware of this risk and thought HMRC were telling him that traders who used to commit this fraud in the mobile phone and computer chip sectors had now moved into scrap metals, ie that it was the traders who had moved across, not that there were new players in the market who had established themselves in the scrap metal sector. He had not considered Notice 726 to be relevant to scrap metal merchants.

(2) He had also focused on the “missing” aspect of MTIC fraud, and regarded the focus as being on ensuring that PPX reported all of its transactions to HMRC (and accounted for the right amount of VAT). He was focused on producing documentation to show to HMRC so that HMRC could see that all of the supplies which had been made to PPX were in those suppliers’ VAT returns.

(3) He sought to confirm that the suppliers charging VAT were VAT-registered – with a “live and valid” VAT number – which to him meant they were under the care and management of HMRC. This is what was important.

(4) Mr Pearce admitted that the due diligence documentation generally obtained by PPX – comprising the VAT certificate, letter of introduction, and certificate of incorporation – was poor. However, for him, the fundamental check on suppliers was that they delivered the metals to PPX. He did not see recent incorporation, young directors or recent VAT-registration as a problem. PPX did not conduct credit checks on suppliers – poor credit history would not be an issue, as PPX was not taking credit risk on suppliers.

(5) PPX would only pay the VAT-element of the purchase price once the VAT registration had been checked.

(6) He has built the business of PPX, which now has 20 employees, and would not put it in jeopardy for someone else’s business, and PPX has not itself benefitted from the fraud on HMRC. It sickens him that HMRC say that what they knew about the

various traders is irrelevant. HMRC had information they could have given him about their concerns; they had more information than PPX.

189. We assess this evidence in the light of all of the evidence before us. At the outset we note that we have concluded that there were several inaccuracies in Mr Pearce's witness statements, including:

- (1) The amount of documentation which was held by PPX at a particular date, typically the date that PPX started trading with the Defaulting Suppliers, to which we have already referred (at [88.] above);
- (2) whether HMRC had informed PPX of enquiries into its VAT returns for certain periods subsequent to the relevant period (05/17 and 08/17) – PPX had been sent (before the dates of Mr Pearce's witness statements) various Tax Loss Letters in relation to a multitude of transactions in these periods; and
- (3) whether PPX's returns were sent to HMRC on time – which we have addressed at [175.] above.

Awareness of risk of fraud

190. By the time of the beginning of the relevant periods, on 1 September 2014, we find that PPX had a good knowledge of the risk of VAT fraud in the industry, had been given advice as to steps that could be taken to reduce the risk of becoming involved in transactions connected to fraud, and had also been told that some of its own transactions had been connected with the fraudulent evasion of VAT and that counterparties had been deregistered.

191. We have set out at [188.(1)] and [188.(2)] above how Mr Pearce described his understanding of MTIC fraud (ie the same traders moving into metals, and the emphasis on "missing").

192. The report of the visit on 26 January 2012 does not support that explanation, but we recognise that this may have been a potentially plausible understanding at that visit itself, against a backdrop of no prior awareness of VAT fraud. However, we do not accept that Mr Pearce can have held such a misapprehension for long:

- (1) the leaflets which were explained in that meeting are clear – the "How to Spot Missing Trader Fraud" leaflet does not, on its face, only apply to mobile phones, or support the suggestion that the particular traders themselves have moved sectors;
- (2) if this was Mr Pearce's understanding, none of the checks he or the admin team at PPX did were seeking to test whether the traders PPX was dealing with had previously been involved in mobile phones or computer chips. This is not the case for the documents obtained, nor was it Mr Pearce's evidence that he had asked any of those traders whom he had met; and
- (3) that first meeting was followed-up by the MTIC Awareness Letter of 1 February 2012 which sets out the scale of MTIC fraud, pointing out that verifying VAT registration does not guarantee the status of suppliers. The letter is broadly expressed, and we do not accept that anyone reading this letter could have retained a misapprehension that they were being warned to beware of trading with anyone who had moved sectors.

193. The risk of VAT fraud, and the checks that should be done, were then repeatedly addressed in HMRC's visits to PPX (with leaflets being repeatedly provided) and we have concluded that by the time of the beginning of the relevant periods (and in fact at a much earlier stage), Mr Pearce knew of the risk of fraud in the metals sector, and that this was not confined to traders who had moved into the sector from mobile phones or computer chips.

194. Mr Pearce was also repeatedly given advice as to the steps that could be taken by PPX to reduce the risk of entering into transactions that were connected with fraud, not only at that first visit and in the leaflets given to him at that visit (and subsequently), but also, eg:

(1) at the visit on 25 November 2013, Mr Pearce was told that the Wigan check was not the only check to carry out, that it did not constitute permission to trade and that MTIC fraud could result in HMRC denying input tax if transactions were traced to fraud; and

(2) at the visit on 9 July 2014, which was shortly before the beginning of the relevant periods, Mr Pearce was told that receiving the Tax Loss Letters raised the bar as regards due diligence, and giving evidence Mr Pearce confirmed that he understood what he was being told about due diligence.

195. PPX had also received eight Notices of Deregistration in the period 13 July 2012 to 6 August 2014. This would have made it abundantly clear that whatever PPX was doing was not sufficient to prevent it entering into transactions which were connected to fraud and leading to its suppliers being deregistered.

Due diligence

196. The visit reports show that by the time of the relevant periods, PPX had been given comprehensive advice as to the range of due diligence checks that could be carried out, the role of Wigan checks as part of that, and the purpose of these checks.

197. In his witness statements, Mr Pearce stated that PPX carefully vetted the Defaulting Suppliers. He subsequently acknowledged that the due diligence carried out by PPX was poor. Whilst we agree with that assessment, it is important to consider further the information which was actually obtained by PPX, the information which could have been obtained by them at the time of the transactions, and how this fits in with what Mr Pearce told HMRC during the visits that PPX would be doing by way of due diligence and the importance which Mr Pearce placed in his evidence on suppliers having “live and valid” VAT numbers (including Mr Pearce’s evidence that PPX only paid suppliers the VAT-element of the price once the VAT number was confirmed).

198. Whilst we have carefully considered the witness statements provided by various HMRC officers in respect of the Defaulting Suppliers, we are mindful that some of the information set out therein (the accuracy of which was not challenged) could only have been known to HMRC (eg the failure to file VAT returns). We do, however, take account of the evidence as to the visits made by HMRC to the premises (or purported premises) of the Defaulting Suppliers, as the information as to occupation of directors, relevant experience, timing of appointment, or type of premises would have been apparent to PPX if they had made such a visit.

Information obtained by PPX and otherwise available to them

199. PPX was dealing directly with the fraudulent defaulters; there were no buffer traders in the transaction chains. Mr Watkinson submitted that PPX had nothing which could support a conclusion that the Defaulting Suppliers were bona fide traders, with sufficient financial standing to enable them to conduct legitimate business supplying the quantities of metals that were supplied to PPX, particularly given that many of the supplies were on credit.

200. We have set out in our Findings of Fact the due diligence that was conducted by PPX at the various times. We accept Mr Pearce’s explanation of the due diligence approach that was actually taken, as summarised at [188.(4)] above.

201. There are clear concerns for each Defaulting Supplier – whether based on the information PPX actually had, the timing of checks that were made (including checks of the suppliers’ VAT numbers), and matters which would have been evident from further information that PPX could have obtained at the time of trading. We have set out below some of the matters which can be identified in relation to each of the Defaulting Suppliers.

Road Runner

202. Road Runner supplied up to £98k of material at a time, yet the level and scrutiny of the due diligence undertaken by PPX in relation to Road Runner clearly raises concerns:

(1) Mr Pearce’s explanations given to HMRC as to how PPX came to meet Road Runner and trade with them have not been clear or consistent. The explanation at the hearing was clear and straightforward, yet this was not previously given to HMRC at the visits in the context of Road Runner (although becomes slightly more apparent when looking also at statements in relation to LPI). We note that when HMRC visited Road Runner on 16 June 2015, Mr Marino confirmed he had traded with PPX and his contact at the company was with a person called Paul, but said he didn’t know his surname and didn’t know his position in the business. He couldn’t confirm if Paul had any official connection to PPX. We do not doubt the accuracy of that visit report, but place no reliance on the fact of Mr Marino having said this – Road Runner is agreed to be a defaulting trader and we did not hear evidence from Mr Marino.

(2) PPX did not obtain a copy of Road Runner’s VAT certificate, nor did it conduct a Wigan check.

(3) The first check on Road Runner’s VAT number was the VIES check on 18 November 2014, after the first three transactions in the relevant periods.

(4) Further due diligence would have revealed:

(a) Mr Marino had only been appointed as a director of Road Runner on 17 March 2014, and had not been a director of that company when he first met Mr Pearce. Mr Marino was a director of LPI from 28 March 2013 to 2 May 2015.

(b) Road Runner had been registered for VAT with effect from 7 October 2013. It had a trade classification of passenger transport company.

(c) A Company Check Report showed Road Runner had no credit status. The accounts also showed minimal fixed assets and net current assets that could not explain how Road Runner was able to provide credit

(d) There were different addresses listed – the accounts show a registered office of Unit 9 Burnt Mill Industrial Estate, whereas the self-billed invoices show Unit 17, Greenway Bus. It is not uncommon to have a registered office which is different from the trading address or place of business, but this is typically where the registered office is a serviced office, or maintained by a law firm, accountant or incorporation service provider, not where it is itself on an industrial estate.

(5) Mr Pearce said that if he had seen the accounts, he would have assumed that the buses were owned by Olympus. He had seen the buses, with the logo, they did exist and Road Runner did deliver scrap metal to PPX. Whilst the explanation that Road Runner was scrapping buses is plausible on its own, the reality is that they were not selling bus scrap to PPX – Road Runner were selling large volumes of high value metals. Mr Pearce was well aware of this, and there was no explanation as to this disparity.

MayX1

203. PPX had started trading with MayX1 before the relevant periods and MayX1 had supplied up to £101k of material at a time. The only transactions in any of the relevant periods were in 11/14, on 4 September 2014. By this time, PPX had received the results of the Wigan check. However, we note:

- (1) The first transaction with MayX1 was on 12 May 2014, and at this time PPX had no due diligence information on May X1. It only received the letter of introduction and accompanying documents on 30 May 2014.
- (2) The VAT certificate was newly issued, being dated 30 May 2014, and had an effective date of 3 February 2014, just a few months before trading with PPX. The business activity was described as non-specialised wholesale.
- (3) The Santander bank account statement showed little evidence of trading.
- (4) PPX had not requested a Wigan check until 2 June 2014, and received confirmation of the VAT number on 25 June 2014. No VIES check was conducted until 21 August 2014. There were 20 supplies from MayX1 to PPX from 12 May to 25 June 2014 (although four of these were credited back/rejected loads).
- (5) PPX had not visited MayX1's premises, or taken photos of the goods. HMRC officers had visited MayX1's premises in December 2014, and discovered it was a business unit and not a scrap yard. The building manager told HMRC that MayX1 had last been seen at the premises in June 2014, did not use the premises to store goods and had been evicted in July 2014. A visit at the beginning of trading would not have revealed all of this information but it would have been apparent that it was not a scrap yard.
- (6) PPX made third party payments in respect of supplies received from MayX1, which were identified as a red flag in HMRC's guidance, and Mr Pearce had told HMRC he would not do this during the visit of 26 January 2012.

LPI

204. LPI was supplying up to £198k of material at a time, and taking account of the information known to PPX or that could readily have been found out:

- (1) LPI had only been incorporated on 28 March 2013. The company's activity was building completion and finishing, and this was how they had introduced themselves to Mr Pearce. This is consistent with the trade classification of specialised design activities on their VAT certificate, but they were selling specialist metals and large volumes of copper wire, which Mr Pearce accepted was being bought wholesale. The scrap being sold to PPX was not from stripping out buildings.
- (2) There was nothing to establish that Mr Anderson had any role with the company – he was not appointed as a director until 19 May 2015 (after LPI had ceased trading with PPX), and PPX did not have any ID for him.
- (3) HMRC officers visited LPI's principal place of business at Unit 17, Greenway Business Centre, on 2 June 2015. The unit had signage for Olympus Coach Travel, and an employee of Olympus told them that LPI had rented a desk from them but that these arrangements had ended a year ago. Thus LPI had vacated that address in June 2014. Mr Pearce's evidence was that he had met with Mr Marino of Road Runner at their premises, and we infer that it was at this unit. PPX did not start trading with LPI until September 2014, and the fact that LPI only had a rented desk and even this had ceased by this time was information that PPX could have discovered.

- (4) LPI gave credit to PPX on the first deal of £63k for several days, although many subsequent invoices were paid on the date of issue or in the day or so thereafter.
- (5) There was no Wigan check. The first check on LPI's VAT number was more than two months after trading began.
- (6) PPX was still trading with LPI in the first few months of 2015 and could have obtained its most recent accounts, showing its turnover levels (which were dwarfed by the levels of subsequent trading with PPX) and negative net assets. Those accounts described its activity as building finishing and completion, making no mention of wholesaling scrap metal.

Fortified

205. PPX had traded with Fortified between September and December 2014, and the following concerns are apparent:

- (1) The company had undergone a number of recent changes. It had changed its registered office on several occasions and had recently changed its name. The previous director, Mr Myerscough, had sold the company and resigned as a director on 6 August 2014. Mr Vajai had been appointed on 5 August 2014, just before they started to trade with PPX. It was readily apparent that Mr Myerscough and Mr Vajai were not running the company together.
- (2) In a letter dated 30 September 2014, Fortified provided updated bank account details to PPX (account number ending 3435) and asked PPX to make payments to that account, just two weeks after the amended VAT certificate had been issued, showing that Fortified had provided different bank account details to HMRC.
- (3) There was no Wigan check, but the first VIES check was on 25 September 2014, the day after the first transaction in the relevant period.
- (4) The self-billing agreement had been signed by M Iqbal. Mr Pearce had said the contact was Andy, and it was plausible that these were Monty and Arpad Vajai, noted as the contacts on the self-billing agreement. However, there was no documentary evidence confirming this, or otherwise establishing the named contact's (ie Andy's) connection with the company.
- (5) Fortified's most recent accounts showed that it had no fixed assets, and minimal net current assets, yet it was supplying up to £66k of material at a time.
- (6) At the visit on 17 July 2015 Mr Pearce had told HMRC that his drivers sometimes collected from Fortified and so he knew the yard was there. However, HMRC had asked him about the principal place of business without specifying an address (or at least none that is recorded in the visit report) so it is not clear which address the drivers had collected from during the period of the transactions. HMRC had tried to visit Fortified at the address on its VAT certificate (Unit 12) on 26 January 2015, but were unable to locate that address – the industrial estate comprised units 1 to 6. Mr Pearce didn't know where PPX's drivers had visited. If PPX had tried to visit Fortified at the address on the VAT certificate, then they would also have discovered that this address appeared not to exist.

OIL

206. As regards OIL:

- (1) The VAT certificate showed that the company had been registered for VAT for less than one year, and that its trade classification was roofing activities. This was

consistent with the description in its accounts of the turnover, but did not reflect the activity between PPX and OIL.

(2) The letter of introduction misstated the company's VAT number – this is potentially a straightforward typographical error, but needs to be considered in context.

(3) There was no Wigan check. The VIES check was conducted part-way through the period of trading.

(4) The company had no assets, and there had been a recent change of director, the new director being young with no evidence of his level of experience in the sector.

(5) PPX did not visit OIL's premises. The letter of introduction had an address in Scunthorpe, whereas the VAT certificate had an address in Grimsby. If PPX had visited the address on the VAT certificate, they would have discovered it was the home address of the former shareholder and director.

IHEI

207. PPX started trading with IHEI in March 2015. This is part-way through the relevant periods, and by this time there had been two more visits from HMRC to PPX, and PPX had received Tax Loss Letters in relation to two suppliers and three more Notices of Deregistration. The following matters are evident from the information available to PPX:

(1) IHEI had only been incorporated for two months when it started trading with PPX.

(2) PPX started trading with IHEI at a time when IHEI was not VAT-registered yet supplied PPX with £225k net of materials before IHEI had even applied for VAT registration, an amount which is obviously above the registration threshold.

(3) The self-billing agreement is dated 1 April 2015, yet that authorises PPX to issue VAT invoices to itself at a time at which IHEI was not VAT-registered. We had no evidence from Mr Nagra as to why IHEI would be entering into such an agreement at a time when IHEI had not even applied to be VAT-registered. A further, more significant difficulty, is that the details for IHEI, which were all completed in manuscript and show no indication that they were completed or inserted at different times from each other, also include IHEI's VAT number, which was not notified to IHEI until June 2015 and cannot have been known at 1 April 2015. We do not know who signed on behalf of PPX; and Mr Pearce didn't know if the document had been backdated.

(4) The director was 24 years old, and a business consultant. There was no documentary evidence of his having any experience in scrap metal.

(5) As a new company, there was no financial information available that could explain how it granted credit of more than £2 million to PPX.

Zeggo

208. PPX also started trading with Zeggo in March 2015:

(1) The VAT certificate showed a trade classification of retail, rather than relating to scrap metal.

(2) PPX did not request a Wigan check at the start of trading with Zeggo. They did make a Wigan check on 6 June 2015 but on 25 June 2015 HMRC said they were unable to verify the VAT number. PPX nevertheless continued to trade with Zeggo – there were deals on 29 June, 2 July, 7 July, 8 July, 10 July and 14 July 2015. Zeggo supplied

materials to PPX with a net value of £320k after HMRC had said they couldn't confirm the VAT registration.

(3) Mr Pearce did not know who "J Wilson" was who had signed the self-billing agreement. Stanley Wortham sent the letter of introduction to PPX, not Hugh or Rob (both of whom had been mentioned by Mr Pearce as his contacts at Zeggo), and Mr Wortham had no known connection to Zeggo (but had been the director of LPI since 1 November 2014).

(4) HMRC confirmed that Zeggo had an office at the registered address (on 4 August 2015), which was being rented at £150 per month. Mr Roberts told HMRC officers that Zeggo had no other premises such as a yard. Whilst Mr Watkinson drew attention to the various addresses shown on the letters accompanying the letter of introduction, we note that these letters are both from HMRC – there can be no concern that Zeggo was hiding these addresses from HMRC.

(5) Hugh Roberts attended HMRC's office on 19 August 2015, and at that meeting he said he had originally set up the company to trade in antiques, but no trading had been undertaken in antiques or other goods between the date of registration and May 2015. He had no experience in the metals trade sector. Mr Pearce had met Mr Roberts and this information should also have been evident to him.

(6) PPX was being given credit of hundreds of thousands of pounds, yet there was no evidence of Zeggo's own financial position.

Yahya

209. As to Yahya:

(1) Yahya had only been registered for VAT for a few months at the time PPX started trading with PPX, and the director was newly appointed.

(2) Whilst PPX had conducted a VIES check before trading with Yahya, the Wigan check was not requested until after the final transaction.

(3) The company had net assets of £100, and there was no financial information as to its credit status, yet Yahya was granting credit of a few days on the invoices, which were being paid in full.

(4) PPX did not visit Yahya. HMRC officers had made an unannounced visit to Yahya on 18 March 2015 – it was an industrial unit on an industrial estate. There was no sign of activity at the time. They met with Mr Goddard on 31 March 2015 and described the place of business as a small industrial unit with an office, and there was a small amount of scrap metal in the unit. If PPX had visited these premises, they would have seen that this did not reflect the advanced processing facilities, etc, which were described in the letter of introduction.

Bavalda

210. PPX started trading with Bavalda in August 2015, and the information available showed:

(1) The company had only been incorporated in June 2015 and registered for VAT from July 2015. There was no financial history.

(2) Bavalda had initially declared a trade classification of plastering to HMRC (which had been noticed and questioned by PPX), yet within two months were moving into demolition and construction. This explanation of plastering to demolition and

construction does not explain how Bavalda would be trading large amounts of copper grains.

(3) PPX requested a Wigan check shortly after they started trading, but twice received a response that HMRC were unable to verify the VAT number. No validation was ever received from HMRC — Bavalda were deregistered on 13 October 2015. The final deal was on 12 October 2015 (the day before HMRC visited Bavalda and deregistered it with immediate effect) but this deal was subsequently credited back.

(4) The address on the VAT certificate is Perth Road in London, whereas the VIES check shows an address in Chigwell, as do Bavalda's invoices, and that same address is on the director's driving licence. This suggests that Bavalda was trading from a residential address. HMRC had visited the Chigwell address on 13 October 2013 – the occupier said her brother worked for Bavalda but did not live at the address (which she was renting). Whilst Mr Pearce pointed out that PPX had stopped trading with Bavalda on 12 October, there is no reason to think that he would not have discovered the same information as HMRC about the address if PPX had visited between August and October 2015.

Heritage

211. There were a small number of transactions with Heritage in September 2015:

(1) The Wigan and VIES checks were first conducted in June 2015, several weeks before trading. Heritage then changed director, bank account and address. The Wigan check was not repeated, but there were further VIES checks, eg on 21 September 2015.

(2) The VAT certificate has an address in Romford. That address had no connection to the company, according to the new director.

(3) Mr Field, was a newly appointed director, had no experience in the metals trade and PPX could have discovered this if it had visited. Mr Field had told HMRC on 17 September 2015 that his appointment was a temporary measure, and he was an accountant.

(4) The bank account information differed between the VAT certificate and copy bank statement.

(5) The Corporate and Contact Information sheet lists both Mr Shifrin and Mr Field as directors, even though their appointment had only overlapped for a few days. James Buchannon, listed under the heading of Trading, has no apparent connection with Heritage.

(6) The company had net liabilities, and no apparent credit status.

GDIL

212. PPX did a large volume of trading with GDIL from September to November 2015, with minimal information which could establish the legitimacy of the supplier:

(1) The VAT certificate was only issued to GDIL on 19 November 2015, by which time GDIL had supplied £2 million of metal to PPX.

(2) There were no VIES or Wigan checks made until after the relevant transactions.

(3) The VAT certificate listed the business activity as electrical installation and the documentation showed its accreditation for green energy, but the metals being supplied were, as acknowledged by Mr Pearce, not electrical offcuts. GDIL was wholesaling this material.

(4) No payments were made until January 2016. GDIL thus provided credit of £3.3 million to PPX for months, and none of the documentation available to PPX explained how GDIL was able to do this.

(5) PPX did not visit GDIL, or make credit checks.

Engagement with HMRC on due diligence and proposed approach by PPX

213. HMRC were clear throughout as to the checks that they were recommending. PPX knew of the risk of fraud and had been given advice, before the relevant periods, as to the checks that could be done to minimise the risks of becoming involved in transaction chains connected to fraud.

214. We consider that the visits and correspondence in the middle of 2015 were particularly important when trying to assess and understand the approach taken by PPX:

(1) At the visit on 24 June 2015, HMRC were clear in the advice they gave as to due diligence, and recommended visiting suppliers.

(2) The July 2015 Tax Loss Letters set out the scale of tax losses identified in PPX's transaction chains to date, the numbers of transactions involved (listing the purchase invoices concerned), that they arose in chains from more than one supplier (identifying MayX1, Fortified, LPI and Spire). They are a lengthy set of documents, and make the scale of the issue obvious.

(3) The visit on 17 July 2015 included a detailed discussion on due diligence:

(a) The preliminary discussion included Officer Farmer telling Mr Pearce that due diligence is about protecting his business, the more they do the better – they should be looking at a basket of evidence and making a decision.

(b) Officer Farmer referred Mr Pearce to looking at (on Companies House checks) whether there has been a total change of directors, has there been a change of main business address, does the trade class on the VAT certificate reflect metals trading, is the bank account on the VAT certificate the same as that given to PPX.

(c) When they discussed the due diligence on specific suppliers, Officer Farmer was pointing out the flags that should have been considered. This was not a generic discussion – Officer Farmer had reminded Mr Pearce of the generic issue around risk but then looked specifically at the checks that had been done, and made specific suggestions as to additional due diligence that could be undertaken.

(4) By the end of July 2015, PPX had been sent Notices of Deregistration for MayX1, Fortified, OIL, LPI, Road Runner and Yahya.

215. By the end of July 2015, it was absolutely clear to Mr Pearce that the steps being taken by PPX not only did not reflect the advice which had been given by HMRC, but also that PPX had repeatedly become involved in transactions chains which were connected to fraud. Yet there was no noticeable difference in the approach which was then taken by PPX to dealing with suppliers, as can be seen from the due diligence then undertaken on Bavalda, Heritage and GDIL.

216. Furthermore, whilst Mr Pearce gave the appearance of engaging with HMRC in the discussions in relation to due diligence and checks (replying to questions about suppliers, and asking questions about the checks), PPX was not undertaking the checks he told HMRC they were already making, nor did they implement the changes he told HMRC they would make:

(1) At the visit on 25 November 2013 Mr Pearce told the officers that for new businesses he went to the premises and took pictures of the goods, etc. This was before the relevant periods, and at the hearing Mr Pearce confirmed that he had not done this, and that his only concerns had been that the material was delivered and there was a “live and valid” VAT number. We do note that Mr Pearce had visited some of the Defaulting Suppliers (eg Road Runner).

(2) At the visit on 24 June 2015 Mr Pearce told HMRC that PPX were now doing credit checks on all companies. PPX were not doing credit checks, and at the hearing Mr Pearce explained that they were not concerned about the creditworthiness of suppliers as PPX was not taking credit risk on them. This is correct, but shows both that statements made to HMRC were not true and that there was a failure to engage with the need for checks and need to understand how the suppliers were able to conduct business on the terms on which they were contracting with PPX, ie how could GDIL give millions of pounds of credit to PPX. There was no evidence that, say, GDIL had asked PPX about its own creditworthiness.

(3) At the visit on 17 July 2015, Mr Pearce confirmed that PPX now did credit checks and Companies House checks and when asked what PPX would do going forwards he said he was going to visit traders and take photos, do a Wigan check, a questionnaire and a Europa check. This new approach was not implemented – instead, the haphazard approach to VAT checks (both Wigan checks and VIES checks) continued, as set out below.

Significance of checks on VAT numbers

217. The documentation which was generally obtained by PPX by way of due diligence on suppliers was (broadly) that which was required to conduct a Wigan check. Mr Pearce’s evidence was that (in addition to a supplier having the metal to sell), the most important check was that the supplier had a “live and valid” VAT number (see [188.(3)] above). Mr Kinnear submitted that PPX were entitled to take comfort from HMRC’s validation of the VAT numbers of the suppliers.

218. There are two significant difficulties with accepting Mr Pearce’s evidence about the importance of suppliers having “live and valid” VAT numbers and, as he termed it, being under the care and management of HMRC:

(1) It was repeatedly made clear to Mr Pearce that a Wigan check was just one of a number of checks that could be made:

(a) this can be seen from the first visit in January 2012, at which Mr Pearce was given Notice 726 which sets out a list of examples of specific checks that can be carried out, only one of which is to verify the VAT number with HMRC;

(b) at the visit on 25 November 2013 Mr Pearce was told that the Wigan check was not the only check to carry out and it did not constitute permission to trade; and

(c) the terms of the confirmations themselves which were sent following a Wigan check when HMRC verified the VAT number, which state:

“I can confirm that the information you supplied matches that held currently by HMRC and the VAT Registration listed below appears to be valid at this time.

This confirmation is not to be regarded as an authorisation by this Department for you to enter into commercial transactions with this/these

traders. Any Input Tax claims you make may be subject to subsequent verification.”

(2) Furthermore, PPX’s approach to verifying the VAT numbers was (at the very least) haphazard and on the basis of the evidence we have concluded that PPX did not routinely verify the VAT number of each of the suppliers by making a Wigan check.

219. It can be seen from the Findings of Fact on Due Diligence (at [85.] to [173.] above) that Wigan checks were not made on all of the Defaulting Suppliers, eg Road Runner and LPI.

220. Mr Pearce’s explanations for the failure to conduct Wigan checks referred to:

(1) A deliberate decision to stop making Wigan checks following PPX’s experience when they requested a check on Zinda. The check on Zinda led to HMRC visiting Zinda and that had resulted in the loss of that supplier. PPX then decided not to make Wigan checks. Mr Pearce explained this to HMRC at the visit on 25 November 2013. They did subsequently re-start following advice from HMRC.

(2) There was, separately, an administrative problem with the handover in the admin team from Helen to Ms Coles, and Ms Coles had not realised that Wigan checks were required and were different to VIES or Europa checks.

221. We assess that explanation in the light of PPX’s actions.

222. PPX did not request Wigan checks on:

(1) Road Runner (supplier to PPX in September 2014 to May 2015) – no VAT certificate, VIES check on 18 November 2014, made first payment on 29 September 2014;

(2) LPI (supplier in September 2014 to April 2015) – VIES check on 18 November 2014, payments made on 5 September 2014;

(3) Fortified (supplier in September 2014 to December 2014) – VIES check on 25 September 2014, the day after the first transaction; and

(4) OIL (supplier September 2014 to November 2014) – VIES check on 31 October 2014.

223. PPX did request Wigan checks on the remaining Defaulting Suppliers, although not always at the start of trading (and the position is somewhat different for IHEI as that company was not VAT-registered at the outset). The timing was as follows for those suppliers:

(1) MayX1 (supplier May to September 2014) – PPX made a Wigan check on 2 June 2014, receiving confirmation of the VAT number from HMRC on 25 June 2014. PPX had been making payments to MayX1 from 18 June 2014, and the first VIES check was on 21 August 2014.

(2) IHEI (supplier March to September 2015) – This company was not initially VAT-registered, and its first VAT certificate was issued on 4 June 2015. PPX conducted a Wigan check on 8 July 2015, and they received the confirmation of validity from HMRC on 22 July 2015. The first VIES check was made on 10 July 2015.

(3) Zeggo (supplier March 2015 to August 2015) – PPX requested a Wigan check on 16 June 2015, HMRC failed to verify the VAT number on 25 June 2015, but PPX continued trading with them. Zeggo then supplied metals to PPX on 29 June, 2 July, 7 July, 8 July, 10 July and 14 July 2015. Zeggo supplied materials to PPX with a net

value of £320k after HMRC had said they couldn't confirm the VAT registration. The first VIES check was made on 4 August 2015.

(4) Yahya (supplier May to June 2015) – PPX requested a Wigan check on 23 June 2015 (after the last transaction), and HMRC confirmed that the VAT registration appeared to be valid on 7 July 2015. PPX had conducted a VIES check on 6 May 2015, before PPX started trading with them.

(5) Bavalda (supplier August to October 2015) – PPX requested a Wigan check on 17 August 2015, which was shortly after they started trading with Bavalda, but HMRC twice said that they were unable to verify the VAT registration. HMRC never verified this company's VAT number. PPX did make a VIES check on 14 August 2015.

(6) Heritage (supplier in September 2015) – the Wigan check had been made on 5 June 2015, receiving confirmation of validity from HMRC on 18 June 2015. A VIES check had been made on 4 June 2015. These checks were therefore both completed before PPX traded with Heritage.

(7) GDIL (supplier September to November 2015) – PPX made a Wigan check on 21 December 2015, after the relevant transactions. HMRC were not able to confirm validity until 6 January 2016. PPX did not have a copy of GDIL's VAT certificate until November 2015. A VIES check was made on the same date the Wigan check had been requested, and no payments were made until after 6 January 2016.

224. Mr Pearce had explained the situation which arose following the check on Zinda to HMRC at the visit in November 2013. Following that visit, PPX did resume making some Wigan checks. This can be seen not only from the making of Wigan checks on some of the Defaulting Suppliers (eg MayX1 on 2 June 2014) but also the background notes to HMRC's visit report of 9 July 2014 record that Wigan checks were being made. This was before the beginning of the relevant periods, and cannot explain any of the failures in respect of the Defaulting Suppliers.

225. Furthermore, there is a problem with blaming the failure to conduct checks, or delays in requesting Wigan checks, on an administrative oversight resulting from changes in the admin team.

(1) Ms Coles joined PPX in October 2014, and it was at the visit on 24 June 2015 (which she attended along with Mr Pearce) that Ms Coles said she didn't know about the Wigan checks. It is not clear from those notes, viewed in isolation, whether Ms Coles was recounting that she had not initially been aware, but had since been told about them, or if her lack of awareness had continued until HMRC had requested various documents on 10 June 2015.

(2) PPX had recently requested Wigan checks shortly before that visit – on 5 June 2015 (Heritage), 16 June 2015 (Zeggo), and 23 June 2015 (Yahya) – and, in the case of Heritage and Yahya, there had also been VIES checks made. It is therefore clear that before HMRC had requested the most recent set of documents, the person at PPX making the checks already knew that Wigan checks and VIES checks both existed and were different from each other.

(3) There was no evidence as to when Helen had left PPX, and it is plausible that if Helen had left shortly before Ms Coles joined then this could explain the absence of Wigan checks on the four Defaulting Suppliers (where they were supplying PPX in September 2014). It would not, however, explain the delays in 2015.

226. It is also not the case that PPX were routinely conducting VIES checks on VAT numbers at the beginning of trading with the Defaulting Suppliers. By way of examples, VIES checks were made part way through the trading period on Road Runner and OIL (two suppliers where there was no Wigan check), and on Zeggo and GDIL.

227. In addition, it can be seen that when HMRC responded to a Wigan check by stating that they were unable to confirm the VAT number, PPX still continued to trade with them. This is evident from the transactions with Zeggo and Bavalda.

228. In the light of all of the evidence, we do not accept that Mr Pearce and PPX relied on suppliers having a “live and valid” VAT number when trading with them. The reality is that a large number of transactions with Defaulting Suppliers were entered into before a Wigan check had been successfully completed (and several, eg with Road Runner, IHEI and GDIL before PPX had received a copy of the supplier’s VAT certificate).

Withholding payment of VAT-element of price

229. One of the recurring themes in Mr Pearce’s evidence was that he would only pay the VAT-element of the purchase price once PPX had confirmed that the supplier had a valid VAT number (as referred to at [188.(5)] above).

230. As a matter of law, it is not possible to separate out payment of the net price and what Mr Pearce labelled the VAT-element in this way – any part payment of an invoice is treated as part payment of both the net price and VAT-element proportionately. We have nevertheless sought to assess whether this was a reasonable approach to take, and whether it is accurate in the context of the Transactions with the Defaulting Suppliers. We have difficulty with both aspects:

(1) The focus of the explanations from HMRC was on PPX making a decision as to whether or not to trade with a counterparty, not on whether or not to pay a particular supplier. This is apparent from, eg:

(a) the MTIC Awareness Letter which makes it clear that the question for a trader is whether to participate in a transaction. It is not about trading but paying only part of the price;

(b) the visit on 25 November 2013, where there were discussions about Wigan checks and the possibility that HMRC may deny input tax credit. The focus was on PPX making a decision as to whether or not to trade, not on whether or not to pay; and

(c) the visit on 17 July 2015, where the decision being referred to here, repeatedly, by Officer Farmer is a decision whether or not to trade with a particular supplier. Furthermore, we also infer from the discussion, and the questions asked by Mr Pearce at that visit, that he was aware of this. It is not that HMRC were contemplating that in some situations PPX would buy the material yet not pay the VAT, and Mr Pearce knew this.

(2) The timing of the payments for supplies does not support the assertion that PPX generally treated the net price and VAT-element of the price differently, nor that payment was not made until after the VAT number had been verified by a Wigan check, or even by a VIES check. There were some examples of payments being made after the VAT checks, eg payments to GDIL were all made in January 2016, after HMRC confirmed the validity of the VAT number, although this was full payment rather than PPX having paid an amount equal to the net price at an earlier date. There were many examples of payments being made before the VAT number had been verified, eg:

(a) The VAT numbers of Road Runner, Fortified, LPI and OIL were never verified with HMRC by the making of a Wigan check. There were VIES checks made on each of these suppliers, but payments of the full amount invoiced were paid before the VIES check, eg the VIES check on Road Runner was on 18 November 2014, but payments were made in September 2014.

(b) For MayX1, PPX made a Wigan check on 2 June 2014, and HMRC confirmed validity on 25 June 2014. The VIES check was made on 21 August 2014. The ledger showed a purchase invoice was raised on 18 June 2014 for £107,550, which was paid in full on 18 June 2014. We recognise that these transactions were before the relevant periods, but again this is not consistent with Mr Pearce's evidence.

(c) For Zeggo, PPX paid invoices before making either a Wigan check or a VIES check. Whilst Mr Pearce said that PPX were only making payments on account before HMRC verified the VAT number (in July 2015), the notes on the purchase invoices show that invoices were being paid in full before then.

(d) Whilst PPX did make a Wigan check on Bavalda, HMRC did not verify the VAT number. PPX had made a VIES check at the start of trading. Payments were made in full.

Conclusions on due diligence

231. The approach taken by PPX was inadequate and flawed – PPX failed to consider the reasons for making the various checks, or assess the information that was obtained:

(1) Having been told of the risks, and given advice as to the checks, the due diligence undertaken by PPX was largely confined to verifying the existence of the relevant trader. They were not making all of the checks advised by HMRC.

(2) The information that was obtained raised various warning signs. We recognise that some of these issues are more substantive or potentially concerning than others – changes of directors being more substantive than change of name – but all of the information for each supplier needs to be assessed, particularly in the light of warnings that had been given by HMRC.

(3) Further warning signs would have been revealed if PPX had conducted further due diligence at the time.

(4) There was no attempt by PPX to consider how the Defaulting Suppliers were able to conduct business in this way – supplying large sums of metal that were not consistent with their business activity, providing vast amounts of credit for a period of time that was not clearly agreed up front but varied from days to weeks to months.

(5) The Defaulting Suppliers were not “carefully vetted” by PPX, as set out in Mr Pearce's witness statements. Mr Pearce did not know how some of the trading relationships had come about (eg Bavalda), and for others where he had met the traders and knew more about their businesses, what he knew about them was not consistent with the nature of the transactions with PPX (eg Road Runner and LPI were not selling bus scrap or scrap from demolished buildings or refurbishments respectively). Mr Watkinson drew attention to the age of some of the newly appointed directors (some being in their early 20s) but we place no weight on this.

(6) PPX was not ensuring that Wigan checks were always conducted, or ceasing to trade with Defaulting Suppliers when HMRC said they were unable to verify a supplier at that time but needed further information.

232. PPX told HMRC that they would undertake further checks, eg visits to premises and credit checks, but they did not do this. Having considered carefully the visit reports in their entirety, all of the evidence in relation to the Defaulting Suppliers and Mr Pearce's evidence in relation thereto, we concluded that whilst Mr Pearce was maintaining the appearance of engaging with HMRC throughout in relation to the need for due diligence, he was not taking the actions which were advised or required, and indeed was not truthful about what PPX were in fact doing (he had said that PPX were already undertaking credit checks but later accepted that this was not the case). He was asking questions to which he knew the answer (eg asking how long Wigan checks take at a time at which PPX was conducting such checks and could see the time involved).

233. PPX did not change its approach in relation to suppliers which it started trading with later in the relevant period (Bavalda, Heritage and GDIL) – even after all of the visits, Tax Loss Letters and Notices of Deregistration to which we have referred.

Commerciality

234. Mr Watkinson made various submissions that related to PPX's role in the transaction chains and HMRC's case that as part of the orchestrated scheme PPX was being told who to trade with. Mr Kinnear submitted that the existence of an orchestrated scheme was not probative of PPX's knowledge as to its role therein, and emphasised the lack of direct evidence in relation to all of these matters.

235. There was necessarily an overlap in these submissions, and the components into which we have broken them down below are ours rather than HMRC's.

236. We note that we did not have any evidence in relation to (VAT-registered) suppliers to PPX in respect of which input tax credit had not been denied by HMRC other than the fact of their existence (based on the amount of input tax credit claimed by PPX compared to that denied) and non-specific evidence from Mr Pearce as to the scrap metal industry. We could not therefore compare the Transactions in this appeal with other specific transactions, or the Defaulting Suppliers with other suppliers to PPX. We bear this in mind given that HMRC bear the burden of proof.

Lack of documentary evidence as to processing of metals by PPX

237. In his closing submissions, Mr Watkinson submitted that there was no documentary evidence before the Tribunal as to the processing activities said to be conducted by PPX. This formed part of his submissions as to the reason (or lack thereof) for the role played by PPX in some of the transaction chains.

238. Mr Kinnear submitted that this was the first time that HMRC had raised such a challenge and that it was too late for them to seek to make such a challenge.

239. We agree with Mr Kinnear that this challenge had not previously been made by HMRC. HMRC's Statement of Case does not include any pleadings challenging whether PPX did in fact conduct any processing activities. Furthermore, Mr Watkinson did not challenge Mr Pearce in cross-examination as to the existence of such activities. This is particularly significant in the context of HMRC's visits to PPX and Mr Pearce's evidence in these proceedings:

(1) HMRC's visit report of 9 July 2014 sets out that Mr Pearce had showed Officer Farmer around the Mansfield site, explaining the different types of scrap and the processes that PPX undertook to separate the incoming product into separate metals. Mr Pearce had explained to HMRC how PPX kept metals in separate bins, and showed the officer how electric cable is stripped using a specialist machine. He had also

explained to the officers how they strip the valuable metals out of catalytic converters (the type demonstrated was said to be known as a dalek).

(2) In his first witness statement dated 12 September 2019 Mr Pearce had described PPX's business as buying various metals from domestic, commercial and industrial suppliers and subjecting it to a recycling process in order to separate, extract and weigh the metal components before onward sale, as well as buying scrap metal wholesale from other licenced waste metal dealers for onward sale.

(3) Giving evidence, Mr Pearce described in general terms the processing of metals, which could include sorting, granulating, and cleaning.

240. It is correct that we were not taken to any direct documentary evidence of the processing activities undertaken by PPX. However, the burden of proof is on HMRC and they had not pleaded that this was in issue. We see no reason why PPX would have adduced documentary evidence in these circumstances, and note that the witness evidence of Mr Pearce was not challenged and is supported in general terms by HMRC's own visit report. In these circumstances, and having regard to the overriding objective, we consider that it would risk prejudice to PPX and would not be fair and in the interests of justice to permit HMRC effectively to amend its pleadings and submit that processing activities were not performed. In any event we have found as a matter of fact that they were performed.

No commercial role as PPX's suppliers could deal directly with its customers

241. Mr Watkinson submitted that PPX had no commercial role in the transaction chains as its suppliers could deal directly with its customers. In this context Mr Watkinson referred to the transactions where PPX was buying large volumes of, eg copper granules, wholesale and submitted that the suppliers could deal directly with PPX's own customers, referring in particular to evidence that Yahya was already trading with Sims, one of PPX's customers in the relevant periods.

242. Mr Pearce agreed that some of the transactions, whether involving large loads or copper grains, involved metals being sold wholesale by the Defaulting Suppliers. His evidence was that such transactions may take place if the Defaulting Suppliers don't have contacts with PPX's own customers, or if they are not being given the same prices as those that PPX was able to secure. Alternatively, in some instances, PPX may be able to negotiate a better price with customers by amalgamating supplies to form a larger load (for which a higher price per tonne could be achieved) or by processing (which may include cleaning or drying) the metals.

243. As a matter of commercial sense, it is clearly the case that the involvement of "middlemen" in transaction chains (where such middlemen simply sell on the goods they acquire unchanged) is inefficient and reduces the profit which can be earned by the other parties. That does not, however, mean that middlemen cannot exist in genuine commercial transaction chains – they may have better contacts, or better negotiating skills than their supplier, which affords them an opportunity to make a profit. Of itself, we do not therefore regard this as probative of PPX's role in the transaction chains.

244. Furthermore, we have accepted that PPX was processing metals, and we infer that this activity could be used to increase the price which PPX was able to achieve, or make the load attractive to a wider range of potential customers. This is consistent with Mr Pearce's evidence that some large wholesalers to whom PPX sold metals were specific as to the types of loads they were interested in buying, and would not buy loads where the metal needed cleaning, or was wet.

245. Mr Watkinson referred to evidence that Yahya was already trading with Sims, challenging why that Defaulting Supplier was selling to PPX rather than going directly to one of PPX's own customers given that they were known to each other.

246. The evidence that Yahya was trading with Sims was a list of sales transactions for Yahya for 06/15. That list set out invoice numbers and amounts as well as naming the customer – PPX was named as the customer in each transaction other than the first transaction, on 27 April 2015, which named the customer as Sims Metal Management. The witness statement of Sarah Ward, the HMRC officer allocated to Yahya, recorded that VAT assessments had been raised by another HMRC officer based on Yahya's bank statements, and that not all of the amounts deposited in Yahya's bank account had been invoiced. We infer that this list had been prepared from that information, and note that the list does set out what is said to be an invoice number for the first transaction. There were no copy invoices, no copy bank statements, and no evidence of HMRC having asked Yahya about this transaction.

247. We find that Yahya had entered into a transaction with Sims, for which it was paid on 27 April 2015. However, that finding is not, on its own and without further evidence being adduced by HMRC, sufficient to enable us to conclude that Yahya could have sold all of the metal which it in fact sold to PPX to Sims for the same or a higher price. Furthermore, there was no evidence to support a conclusion that PPX was aware that Yahya had dealt with Sims.

PPX was being directed who to trade with

248. HMRC's case included that PPX was being directed who to trade with, putting this to Mr Pearce, and submitting that this was a legitimate inference where suppliers were travelling one hundred miles with a large load of metal to sell to PPX. Mr Kinnear submitted that HMRC had adduced no documentary evidence that PPX had been directed by anyone as to who to buy from or sell to, and that it was relevant in this regard that HMRC had access to all of PPX's records during the monitoring programme and to the present date. The issue of the Schedule 36 notice shows that where HMRC identified gaps in the information they had obtained, they could and did make specific applications for those documents.

249. The evidence on which HMRC relies in support of this submission is circumstantial, relying, eg, on geographical distance, the Yahya example of a Defaulting Supplier having traded with a customer of PPX yet choosing to deal instead with PPX, and the fact that some of the metals were being sold wholesale.

250. We agree with Mr Watkinson that there is a legitimate question to ask as to how the Transactions came about, particularly in the numbers and volumes involved. The existence of an orchestrated scheme (which was accepted by PPX), together with the circumstances on which HMRC rely, does lead us to infer that the Defaulting Suppliers were being told who to trade with, namely PPX. However, that is different from concluding that PPX was being told who to trade with. HMRC bear the burden of proof, and we are not satisfied that PPX was being directed or told who to trade with.

Commerciality of transactions themselves

251. Mr Watkinson challenged the commerciality of the Transactions themselves, in particular:

- (1) lack of documentary evidence of negotiation of price, eg emails;
- (2) lack of commercial documentation, eg written contracts of sale setting out the terms and conditions;

- (3) large volumes of goods being supplied to PPX on credit, with no consideration being given to how the Defaulting Suppliers were able to transact on such terms; and
- (4) one Defaulting Supplier, MayX1, had instructed PPX to make payments to a third party.

252. There was, however, no challenge to the fact of the Transactions having occurred, the existence of the goods as described on the purchase invoices, or that PPX then sold the metals to customers. Furthermore, whilst Mr Watkinson did challenge whether PPX would process the metals, HMRC did not challenge the explanation (given by Mr Pearce to officers during visits and in evidence) that metals from various suppliers would be amalgamated into large full loads and then sold to customers, ie that the metals bought from one supplier in one transaction would not necessarily be sold on in that quantity.

253. Mr Kinnear submitted that the Transactions with Defaulting Suppliers needed to be considered in the context of the remainder of PPX's business, and that whilst they were a large part of the turnover, they were not the majority in number of transactions, and that Mr Pearce's evidence was that the scrap metal industry did not generally use written documentation, such that there was nothing unusual about the manner of dealing with the Defaulting Suppliers.

254. Mr Kinnear drew attention to the lack of evidence from persons other than Mr Pearce as to the operation of the scrap metal industry, to which Mr Watkinson replied that no such evidence was necessary as it is just buying and selling. We did not find the absence of such evidence to be troubling. Mr Pearce has consistently described how suppliers turn up at one of PPX's yards with metals to sell, and whilst HMRC challenge how that comes about the fact of it happening was not challenged. In these circumstances, where PPX can weigh and inspect the metals at that moment (and cannot have done so previously either over the phone or by email), we consider that the absence of documentary evidence of negotiation of price or of terms and conditions of sale are understandable, with the exception of the lack of terms relating to the provision of credit (addressed at [256] below). We take no account of this lack of documentation when assessing the state of PPX's knowledge in this appeal.

255. We have already found that all payments by PPX in respect of supplies by MayX1 were paid to the account of a third party. We find that PPX knew that the payments were being made to a third party, and not to the supplier itself. That it had been instructed to make such a payment should have raised a clear red flag – not only on the basis that PPX had been warned about such payments by HMRC (from as early as January 2012), but also should raise a commercial question as to why it was being told to do this, and, eg, whether it was protected against a subsequent claim by MayX1 for payment (as MayX1 had not itself been paid).

256. We also consider that the provision of credit by some of the Defaulting Suppliers is a factor to be taken into account when assessing PPX's state of knowledge:

- (1) The absence of written documentation means that credit was being advanced on uncertain terms – there was no agreement as to whether suppliers would be paid in, eg, one week or one month. The facts show that credit was being advanced for varying lengths of time (certainly between one day and more than two months), for hundreds of thousands of pounds.
- (2) There was no evidence that PPX had considered how suppliers were able to transact on this basis. We have already set out the due diligence information obtained by PPX and this does not provide any basis for concluding that the Defaulting Suppliers had sufficient funding available to them to advance credit to PPX. That PPX was not at

risk on these suppliers, ie that it was not providing credit itself, does not answer this point.

Financials

257. We have set out at [180.] to [182.] above the turnover, gross profit and net profit recorded by PPX in its financial statements. Mr Watkinson's submissions (and cross-examination of Mr Pearce) focused on the increase in turnover and gross profit of PPX, whereas Mr Kinnear focused on the net profits (noting the increases in the administrative expenses of PPX which meant that the higher gross profit did not result in proportionately higher net profit for the company). Mr Kinnear submitted that PPX paid the amounts in respect of VAT (of £3.57m) to the Defaulting Suppliers, who have not accounted for that money to HMRC and which has not been traced, and it is inherently unlikely that Mr Pearce would put his business and the jobs of PPX's employees at risk.

258. The financial statements show a significant increase in turnover from the year ended August 2013 to the period ended February 2015 (even taking account of the fact that the latter period is an 18 month period), whilst net profits (after expenses and tax) reduced slightly. There is then a dramatic increase in the turnover, which more than triples, in the period ended February 2016. This simply shows, however, that there was a large amount of turnover attributable to transactions which were connected with fraud, a fact which is evident when looking at the transactions in respect of which input tax credit has been denied.

259. The gross profits of PPX increased during these periods (albeit not to the same extent), as did the administrative expenses. As a matter of fact, it was the turnover from the Transactions which helped to fund the ongoing costs arising from the expansion of PPX, ie the increase from one to three sites, with commensurate increases in expenses (eg utility bills, vehicles and the large increase in the wages bills).

260. The financial information does not show a clear boost to the net profits of PPX; and we are mindful that HMRC have not adduced evidence tracing the amounts paid to the Defaulting Suppliers (which is unsurprising given that they are missing and many of them have failed to file VAT returns let alone produce documentation for the relevant periods).

Provision of information

261. We have set out at [174.] to [179.] above our findings in relation to the filing of VAT returns and the provision of information to HMRC.

262. Two of the returns within the relevant period were submitted late, and Mr Pearce had told HMRC that the return for 08/14 (ie the period immediately preceding the relevant periods) had just been submitted when he met with officers in February 2015, but this was not correct – checks on 10 March 2015 showed that it had not been submitted even by that date. Mr Kinnear submitted that late submission of returns is not of itself significant, as the VAT returns just contain the numbers rather than any details of transactions or suppliers. We do not discount the late filings in this way – those numbers would have shown the increase in turnover of the business at a very early stage. The delays meant that PPX was delaying HMRC's knowledge of the level of turnover of the business, and in particular the extent of the increase in that turnover. This is exacerbated by the fact that Mr Pearce had said that a return had been filed when in fact it had not been.

263. During the visits, Mr Pearce presented himself as keen to avoid involvement in fraud, and wanting to be cooperative and helpful to HMRC. We have found that PPX provided large amounts of documentation to HMRC. Mr Pearce answered HMRC's questions, and we can see from the visit reports that he was answering questions about the Defaulting Suppliers. He did not refuse to provide information or documents. However, the visit reports of 25

February, 24 June and 17 July 2015 all reveal the extent to which HMRC was having to chase for documents which had been requested. We agree with Mr Watkinson that these delays could potentially be significant in the context of HMRC's access to information in real time. We take the full picture into account when assessing PPX's state of knowledge.

Conclusions

264. Assessing all of the evidence before us, and taking account of all of the submissions (both written and oral), we have concluded that HMRC have satisfied the burden of establishing that, on the balance of probabilities, PPX knew that the Transactions were connected with the fraudulent evasion of VAT.

265. In reaching this conclusion, we consider the following particularly significant:

(1) We were not satisfied that Mr Pearce's evidence was entirely credible, and we have not accepted some of his key evidence, eg checking that suppliers were VAT-registered or that PPX did not pay the VAT-element of the purchase price until the VAT registration number had been checked. We have not placed equal weight on all of the inaccuracies identified in his witness statements as, eg, we accept that there was a reasonable explanation for the incorrect lists of due diligence documentation held by PPX.

(2) We have found that Mr Pearce knew of the risk of fraud in the metals sector, and that this was not confined to traders who had moved into the sector from mobile phones or computer chips. He was being told (eg at the visit on 25 November 2013) that input tax could be denied if transactions were traced to fraud. He was repeatedly given comprehensive advice as to the steps that could be taken by PPX to reduce the risk of entering into transactions that were connected with fraud and it would have been clear to him (from HMRC's visits and the Notices of Deregistration) before the beginning of the relevant period that the steps being taken by PPX were not sufficient to prevent PPX entering into transactions that were connected with fraud.

(3) Against that background, the conducting of minimal due diligence, with little attention being paid to the information obtained, the failure to make checks which would help to assess the commerciality of the suppliers (particularly the provision of credit) and the failure to make Wigan checks on all suppliers are difficult to explain other than as deliberate decisions and possible indicators that PPX knew that full investigation would reveal further evidence that the Defaulting Suppliers were fraudulent.

(4) This factor in (3) above is then exacerbated by the fact that PPX failed to change its approach after the clear, specific warnings it received from HMRC in June and July 2015, illustrated by the minimal due diligence conducted on Bavalda and IHEI.

(5) Whilst the Defaulting Suppliers were just 11 out of more than 4,000 suppliers to PPX over the relevant periods, the Transactions in total represented a significant proportion of PPX's turnover. There was a dramatic increase in turnover, from £3m, to £10.9m (in the 18 month period, which included two of the VAT periods in issue), and then to £31m (in the period which included three of the VAT periods in issue); that increase then contributed to an increase in PPX's gross profits. This was in circumstances where some of the Defaulting Suppliers were advancing vast amounts of credit to PPX, with PPX having no information explaining how they were able to do so. PPX cannot have been unaware of any of these elements.

(6) There was a repeated lack of transparency in PPX's dealings with HMRC:

- (a) failing to make a Wigan check at the beginning of trading with new suppliers (for four Defaulting Suppliers, not making a Wigan check at all, for Yahya and GDIL only after trading had ceased) and thus avoiding giving HMRC notification at the outset of who they were dealing with;
- (b) telling HMRC that PPX was making certain checks on suppliers (eg visiting premises) when it was not in fact making these checks;
- (c) telling HMRC that PPX would start making further checks (eg questionnaire, Wigan and VIES checks and further commitment to visiting premises) that it did not in fact do within the relevant periods;
- (d) delays in filing some VAT returns at a time at which there was a significant increase in turnover; and
- (e) delays in providing documentation (which in practice meant that the provision of information monthly, which was expected for traders on the monitoring project) was not routinely happening.

266. There are some areas where there was insufficient evidence to support HMRC's submissions. This was notably the case in respect of HMRC's submissions as to:

- (1) the pricing of the Transactions (as there was insufficient evidence before us to enable us to reach any conclusions on the commerciality of the pricing);
- (2) the role of PPX in the transaction chains (where PPX was buying wholesale quantities of processed metals);
- (3) whether PPX was being told who to trade with - although we do accept Mr Watkinson's submission that the Defaulting Suppliers were attracted to PPX because they knew that PPX would not ask probing questions.

267. We place no weight on these submissions.

268. Whilst Mr Kinnear emphasised the volume of the business being conducted by PPX throughout the relevant periods, and the lack of increase in the net profits of PPX during this time, we concluded that such matters were significantly outweighed by the factors set out at [265.] above.

269. Our conclusion that PPX knew that the Transactions were connected to the fraudulent evasion of VAT is sufficient to dismiss the appeal. However, HMRC also relied on its alternative pleading that PPX should have known of the connection. As we heard submissions from both parties relevant to this pleading, we have briefly set out our conclusions on this issue.

270. We reminded ourselves of the guidance set out by Moses LJ in *Mobilx* as to how to assess whether a person "should have known" of the connection to the fraudulent evasion of VAT. We concluded that this was clearly the case in respect of the Transactions entered into by PPX, relying in particular on:

- (1) PPX's awareness of the risk of fraud, and the advice it had received from HMRC as to the steps it could take, yet nevertheless conducting minimal due diligence, not making the checks which HMRC was advising it should make, and failing to consider the information obtained from such due diligence. One important aspect of this failure of due diligence was the failure to ensure Wigan checks were always undertaken.
- (2) PPX ignored the very warning signs that it had been told of by HMRC, including by making payments to a third party, dealing with new companies with minimal financial history yet which provided vast amounts of credit (and thus at no financial

risk to PPX). The first transactions with IHEI were significantly higher than the amount of the VAT registration threshold, yet PPX traded with them knowing they were not VAT registered at that time.

271. Whilst Mr Kinnear submitted that we should assess the Transactions in the context of all of the trade being carried out, and noted that the due diligence was sufficient to identify the traders and that the goods existed and were sold at a commercial price, we nevertheless considered that PPX should have known that the only reasonable explanation for the Transactions was that they were connected with the fraudulent evasion of VAT. We would therefore have dismissed PPX's appeal on this basis.

DISPOSITION

272. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

273. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

Release date: 03rd MAY 2023