



**TC05443**

**Appeal number: LON/2007/1551 and  
LON/2007/2019 and LON/2008/0724**

*VALUE ADDED TAX -- input tax – MTIC – fraudulent evasion of VAT –  
whether tax losses caused by fraudulent evasion –yes - whether appellant’s  
transactions were connected with fraudulent evasion – yes - whether the  
appellant knew or should have known that its transactions were so  
connected – yes – alleged suppression of evidence by HMRC - appeal  
dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ATEC ASSOCIATES LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE GUY BRANNAN  
                  MR MICHAEL SHARP FCA**

**Sitting in public at The Royal Courts of Justice, Strand, London WC2 on 24, 25,  
26, 31 March 2015, 1, 7, 8, 9, 10, 20, 21 April 2015 and subsequent written  
submissions, and 5 November 2015, 17 and 18 December 2015**

**Renee Kalia, former director, for the Appellant**

**Michael Holland QC, Howard Watkinson and James Jackson, counsel,  
instructed by the General Counsel and Solicitor to HM Revenue and Customs,  
for the Respondents**

## DECISION

### Introduction

1. The appellant, Atec Associates Limited (“Atec”), appeals against the decisions of HMRC denying it an entitlement to the right to deduct input tax in the total amount of £7,790,503.88 claimed on 53 purchases in the monthly VAT periods 04/06, 05/06, 06/06 and 07/06.

2. In the course of the hearing, Atec made it clear that it had withdrawn its appeal in respect of its claim to input tax on deal 53 with the result that there were now 52 transactions in dispute. We note that Atec argued that deal 53 had already been withdrawn. It is unnecessary for us to delve further into this point because the agreed position was that an appeal in respect of deal 53 was not before the Tribunal.

3. Until 3 February 2015, there were two additional appeals, concerning a related company called Wireless 5 Limited (“Wireless 5”) which involved transactions in 2010 (“the 2010 transactions”). On that date, however, Wireless 5 withdrew its appeals. As we shall see, the evidence in relation to those 2010 appeals remained relevant to the remaining 52 appeals and, for the reasons given below, we decided should remain in evidence.

4. This is what is commonly known as an alleged MTIC appeal. There have now been many decisions of this Tribunal, the Upper Tribunal and the Court of Appeal in respect of alleged MTIC transactions and it is therefore unnecessary to give another explanation of how MTIC fraud is carried out. A convenient explanation is given by Christopher Clarke J (as he then was) in *Red 12 Trading Ltd v HMRC* [2009] EWCH 2563 (Ch) at [2] – [10] which covers both “plain vanilla” MTIC transactions and the more complex “contra-trading” variant of the fraud – both versions of MTIC fraud are alleged to be relevant to these appeals.

5. The decisions denying Atec the right to deduct input tax and against which Atec now appeals are as follows:

(1) by a letter dated 20 August 2007, HMRC notified Atec that it was denied the right to deduct input VAT in the sum of £2,474,089.63 claimed on the purchase of mobile telephones in VAT monthly period 04/06 and £2,244,464.25 claimed on the purchase of mobile telephones, iPods, PlayStations, laptop computers and pocket PCs in monthly VAT period 05/06;

(2) by a letter dated 19 November 2007, HMRC notified Atec that it was denied the right to deduct input VAT in the sum of £1,270,062.50 claimed on the purchase of mobile telephones, iPods, PlayStations, and digital video recorders in the monthly VAT period 06/06 and £1,078,437.50 claimed on the purchase of mobile telephones, satellite navigation systems and palm top PCs in VAT period 07/06; and

(3) by a letter dated 29 February 2008, HMRC notified Atec that it was denied the right to deduct input VAT in the sum of 723,450 in respect of monthly VAT period 05/06.

6. In each case, HMRC's reason for denying Atec its right to deduct input VAT was that Atec's purchases were connected with the fraudulent evasion of VAT and that Atec knew or should have known that its transactions were so connected.

7. On 9 March 2015, this Tribunal (Judge Brannan) directed that Atec should not be entitled to cross-examine certain HMRC witnesses pursuant to the decision of the Upper Tribunal in *Fairford Group plc & Anor v HMRC* [2014] UKUT 329 (TCC). These witnesses were largely HMRC officers giving evidence in respect of defaulting traders or contra-traders. The reasons for the Tribunal's direction are set out in a separate decision. Although Atec was not entitled to cross-examine these witnesses, it was entitled to (and did) submit that the evidence tendered by those witnesses did not satisfy the burden of proof.

8. Atec did not accept that HMRC's evidence demonstrated that in respect of each deal HMRC has suffered a tax loss as a result of fraudulent evasion. Moreover, Atec did not accept that HMRC had established that its deals were connected with that fraudulent evasion. Furthermore, Atec contended that it neither knew nor should have known that its deals were connected with the fraudulent evasion of VAT.

9. Inevitably, therefore, because every issue is in dispute and given the volume of the evidence before us, this will be a long decision.

10. Furthermore, there was a dispute which emerged towards the end of the hearing concerning whether HMRC had suppressed evidence or had engaged in an abusive course of conduct towards Atec. This required a further hearing conducted over three days in November and December 2015.

### **Terminology**

15. In the course of numerous MTIC appeals it is now established that the parties in the alleged transaction chains are usually described by certain terms. A party in the position of the appellant in this appeal who exports (technically, for VAT purposes, "dispatches") goods to a foreign purchaser is known as the "broker". A party who buys from the importer of the goods ("the acquirer") and intermediate purchasers between that party and the appellant are usually known as "buffers". We shall use these expressions in this decision simply for convenience but without in any way prejudging the issue.

### **The law**

11. The basic applicable legal principles can be summarised as follows.

12. The legal right to a deduction for input tax is enshrined in Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 and in sections 24, 25 and 26 of the Value Added Tax Act 1994.

13. There is no legal right to a deduction for input tax, however, where fraud is involved. There is now extensive case-law on this subject both before the European

Court of Justice and our domestic courts. The position was summarised by Lewison J in the decision of the Upper Tribunal in *Brayfal Ltd v HMRC* [2011] UKUT 99 (TCC) as follows:

5 “While Brayfal’s appeal has been making its way through the system, the law has been considered by the courts on a number of occasions. It finds its latest authoritative pronouncement in the decision of the Court of Appeal in *Mobilx Ltd v HMRC* [2010] EWCA Civ 517. This decision was handed down on 12 May 2010, a couple of months after the revised decision of the FTT. That case examined the ramifications of the decision of the ECJ in *Axel Kittel v Belgium; Belgium v Recolta Recycling* Joined Cases C-439/04 and C-440/04 [2006] ECR I-6161 (“*Kittel*”). What the Court of Appeal decided was:

10 A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and fails to meet the objective criteria which determine the scope of the right to deduct. (§ 43)

15 If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. (§ 52)

20 The principle 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. (§ 60)

25 The test 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. (§ 59)

30 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. (§ 81)

35 In answering the factual question, 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 focusing 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. (§ 82)

5 I should also record that it was common ground that these principles should be applied in the light of the circumstances prevailing at the date of the taxable person's own transactions: C-354/03 *Optigen Ltd v Customs and Excise Commissioners* [2006] ECR I-483. "

14. We respectfully adopt Lewison J's summary of the law as a correct statement of the current position.

10 15. We should also add that, in relation to the issue whether a trader's transactions were connected to the fraudulent evasion of VAT, Roth J held in *Powa (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC) that it was not necessary that the trader should be in privity of contract with a fraudulent trader. Instead, if a trader knows or should have known that the transactions which it entered into were part of a chain in which one or  
15 more of the earlier transactions were fraudulent, even if its immediate supplier was not fraudulent, the *Kittel* test is satisfied.

16. We also note the comments of Christopher Clarke J in *Red 12 Trading Ltd v Revenue and Customs Comrs* [2009] EWHC 2563 (Ch) at [109]–[111] (approved by Moses LJ in *Mobilx* at [83]) in relation to questions of evidence, where he said:

20 "[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  
25 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  
30 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 phones may be entirely regular, or entirely regular so far as the  
35 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  
40 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  
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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.”

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17. In *Megtian Limited v HMRC* [2010] EWHC 18 (Ch), Briggs J discussed the test in *Kittel* and the comments of Moses LJ in *Mobilx* that the test should not be over-refined. In relation to “clean” and “dirty” chains involved in contra-trading he held that for the *Kittel* test to be satisfied it was not necessary that the appellant should have actual or imputed knowledge of the details of the fraudulent conduct:

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“31. The issue addressed by Lewison J in *Livewire* concerned the nature of the fraud which it was necessary to demonstrate that the broker at the foot of a clean chain knew or ought to have known was connected with his transaction. In a contra-trading case there are, at least in theory, two potentially distinct frauds. The first is that of the missing or defaulting trader at the head of the dirty chain, who intends to abscond without accounting to HMRC for the tax paid to him by his immediate buyer. The second is that of the contra-trader who seeks to use the clean chain involving the broker as a means of dishonest concealment of the first fraud. As Lewison J put it, at paragraph 102:

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“In my judgment in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself the dishonest co-conspirator, there are two potential frauds:

(i) the dishonest failure to account for VAT by a defaulter or missing trader in the dirty chain; and

(ii) the dishonest cover-up of that fraud by the contra-trader.”

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The issue for Lewison J was whether a disallowance of repayment of input tax claimed by the broker at the foot of the clean chain required it to be shown that he knew or ought to have known of both of those frauds, or merely one or the other of them. He concluded that the second of those alternatives was sufficient, at least in a case where dishonesty had been established as against the contra-trader.

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32. Lewison J’s conclusion is set out at paragraph 103 of the judgment as follows:

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“Thus it must be established that the taxable person knew or should have known of a connection between his own transaction and at least one of those frauds. I do not consider that it is necessary that he knew or should have known of a connection between his own transaction and both of these frauds. If he knows or should have known that the contra-trader is engaging in fraudulent conduct and deals with him, he takes the risk of participating in a fraud, the precise details of which he does not and cannot know.”

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33. ....

5 34. ... I do not read Lewison J's analysis of the issue as to what must be shown that the broker knew or ought to have known in a contra-trading case as amounting to a rigid prescription that, as a matter of law, such an analysis must be performed in every contra-trading case, such that it will be defective unless it identifies one or other of the alternative frauds as being that which the broker knew or ought to have known.

10 36. ... Lewison J acknowledged that in many if not most cases of contra-trading, the clean chain and the dirty chain were likely to be part of a single overall scheme to defraud the Revenue. As he put it, at paragraph 109:

“Indeed it seems to me that the whole concept of contra-trading (which is HMRC's own coinage) necessarily assumes that to be so.”

15 37. In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

20 38. Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up into self-contained boxes even though, on the facts of particular cases, including *Livewire*, that may be an appropriate basis for analysis.”

25 30 35 18. In *POWA (Jersey) Limited v HMRC* [2012] UKUT 50 (TCC) Roth J agreed with the above approach of Briggs J in *Megtian*, stating:

40 45 “52. However, I do not see that there is any requirement that PJL should reasonably have known the identity of the contra-trader. HMRC must establish that fraudulent evasion of VAT took place, and if the form of fraud involved was contra-trading then that is what they have to prove. But it is a misconception to consider that they must also establish that the party seeking to deduct input tax (i.e., here, PJL) should reasonably have known that its own transaction was connected to (or involved in) this particular form of missing trader fraud as opposed to another form. I do not regard the Chancellor's judgment in *Blue Sphere Global* as authority to the contrary. Moreover, I respectfully agree with the approach expressed by Briggs J in his subsequent judgment in *Megtian Ltd (in admin) v Revenue and*

*Customs Comrs* [2010] EWHC 18 (Ch) at [37]–[38], [2010] STC 840 at [37]–[38]....

[53] In any event, it is clear from the Court of Appeal judgment in *Mobilx*, where one of the three cases under appeal was *Blue Sphere Global*, that no special approach is required in a case involving contra-trading. The correct test as regards knowledge is always the same. It is the test derived from *Kittel* as set out at [59] of Moses LJ’s judgment: see [39], above. Hence, in the section of his judgment that addressed the specific appeal in *Blue Sphere Global*, Moses LJ found that although the case on the facts came close to satisfying the test, the tribunal had focused unduly on whether Mr Peters, the company’s sole shareholder and director, had exercised sufficient care and diligence, and what he might have found out if he had made further inquiries, and thus had failed to make a finding applying the correct test. Moses LJ concluded at [75]:

‘The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT. The tribunal might have concluded that Mr Peters should have known that the transactions into which he entered were connected with fraud, by reference to the unconventional nature of those circumstances (a finding it came close to making at para 228). But it was not the only decision within the bounds of reasonable conclusion.’

[54] By contrast with the tribunal in *Blue Sphere Global*, the FTT here emphasised that the test was ‘not whether PJJ took adequate precautions, but whether it knew or had the means of knowing that its transactions were connected with fraud’: [2009] UKFTT 360 (TC) at [127]. Based on a thorough consideration of all the surrounding circumstances, it found that PJJ knew or must have known that it was engaged in an artificial, contrived market, and that finding applies to the three transactions that were part of a contra-trading chain as much as to all the others. This ground of appeal is accordingly misconceived.”

19. Leave to appeal from the judgment of Roth J was refused by Moses LJ in the Court of Appeal (*POWA (Jersey) Limited v HMRC* [2013] EWCA Civ 225).

20. Also, in relation to contra-trading, the Court of Appeal in *Atlantic Electronics Ltd v HMRC* [2013] EWCA Civ 651 (per Ryder LJ at [14], citing the Chancellor in *Blue Sphere Global Ltd v HMRC* in the High Court [2009] STC 2239, at [55]), has noted that knowing involvement of the contra-trader has to be established if, as here in relation to Atec, it is asserted that a broker in a chain connected to the contra-trader knew or should have known of the connection of its transaction to fraud.

21. Finally, the standard of proof is the normal civil standard of proof (i.e. the balance of probabilities) and, as explained by Lewison J in *Brayfal* citing *Mobilx* (above), that the burden of proof lies upon HMRC. Ms Kalia argued, on the basis of a decision of this Tribunal in *Unistar Trading Ltd v HMRC* [2013] UKFTT 344 (TC) at [36], that there was a need for cogent evidence in addition to the normal civil standard



of proof. We consider, with respect, that that decision did not substitute a different test from the correct test of the ordinary civil standard of proof and, to the extent it did so, we decline to follow it.

## **Evidence**

### 5 *General*

22. We were provided with approximately 130 volumes of witness statements and exhibits.

23. For the appellant, Mr Bobby Kalia, director of Atec, produced witness statements and gave oral evidence and was cross-examined. Ms Renee Kalia, director  
10 of Wireless 5 (and formerly a director of Atec), also produced witness statements and was cross-examined.

24. For HMRC, five witnesses gave oral evidence as well as producing witness statements. They were each cross-examined by Ms Kalia. Four of the witnesses were  
15 HMRC officers: Mr Nigel Saunders (giving evidence in respect of Atec – referred to as the “Broker Officer”), Mr David Berry (giving evidence in respect of the 2010 transactions), Mr Peter Dean (giving evidence in respect of transactions involving First Curacao International Bank (“FCIB”)) and Mr Ian Simmons (giving evidence in respect of his visits to Atec). The fifth HMRC witness was Mr Matthew Corkery who gave expert evidence in respect of the “grey” market.

20 25. In addition, 43 HMRC officers produced witness statements. As regards 28 of those officers, their evidence was the subject of a “*Fairford* <sup>1</sup>direction” mentioned above, given by this Tribunal at a hearing on 9 March 2015 that the witnesses did not need to attend for cross-examination. At the hearing on 9 March 2015 it was agreed that only 11 HMRC officers would be required to attend for cross-examination. In the  
25 event, Ms Kalia only cross-examined the five HMRC witnesses referred to above.

26. There were witness statements from two additional witnesses giving evidence on behalf of HMRC: Ms Dawn Ramsay giving evidence on behalf of Garmin and Ms Catherine Clark who gave evidence on behalf of Nokia. Neither witness was cross-examined.

### 30 *Dispute as to admission of evidence*

27. Initially, Atec objected to the admission of the expert evidence of Mr Corkery. In the course of the hearing, Ms Kalia, who represented Atec, withdrew her objection to Mr Corkery’s evidence which was, consequently, admitted.

28. Atec also objected to the admission of the evidence of Mr Miller, an HMRC  
35 officer. Mr Miller’s witness statement related to the prosecution and conviction of

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<sup>1</sup> *Fairford Group plc & Anor Revenue And Customs* [2014] UKUT 329 (TCC) (23 July 2014) (Simon J and Judge Bishopp)

certain individuals involved with companies which included Letting Solutions and H Communications. Ms Kalia objected to the admission of Mr Miller's evidence on the grounds of relevance. Mr Holland who appeared for HMRC (leading Mr Watkinson and Mr Jackson) argued that Mr Miller's evidence was relevant to the issue whether participants in the particular chain of transactions were engaging in genuine commercial deals all part of an organised scheme to defraud.

29. We considered whether to admit Mr Miller's evidence and decided that it was potentially relevant and should be admitted.

30. Finally, HMRC applied to readmit evidence relating to the 2010 transactions. This evidence had been admitted but, as we have explained, the underlying appeals were withdrawn on 3 February 2015. Mr Holland submitted that although the appeals in respect of the 2010 transactions had been withdrawn, the evidence in relation to those appeals remained relevant because it revealed a propensity on the part of Atec and associated parties to become involved in transactions which were connected with the fraudulent evasion of VAT. Ms Kalia challenged the admission of this evidence on the basis that it was an impermissible attempt to use hindsight in evaluating the state of knowledge of Atec in 2006.

31. Our decision was to admit the evidence of the 2010 transactions. We were satisfied that there was no prejudice to Atec because the evidence had been served in relation to the 2010 appeals many months ago. We considered that the evidence was potentially relevant to the issues before us and that it was a question for this Tribunal of the weight that should be attached to it.

### **Issues in dispute**

32. Essentially there are four issues in dispute in this appeal:

- (1) was there a loss of VAT incurred by HMRC?
- (2) If so, was the loss caused by fraud?
- (3) If so, were Atec's transactions connected with that fraudulent loss of VAT?
- (4) If so, did Atec know or should it have known that its purchases were connected with that fraudulent tax loss?

33. Essentially, therefore, it is necessary to consider the evidence in relation to all the defaulting traders, contra-traders and look in detail at the 52 alleged deal chains. For convenience, we have set out our findings and conclusions in relation to issues (1) to (3) above in the Appendix to (and which forms part of) this decision.

### **The background facts**

34. We find the following facts.

*Transactions in dispute*

35. In our description of the deals we will use the numbering assigned to the transactions at the hearing and the numbers in brackets refer to the relevant invoices in respect of which Atec claimed a VAT input deduction.

5 36. As we have mentioned, this appeal is in respect of 52 transactions undertaken by Atec in 2006.

37. As regards 46 transactions (deals 1 (1411), 4-12 (1414-1422), 16-37 (1427-1452) and 40-53 (1457-1473)) HMRC contend that each of these transactions was connected to a fraudulent loss of VAT in deal chains that traced directly back to a fraudulent defaulting trader.

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38. In relation to deals 32 (1447) and 41-51 (1459-1469), HMRC have been unable to trace the chain of transactions beyond a company called RX Tech Solutions Ltd (“RX”). HMRC refer to this company as a “blocker” trader. Nonetheless, HMRC submit that, on the balance of probabilities, in view of RX’s pattern of trading, these transactions traced back to a fraudulent tax loss.

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39. As regards the remaining seven transactions, HMRC allege that these were part of a contra-trading scheme intended to defraud HMRC. The alleged contra-traders were A-Z Mobile Accessories Ltd (“AZ”) (deals 2, 3 and 38), Wetherby Fashions Limited (“Wetherby”) (deals 13-15) and Jag-Tec Ltd (“Jag Tec”) (deal 39).

20 *Background to the Appellant*

40. Atec was incorporated on 22 August 2002.

41. At the times material to this appeal, the officers of Atec were:

(1) Mr Bobby Kalia (“Mr Kalia”) who was a director, appointed 22 August 2002;

25 (2) Ms Renee Kalia (“Ms Kalia”), sister to Mr Kalia, and a director between 27 June 2006 and 1 August 2009. Ms Kalia was also Atec’s company secretary between 22 August 2002 and 21 January 2003; and

(3) Mr Paul Ross (“Mr Ross”) who was company secretary between 1 January 2004 and 11 March 2009.

30 42. During the periods relevant to these appeals, Mr Kalia was either the sole or the principal shareholder of Atec.

43. Atec applied to be registered for VAT on 15 November 2002. On the VAT registration application, Mr Kalia declared Atec’s main business activity to be “internet/portal service design”. The forecast turnover for the next 12 months was

35 £65,000.

44. Atec was duly registered for VAT with effect from 18 November 2002. Initially, Atec submitted VAT returns on a quarterly basis but from 10 December 2003 HMRC required Atec to make monthly VAT returns.

*Wireless 5 Ltd (“Wireless 5”)*

5 45. Wireless 5 was incorporated on 15 March 2004. Ms Kalia was Wireless 5’s director from 31 January 2005 and Mr Kalia, was a director between 27 June 2006 - 15 June 2009; they were, therefore, the directors at the times material to these appeals. Mr Ross was Wireless 5’s company secretary between 1 March 2006 and 11 March 2009.

10 46. Wireless 5 was registered for VAT from 1 April 2005. The stated business activity on the application for registration was “Online ‘Top End’ of market electrical goods retailer – future through a retail outlet”. The anticipated turnover for the next 12 months was stated to be £250,000.

15 47. Mr Kalia was the sole shareholder of the company (according to the annual accounts as at 31 March 2006). Mr Kalia disposed of the shares in the year to 7 March 2007.

20 48. Wireless 5 purchased from other buffer traders and on-sold to Atec in deals 9 – 15 (inclusive), 17 – 21 (inclusive) and 24 – 29 (inclusive). Mr Kalia said that Ms Kalia had forged a relationship with two wholesale suppliers – Zain Communications and Team Mobile – whom she said were willing to supply her with stock. Although  
25 Wireless 5 was a retail business, according to Mr Kalia, Ms Kalia told him that she was keen to buy stock from Zain Communications and Team Mobile and on-sell to Atec, because she felt this would help increase her turnover, thereby strengthening her financial credibility with potential manufacturers and suppliers in relation to Wireless 5’s retail business.

49. As we shall see, in all the deals in which Wireless 5 was supplied by Zain Communications and Team Mobile the goods were eventually exported by Atec to a German business called Freitex GmbH (“Freitex”).

*Atec’s trading history*

30 50. Atec started wholesale trading in January 2003. Atec’s first set of annual accounts for the year ended 31 August 2003 recorded a turnover of £53,708,183 and a profit on ordinary activities before taxation of £95,651 activities described in the Directors’ Report as “general wholesalers.” Evidently, Atec was trading on very slim margins.

35 51. Atec’s sales, measured by its outputs recorded on its VAT returns, for its first quarterly period of trading (02/03) was £15,188,378. Its second-quarter (05/03) recorded outputs of £27,554,076. Its outputs for the period 08/03 amounted to £10,965,728 and in the final period for its first year of trading Atec’s outputs were

£18,845,889. By any measure, this was an extraordinary start to Atec's business. In this first year, Atec did not import or export within the EU.

52. Mr Kalia's own evidence was that he had little or no previous experience of trading in mobile phones. He claimed that that he had started trading in mobile phones when he met a mobile phone trader who had premises in Hayes. Mr Kalia said that he had told the trader that he had large quantities of mobile phones with which he could supply him. Mr Kalia accepted that this was a "huge exaggeration". In cross-examination, Mr Kalia claimed that he saw nothing unusual for someone who had no experience in trading mobile phones to offer to sell mobile phones which he did not have and did not know whether he could obtain them. This was a proposition which we did not consider to be convincing.

53. For the following year (to and including the VAT period 08/04), Atec's outputs, according to its VAT returns, were approximately £43 million. Atec started exporting in the period 07/04 (in which period its outputs were £5,000,756 and its EC supplies were £223,840). For 2005 (to and including the VAT period 08/05) Atec's outputs soared to over £108 million. By this stage, Atec was making substantial supplies to EU customers. For example, in the period 07/05 Atec's total outputs were £14,883,384 and its EU supplies were £11,558,325.

54. In 2006 Atec's output figures were: £12,984,520 (01/06), £14,035,424 (02/06), £27,518,878 (03/06), £15,154,230 (04/06), £18,316,210 (05/06), £7,848,250 (06/06), £6,667,750 (07/06). In all these periods the vast preponderance of Atec's supplies were EU supplies. Thereafter, Atec's outputs fell away sharply with no outputs in the period 08/06 and minimal amounts thereafter.

55. According to HMRC's PAYE records (Form P14) for May 2006 – in other words, at around the time of the transactions under appeal – Atec employed four employees, excluding Mr Kalia.

#### *Summary of contacts by HMRC with Atec*

56. HMRC visited Atec on 10 January 2003, approximately two months after Atec was registered for VAT (18 November 2002). Notwithstanding the description of Atec's intended business in its application for registration, Atec had already undertaken two transactions in computer chips (CPUs) and intended to trade in mobile phones. Mr Kalia also expressed an interest in trading in uncut diamonds. HMRC instructed Mr Kalia to clear all the VAT registration numbers of Atec's trading counterparties through HMRC's Redhill office.

57. Mr Kalia attended HMRC's Maidenhead offices on 13 May 2005 and met an HMRC officer, Mr Gilley. Mr Gilley had previously attended Atec's offices, but had found that Mr Kalia was not present. From documents collected on that occasion, Mr Gilley noted that 14 of Atec's transactions in January and April 2003 were found to be transactions in which Atec had purchased from traders using hijacked VAT registrations (Inex and Hanard).

58. Later, on 13 May 2003, Mr Gilley asked Mr Kalia about the transaction in which Atec had purchased computer components from a company called Dialer Select and had sold to a company called Thunderdraw – the purchase and sale prices were identical and the supplier and customer both had the same address. Mr Kalia said that  
5 he had not noticed the identical address and that the lack of profit from the deal was simply because he wanted to be seen to be “ticking over”. In cross-examination Mr Kalia, in relation to this point, described himself as “a bit of a bone head.”

59. Mr Gilley then discussed with Mr Kalia the Joint and Several Liability provisions which had been recently introduced. The provisions (explained in Notice  
10 726) provided that, in certain circumstances, a trader could be made jointly and severally liable for the unpaid VAT of another VAT-registered business. Mr Kalia said that he checked VAT Registration Numbers (“VRNs”) with HMRC’s office in Redhill and that his supplier had signed a statement of ownership of the goods. Mr Gilley then asked how his supplier could sign that statement when Atec was making  
15 the bulk of the payment to an EU supplier which was not Atec’s supplier (i.e. a third party payment). The Mr Gilley’s note of the meeting records Mr Kalia as saying:

“He says he didn’t know and hadn’t been sure about this himself.”

60. When cross-examined about this, Mr Kalia said that he had not understood this at the time. He claimed did not see it as a warning sign. He added that at that time he  
20 had an anti-establishment view towards HMRC which had subsequently changed.

61. Mr Kalia was then asked by Mr Gilley what checks he made of the goods. Mr Kalia said that he made no checks as “it is not his problem.” The note of the meeting records Mr Kalia as saying that he did not care what was in the boxes as it was “not  
25 my money” – if it had been his money he would have checked. He said that he did not incur inspection costs from freight forwarders. When cross-examined on this point Mr Kalia denied that he did not care about what was in the boxes claimed that he was really asking Mr Gilley to explain why he should care about these matters.

62. The note of the meeting records a discussion about third-party payments (i.e. payments made by Atec not to its own supplier but to a third party). Mr Kalia said that  
30 as far as he was concerned there was no problem because third-party payments were not illegal. Mr Gilley pointed out that what was happening was that Atec were paying VAT to an overseas EC supplier when that supplier would not have charged VAT on their supply to the UK. Mr Kalia denied that he was not concerned about third-party payments and likened the situation to when he used the bank account of Outernational  
35 Ltd (another company owned by Mr Kalia) before Atec had its own bank account.

63. Finally, Mr Gilley asked Mr Kalia whether he had actually read any of the guidelines, in respect of due diligence checks, contained within the various Budget notices. Mr Kalia said that he had not really done so and believed that the provisions  
40 only came into force from 10 June 2003. Mr Kalia said, when cross-examined, that he could not recall what the guidelines were and accepted that he may well have said what was recorded in the note of the meeting.

64. Mr Kalia confirmed that Mr Gilley's note was correct but said it was "a little bit out of context." We did not find Mr Kalia's comments in cross-examination relating to Mr Gilley's note convincing.

5 65. Barclays wrote to Atec on 12 September 2003 stating that it was closing Atec's bank account. The letter stated: "The decision is not a personal one. However the Bank is uncomfortable over the way the sector is going forward and this is the reason behind our decision." In addition, the Royal Bank of Scotland informed Atec on 13 January 2004 that it no longer wished to provide Atec with banking facilities.

10 66. In a letter dated 9 February 2004, HMRC wrote to Atec setting out the conditions for zero-rating its supplies, the documentary evidence required for proof of exports and dispatches and referring to the checks listed in Notice 726 to ensure the integrity of Atec's supply chain.

15 67. On 22 April 2004, Mr Rod Stone, a senior HMRC officer, wrote to Atec in response to a letter from Atec dated 16 January 2004 which, evidently, concerned Barclays' decision to close Atec's account. Apparently, Atec had asked Mr Stone to give various confirmations concerning Atec's cooperation with HMRC and to confirm that Atec always carried out reasonable checks as suggested in Notice 726. Mr Stone declined to give these confirmations. As regards the former, he observed that only Atec knew the true level and extent of its cooperation with HMRC. As regards the  
20 latter, Mr Stone stated:

25 "Similarly I cannot confirm whether you always carry out reasonable checks as suggested in Notice 726 – Joint and Several Liability. Nevertheless, if you make checks to ascertain the integrity of the supplier and customer and give proper credence to the results, this should prevent you becoming caught in a fraudulent supply chain. Again these are matters known only to you.

30 However I do note that in the past, you have received a number of letters from Customs informing you that you have been buying goods from traders using 'hijacked' VAT registrations, from missing traders and also from defaulting traders all of which has resulted in a significant loss of tax. This also resulted in you receiving a warning letter from Customs informing you that if you failed to properly verify your suppliers you may be subject to security action under the budget provisions. This all suggests that in the past you may not have given  
35 any proper credence to the results of checks you see you make."

68. We were not taken to any reply from Atec to Mr Stone's letter. Nonetheless, in cross-examination Mr Kalia claimed that because he was not aware of the nature of MTIC fraud he paid less attention to his customers than he did his suppliers.

40 69. HMRC officers visited Atec's premises on 17 May 2004. The officers explained to Mr Kalia that they were carrying out verifications on transactions that Atec had carried out involving mobile phones and CPUs during September, October and December 2003 and January to April 2004 as part of the process to consider the application of the Joint and Several Liability provisions to those transactions.

70. When dealing with its suppliers, Mr Kalia informed the officers that Atec obtained certificates of incorporation and VAT registration, “sometimes” letters of introduction and bank details. Atec also carried out Redhill checks. The officers noted that Mr Kalia did not obtain trade references, supplier declarations or third-party checks into the background of the companies with which Atec traded. In addition, Mr Kalia did not carry out inspections of the goods nor did he request freight forwarders to do so.

71. Furthermore, the officers noted that all the deals carried out in September and October 2003 were the subject of third-party payments by Atec – notwithstanding the warnings given by Mr Gilley at the meeting on 13 May 2003. The officers warned Mr Kalia about the consequences of making third-party payments – his supplier was not paid enough to make its VAT payments and the remainder of the payment was made outside the UK – but Mr Kalia, according to the note of the meeting, said he “still thought it was okay and that how his supplier paid his VAT was his problem.”

72. Mr Kalia was questioned by the officers about the fairly constant mark-ups that Atec made on these transactions. He replied that he generally worked on a 0.5% to 1% margin and that it was likely to be much the same throughout the chain. Later in the interview, Mr Kalia was asked why, when the prices of the goods fluctuated so much, his mark-up remained the same. Mr Kalia replied that he was “too busy, it was easier just to put 50p or one pound on each item.” When asked if he contacted several companies to get the best price, Mr Kalia stated that he did not.

73. In cross-examination, Mr Kalia effectively confirmed the accuracy of the note of the 17 May 2004 meeting although he believed that he did require supplier declarations. He accepted that he did not undertake third-party checks into the backgrounds of his counterparties and did not obtain inspection reports in respect of the goods. He also accepted that all of Atec’s transactions in September and October 2003 involved making third-party payments, notwithstanding the warnings he had received on the subject. Mr Kalia attributed his attitude to his “anti-establishment” views which, he said, had changed in December 2003.

74. The next recorded visit by HMRC officers to Atec took place on 23 March 2005. One of the HMRC officers, Mr Wingrove, discussed Notice 726 with Mr Kalia who confirmed that the Notice had previously been issued to him.

75. HMRC wrote to Atec on 22 July 2005 in relation to Joint and Several Liability. The letter referred to three transactions in September 2003 in which the supplier was a company called Zenitec Ltd. HMRC stated their belief that Atec had reasonable grounds to suspect that VAT would go unpaid in relation to these three transactions and that Atec was, therefore, liable for £463,847.58. The letter records the statement by Mr Kalia to an HMRC officer on 16 September 2003 to the effect that Mr Kalia had reservations about Zenitec, but continued to do the deals and made third-party payments under an arrangement which saw the company receive less money from Atec than the VAT due from them on the supply.



76. On 4 August 2005 HMRC wrote to Atec issuing a notice of a requirement to give security for VAT in relation to the Joint and Several Liability letter of 22 July 2005 and a further letter on the subject was written by HMRC to Atec on 18 October 2005.

5 77. There was a further visit by HMRC to Atec on 11 August 2005. The meeting quickly reached an impasse with HMRC and Atec refusing to answer each other's questions. HMRC had requested the meeting in order to complete an HMRC questionnaire. Mr Kalia served a list of 13 questions relating to the questionnaire and would not complete the questionnaire unless his questions had been answered. HMRC  
10 served a Notice of Joint and Several Liability on Mr Kalia at the end of the meeting.

*The "warning letters" of 16 March 2006*

78. Next we come to two letters ("the warning letters") written by HMRC (Mr Wingrove) to Atec on 16 March 2006. These letters were, therefore, written in the month before the first period under appeal.

15 79. The first letter related to enquiries by HMRC into transactions carried out by Atec in the VAT period 05/05. The letter stated that, of the 12 transactions selected for verification, every transaction commenced with a defaulting trader and resulted in a loss of revenue exceeding £328,000. The letter referred to Atec's invoice number and its customer's name (in this case a UK company called Digi Trade Ltd), the  
20 invoice date and the net value of the transaction.

80. The second letter related to Atec's VAT period 12/05 and referred to two transactions in which Atec's customers were A/S Comitel and Mobile World GmbH (a company which, as we shall see, was run by a Mr Schmitt). Again, HMRC noted that both transactions commenced with defaulting traders and that they had resulted in  
25 a loss of revenue exceeding £41,841. The second letter gave the same type of detail (e.g. invoice numbers etc.) as the first letter.

81. Both letters stated:

30 "As explained in Notice 726, where you have genuinely done everything you can to check the integrity of the supply chain, can demonstrate you have done so, have taken heed of any indications that VAT may go unpaid and have no other reason to suspect VAT would go unpaid, the joint and several liability measure will not be applied to you.

35 However, if you knew, or had reasonable grounds to suspect, that VAT would go unpaid then the measure [joint and several liability] can be applied to you. From your records you will be able to ascertain who supplied you with the goods detailed above, and you may wish to consider what appropriate action is needed to ensure that the VAT does not go unpaid in respect of any future transactions."

82. The suppliers in respect of the transactions in 05/05 period, as we shall see, were Hendon Import and Export (“Hendon”) and another company called Quanteq and in the 12/05 period was London Mobile Communications Ltd (“LMC”).

5 83. In his witness statement Mr Kalia denied having received these letters. Mr Kalia stated:

“No such letter was received by ATEC and our track record shows that all HMRC letters of query or otherwise with the exception of repayment confirmation letters were responded to.”

84. In a subsequent witness statement Mr Kalia stated:

10 “The Commissioners allege they notified Atec of tax losses in chains from suppliers London Mobiles and Hendon Import and Export and that Atec took no heed of this. I cannot stress enough my objection to this outrageous accusation.”

85. Atec’s opening submissions also contained the following paragraphs:

15 “2.9 In relation to this appeal, HMRC failed to provide any specific warnings to the [Atec] and have claimed that two specific warning letters were issued on 16 March 2006. [Atec] challenges that they received the letters the respondents have sought to rely upon.

...

20 The appellants maintain that the warning letters dated 16 March 2006 ... were never received. [Atec] had a history of responding to all letters from HMRC and on a balance of probabilities, is unlikely to disregard such an important warning in view of the serious commercial consequences it could not afford to risk at the time.”

25 86. On 24 March 2015, on the first day of the hearing, Ms Kalia produced a supplementary witness statement producing the documents (mainly emails and correspondence between HMRC and Atec or its advisers) referred to in Appendix 2 to Atec’s opening submissions. Ms Kalia’s witness statement referred to the fact that  
30 “the appellant has attached correspondence in full between HMRC and Atec in Appendix 2. This comprises of email chains, letters to and from the parties, between 1 and 31 March 2006.” Neither of the warning letters was included amongst the documents attached to Ms Kalia’s witness statement, consistent with Atec’s assertion that it had never received the two warning letters.

35 87. During examination in chief by Mr Holland, Mr Saunders referred to two letters from Atec to HMRC (Mr Wingrove) dated 21 March 2006 and 28 March 2006. These letters (“the reply letters”), signed by Mr Kalia, were plainly replies to the warning letters. The reply letters were to be found amongst the 26 volumes of exhibits to Mr Saunders’ witness statements.

40 88. The letter of 21 March, which was a reply to the second warning letter, informed HMRC that Atec’s supplier in respect of the two invoices in question was LMC. The letter stated that initial company information (including a VAT certificate,

certificate of incorporation and letter of introduction) had been exchanged. The information had been faxed to HMRC's office in Redhill and a faxed verification was received. Companies House reports had been bought and the company was credit checked. The letter then referred to the fact that Mr Kalia had visited the premises of LMC and met the director (Mr Darren Leitch). The letter stated that Mr Kalia had obtained the passport and proof of home address of Mr Leitch and cross-checked this against the home address supplied on the "Creditsafe report." Mr Kalia wrote that after having assessed all the information collated, "we were satisfied that the supplier was suited to enter into commercial negotiations." The letter continued by assuring HMRC that whenever Atec issued a purchase order to LMC, it always ensured that they signed and faxed back a "supplier declaration." The final full paragraph of the letter stated:

15                               "Based on the information we have collated on London Mobile Communications Ltd, we recommend that contact is made with Darren Leitch... to establish what precautionary measures they take to validate their supplier(s)."

89. The letter of 28 March 2006 was in the same terms and was obviously a response to the first letter of 16 March 2006. The letter stated that Atec's suppliers in respect of the 12 invoices in question had been Hendon and Quanteq Ltd.

20 90. LMC and Hendon were both suppliers of Atec in respect of some of the appealed deals (LMC as regards five deals and Hendon as regards one deal<sup>2</sup>).

91. The reply letters, like the two warning letters, were omitted from the documents attached to Ms Kalia's witness statement.

25 92. Unsurprisingly, Mr Kalia was cross-examined at some length on the warning letters and the reply letters.

30 93. Mr Kalia accepted that he must have received the two warning letters and that he had sent the reply letters, although he said that he did not remember the two warning letters or the reply letters. At first, Mr Kalia suggested that the two warning letters only referred to his customers, rather than his suppliers but he was then driven to accept that he had identified the suppliers in the reply letters. Next, Mr Kalia suggested that the four letters may have been lost when Atec moved offices. This, he said, might explain why the letters from Mr Wingrove were missing from the file of correspondence from March 2006 which was attached to Ms Kalia's witness statement. Mr Kalia then said that the reply letters had been sent electronically and would have been on Atec's computer database. Atec's server had, however, been uplifted by HMRC and when it was returned was found to be corrupted. Accordingly, Mr Kalia had had to rely on backup tapes.

94. In addition, later in his evidence, Mr Kalia claimed that he was "phasing out" LMC and Hendon as suppliers to Atec. He thought it likely that he had discussed the

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<sup>2</sup> Hendon was also the supplier to Atec in respect of deal 53. The appeal in respect of this deal was withdrawn.

“phasing out” of one of these suppliers with his sister, Ms Kalia. Mr Kalia accepted that he had continued to trade with LMC and Hendon notwithstanding the two warning letters. He accepted that it was a matter of making money because he probably could have obtained the goods from a different supplier. He regarded the risk of having to pay a Joint and Several Liability assessment if it was imposed upon him as being small.

95. We shall deal more fully with the question of the alleged corruption of the computer server later in this decision but we consider that that did not, in any event, explain the omission of these four items of correspondence. In the light of the reply letters it cannot be doubted that the two warning letters were received by Atec. It seems to us highly unlikely that the two warning letters (which were sent to Atec in the post) would have got lost in the alleged office move and that, as well, the two reply letters were lost because of a corruption of the server, but all the other relevant correspondence relating to March 2006 survived – only these four letters went missing. That scenario seems to us completely implausible. Only those four documents were omitted from the correspondence attached to Ms Kalia’s witness statement. Moreover, Mr Kalia’s shifting explanations did not seem to us to be remotely credible. Instead, Mr Kalia seemed to be desperately casting around for plausible explanations.

96. Furthermore, we do not consider it likely that Mr Kalia would remember his decision to “phase out” LMC and Hendon as suppliers but forget the two warning letters which caused him, so he claimed, to consider dispensing with their services as suppliers.

97. In her supplementary closing submissions Ms Kalia attempted to draw a distinction between joint and several liability warning letters and simple warning letters. As we understood it, the implication of her submission was that Mr Kalia may, in his witness statement, have denied receiving a warning letter on the basis that he believed he had not received a joint and several liability warning letter. We regarded this submission as being of no merit. The letters should plainly have warned Mr Kalia about the dangers of dealing with Hendon and LMC but he continued, nonetheless, to enter into transactions with these two companies and (as we shall see, did so without carrying out due diligence checks of substance.

98. Further Ms Kalia argued that the letters were ambiguous and hard for a lay person to understand. We did not share Ms Kalia’s assessment. She also argued that in his evidence and cross-examination in relation to these letters, Mr Kalia had misunderstood the level of risk Atec faced by entry into transactions with Hendon and LMC. Insofar as we understood her argument, we did not consider it meritorious. The level of risk faced by Atec did not seem to us to be relevant.

99. The receipt of the two warning letters should plainly have put Atec on notice that, if it continued to deal with LMC and Hendon, it did so at its peril. Nonetheless, in the periods under appeal, Atec continue to trade with LMC (Atec’s supplier in deals 1, 5, 6, 22, and 23) and Hendon (Atec’s supplier in deal 52).

100. We have concluded that Atec deliberately suppressed the two warning letters (as well as the reply letters) because it would be obvious that, in relation to the periods under appeal, if it could be shown that it had received those letters it would then be placed in some difficulty in explaining why it continued to trade with LMC and Hendon. It plainly overlooked the fact that the reply letters lurked in the 26 volumes of exhibits to Mr Saunders’ witness statement. We regard this as a deliberate and serious attempt to mislead this Tribunal, which we take into account in assessing the credibility of the Atec’s witnesses.

*Were there fraudulent tax losses?*

101. In this section and in Appendix Part 1 we address the first two disputed issues: was there a loss of VAT incurred by HMRC and, if so, was the loss caused by fraud?

102. Essentially, HMRC allege that 45 of the transactions under appeal (deals 1 (1411), 4-12 (1114 – 1422), 16-37 (1427-1452) and 40-52 (1457-1472) traced directly to a fraudulent tax loss caused by a defaulting trader.

103. As we have already noted, in relation to 11 of those 45 deals, deals 32 (1447) and 41-51 (1459-1469), HMRC acknowledge that they have been unable to trace the transaction chain beyond a “blocker” trader RX Tech Solutions Ltd (“RX”). HMRC allege that, on the basis of RX’s pattern of trading, on the balance of probabilities these transactions traced back to fraudulent tax losses.

104. As regards the remaining seven deals, HMRC allege that they were part of a contra-trading scheme designed to defraud HMRC. HMRC allege that there were three different contra-traders: A-Z Mobile Accessories Ltd (“A-Z”), Wetherby Fashions Ltd (“Wetherby”) and Jag-Tec Limited (“Jag”).

105. In summary, HMRC allege that there were 13 defaulting traders and three contra-traders as set out in the table below:

<i>Deal</i>	<i>Alleged Fraudulent defaulter/contratrader</i>
1 (1411), 5 (1415) & 6 (1416)	Apollo Communication Centre Ltd
2 (1412), 3 (1413) & 38 (1455)	A-Z Mobile Accessories Ltd (alleged contra-trader)
4 (1114)	Woven Art Gallery Ltd
7 (1417)	C & B Trading Ltd
8 (1418)	Midwest Communications Ltd

9-12 (1419-1422)	USM IT Suppliers Ltd
13-15 (1424-1426)	Wetherby Fashions Ltd (alleged contra-trader) (conceded)
16 (1427)	Okeda Ltd
17-23 (1428-1434)	Clifton Communication Ltd (conceded)
24-26 (1434-1437) & 28-29 (1439-1440)	Golden Limited
27 (1438)	Crossview Consortium Ltd
30-31 (1445-1446), 33-37 (1448-1452)	Astar Central Limited
32 (1447), 41-51 (1459-1469)	RX Tech Solutions Ltd (alleged “Blocker”)
39 (1456)	Jag-Tec Ltd (alleged contra-trader)
40 (1457)	Universal Appliances Ltd (conceded) & Daraj Trading Ltd
52 (1470)	Phone City Ltd

106. In relation to Clifton Communications, Universal Appliances, Eutex, Prestige 29 and Advertising South, as HMRC pointed out, Atec had conceded the issue that there was a tax loss attributable to the fraud of these companies in a letter dated 3 March 2014 in response to directions of Judge Mosedale dated 8 January 2014. In that letter Atec also accepted that fraudulent tax losses were attributable to the alleged contra-trader, Wetherby.

107. There was some confusion on the part of Ms Kalia (and of HMRC) at the hearing about what had been conceded. In her closing submissions Ms Kalia denied that any concessions regarding fraudulent tax losses had been made in respect of Clifton Communications, Universal Appliances, Eutex, Prestige 29 and Advertising South. When Atec’s letter of 3 March 2014 was then pointed out to her, Ms Kalia merely observed that Atec continued to dispute that there was any connection between Atec and these fraudulent tax losses.

108. In addition, the letter of 3 March 2014 also conceded that the evidence in relation to a taxable person purporting to be Grange Solutions UK Ltd also demonstrated that HMRC had suffered a fraudulent tax loss.

109. In our view, it was plain that the letter of 3 March 2014 conceded the issue of fraudulent tax losses in relation to the six companies mentioned above and that Ms Kalia accepted this, although maintaining that connection to these fraudulent tax

losses was still disputed. Even if Ms Kalia did not accept this point, we consider it would have been unfair and unjust to allow Atec to resile, without warning, from a concession plainly made in response to Judge Mosedale’s directions.

5 110. As regards the alleged defaulting trader, Astar Central, HMRC were under the belief that Atec had also conceded the fraudulent tax loss issue in relation to that company. The HMRC officer giving evidence in relation to Astar Central was Ms Riley. Ms Riley also produced a witness statement in relation to Advertising South Ltd, an alleged defaulting trader in one of the “dirty” chains relating to A-Z, the alleged contra-trader. In the letter of 3 March 2014, in our view, Atec did not concede  
10 the fraudulent tax loss issue in relation to Astar, but did concede it in relation to Advertising South Ltd. In relation to one of Ms Riley’s witness statements, Atec indicated that it disputed paragraphs 67, 69 and 70. Ms Riley’s witness statement in relation to Advertising South Ltd only contained 56 paragraphs, whereas the one in relation to Astar contained 70 paragraphs. For that reason, we considered that the  
15 concession in the letter of 3 March 2014 plainly related to Advertising South.

#### **Defaulting traders – arguments by Atec**

111. In its opening submissions, Atec confirmed that it was not disputing the evidence of the numerous HMRC officers who gave witness statements in relation to the alleged defaulting traders. Instead, Ms Kalia submitted that the facts drawn from  
20 those witness statements did not discharge HMRC’s burden of proof in relation to the question whether there was a tax loss and whether that tax loss arose by reason of fraud.

112. We should make some general points about arguments put forward by Atec in relation to the issue of fraudulent tax losses.

25 113. Ms Kalia argued, in relation to most of the alleged defaulting traders, that because no accusation of or prosecution for fraud had been brought against the defaulter and no criminal convictions had been obtained, it was not possible for HMRC to argue that the defaults of those traders were fraudulent.

30 114. In our view, this argument plainly has no merit. It is our duty to form a judgment, on the basis of the available evidence, on the question whether a tax loss has arisen and, if so, whether it has arisen as a result of a fraudulent default. In reaching our judgment we should take account of all the relevant circumstances arising from the evidence. The standard of proof is the ordinary civil standard of the balance of probabilities. It is not necessary that the alleged fraudulent conduct should  
35 have resulted in a criminal prosecution or a criminal conviction. In any event, even if the fraudulent default had resulted in a criminal conviction, in view of the fact that these events took place over 10 years ago, it is possible that any criminal conviction would be “spent” under the Rehabilitation of Offenders Act 1974 (as amended by the Offender Rehabilitation Act 2014). In that case, if Ms Kalia’s argument were  
40 accepted, it would be almost impossible to prove that a fraudulent default had occurred. That cannot be a sensible or correct outcome.

115. Secondly, Ms Kalia argued that it was the use of Regulation 25 directions by HMRC to shorten VAT periods of those traders which it suspected of involvement in MTIC fraud and the resort made by HMRC of de-registering such traders that, in fact, led to the defaults. It was impossible to trade without a VAT registration number.  
5 Moreover, Ms Kalia suggested that a trader which knew it would default might be tempted to make the default as large as possible after HMRC had begun to issue their assessments following the company's deregistration. In addition, it may, Ms Kalia argued, make little commercial sense to appeal assessments because this could take years and incur very high costs.

10 116. These arguments, in our view, are misguided. As the evidence (summarised in Appendix Part 1) will show, the use of Regulation 25 directions and the exercise of the power to deregister traders were actions taken by HMRC only after it became apparent to HMRC that, for example, the trader was failing to cooperate, failing to disclose records, misleading HMRC as to the its trading activities or disappearing  
15 from its principal place of business. It is abundantly clear from the evidence that these powers were exercised in order to protect the revenue. It is also clear from the same evidence that the defaulting traders had no intention of complying with their VAT obligations – their intention was to carry out a fraud.

117. As for the suggestion that the use of Regulation 25 directions and deregistration  
20 powers might tempt a trader to increase its default, this seems to us a bizarre argument. Incurring additional VAT liabilities with no intention of making returns or accounting for tax would itself be a further fraud. It is hard to see how such an argument could advance Atec's case.

118. Furthermore, we obviously accept that appealing an assessment, if the appeal is  
25 pursued through the tribunals and the courts, may lead to considerable costs. But before litigation is commenced, one would expect an honest trader who believed that it had been wrongly deregistered or assessed to have taken the formal step of filing a notice of appeal and then disputing the matter in correspondence at relatively modest cost. As we shall see, many of the alleged defaulting traders simply disappeared.  
30 There was no evidence that the costs of a dispute deterred them from lodging an appeal.

119. We should also add that in determining whether HMRC has incurred a tax loss, it is not, in our view, necessary for there to be an assessment. This issue was considered by this Tribunal (Judge Anne Scott and Mrs Myerscough) in *Aircall  
35 International Ltd & Anor v Revenue and Customs* [2016] UKFTT 406 (TC) (09 June 2016) at [63]:

40 “63. It was argued for the appellants that without an assessment under Section 73 of the Value Added Tax Act 1994 or the determination of a debt due to the Crown in respect of an invoice under Schedule 11 (paragraph 5) of that Act no recoverable right to VAT is established. In the absence of an assessment, the right to tax had not crystallised in the form of an enforceable debt and only if the debt was recoverable could a lack of recovery amount to a loss to the Revenue. That is an argument which was advanced in the FTT appeal in *S&I Electronics v*



*HMRC [2009] UKFTT 108 (TC)* and it was comprehensively rejected at paragraphs 61 and 62 which read as follows:

5 “61. We do not agree. The issue is whether there is, in the words of paragraph [59] of Kittel, ‘fraudulent evasion of VAT’. It seems to us that this will be the case where, as the result of fraud, the State does not receive the VAT it ought to have received had the relevant legislation been complied with by the trader. The question of whether or not an assessment has been made is irrelevant.

10 62. Article 10 of the Sixth Directive indicates that the tax becomes chargeable when the tax authority becomes entitled to claim the tax from the person liable to pay. In that context there is fraudulent evasion where the person who is liable to pay, because of the relevant chargeable event (the delivery of the goods) has occurred, defeats the entitlement of the State by fraudulent means; that entitlement exists not  
15 by virtue of administrative action but by reason of the occurrence of the chargeable event. The ECJ said in *Société Financière d’Investissements v Belgium* [2000] STC 164 at 23, that Article 10 ‘enables the date on which the tax debt arises to be determined’. What is at stake in our view is fraudulent evasion of the payment of that debt,  
20 not of a later assessment.”

Although not bound by that decision we entirely agree with that analysis. An assessment is not necessary. It is a mechanism for recovery of tax that is due. In our view the tax loss occurs when a trader does not account for the output tax.”

25 120. We respectfully agree with both decisions.

121. We set out, in the Appendix Part 1 to this decision, our findings and conclusions in relation to fraudulent tax loss. In short, we have concluded that each one of Atec’s 52 deals involved a fraudulent loss of VAT for the reasons given in detail in the Appendix Part 1.

### 30 **Connection to fraud**

122. In the Appendix Part 2 we have analysed each of the alleged deal chains in respect of the 52 appealed deals. We have concluded that each of Atec’s appealed deals was connected to the fraudulent evasion of VAT.

35 123. In reaching this conclusion we have considered the arguments put forward by Atec regarding the issue of connection and to which we now turn.

124. Atec’s primary case in relation to whether its deals were connected to the fraudulent evasion of VAT was, in our view, based upon a misunderstanding of the law.

40 125. In short, Atec argued that there had to be a “triple lock”. In other words, Atec submitted that in order to prove “connection” HMRC had to show a money trail (i.e. a series of payments), a paper trail (e.g. invoices and other deal documents) and a stock

trail (i.e. documents evidencing the movement of goods). All three types of proof had to be present, according to Atec, before connection to fraud could be proved.

126. This submission was, in our view, entirely misconceived. The burden of proof on HMRC to establish that Atec’s deals were connected to the fraudulent evasion of VAT is simply that it must do so on the balance of probabilities. How it discharges that burden of proof will vary from case to case and from deal to deal. HMRC submitted that in the context of MTIC fraud, where participants in the fraud relied on minimal documentation to justify movements of money and goods, it would be an impossible burden for HMRC, reliant upon the production of documentation by other parties, to have to prove a connection to fraud in the manner proposed by Atec. We agree. Ms Kalia suggested that there could be a situation where credit notes had been issued and deals cancelled. Save in respect of one instance (which we deal with in relation to a defaulting trader called Apollo), no evidence was produced of any credit notes cancelling invoices and we consider that it would be impossible for HMRC to be required to prove that there were, for example, no credit notes. This would involve HMRC proving a negative. We therefore reject Ms Kalia’s submissions on this point.

127. Moreover, as we pointed out to Ms Kalia in the course of the hearing, the Upper Tribunal (Judges Berner and Hellier) in *Eyedial Ltd v HMRC* [2013] UKUT 0432 (TCC) (“*Eyedial*”) at [164] and [165] held that the FTT was entitled to find a connection with fraud based on the invoice chain alone. The Upper Tribunal said:

“[164]...The tracing of the deal chains through invoice dates is clearly part of the factual matrix on which a tribunal is entitled to base its decision as to connection with fraud. Invoices on the same, or proximate, dates for the same model and quantity of the goods in question, at equivalent prices, are relevant facts in any enquiry of this nature. Indeed, such evidence is far more likely to be material to the tribunal’s determination of the deal chains than payment dates or dates of delivery, which of their nature may lack any congruity with the making of the deal itself....”

[165]... The linkage between transactions is not primarily evidenced by the payments; *it is evidenced, as we have discussed, through invoices and other documentary material....*” (Emphasis added)

128. We respectfully agree with these observations. We do not, however, understand the Upper Tribunal to be holding that only an invoice chain can constitute sufficient proof of connection to fraud, as its reference to “other documentary material” clearly indicates. The Upper Tribunal was addressing an argument put forward by the appellant in that case that the FTT had been wrong to use invoice dates rather than, as the appellant contended, payment dates in order to establish connection. It was not saying that only invoices could constitute adequate proof. Obviously enough, the type of evidence necessary to discharge HMRC’s burden of proof will, as we have said, vary from case to case.

129. Furthermore, Atec argued that this Tribunal must analyse every broker chain (i.e. the “dirty” chains) entered into by the three alleged contra-traders (rather than the “clean” chains) to prove that Atec’s deal which could be traced to that contra-trader

was connected with fraud. HMRC submitted, and we accept, that *Eyedial* was also authority for the proposition that it is not necessary for us to analyse every transaction in the contra-trader's "dirty" chains in order to reach a conclusion that Atec's transactions featuring contra-traders were connected with fraud. The Upper Tribunal said:

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“159. A different tracing exercise applies to the question of connection to fraud in a “dirty” chain by means of contra-trading. There, as we have explained, the connection arises as a result of the direct chain leading from the broker to the contra-trader, and then the contra-trader's offset of the output tax arising in the “clean” chain by input tax incurred in transactions in one or more different chains, with different goods, but leading back to one or more defaulting and fraudulent traders. As we have said, the nature of contra-trading, which is designed to conceal the connection of the broker's transactions with fraud, is that there is no neat correlation between the transactions giving rise to output tax in the contra-trader, and those giving rise to the offsetting input tax.

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160. This point was raised by Miss Field [for *Eyedial*] when she referred to the fact that Mr White's evidence (which was confined to the contra-trading deals) dealt with the netting or matching of input tax claims against output tax and used a sample of the tax loss chains. She argued that if the FTT had analysed the evidence, rather than, as she submitted, simply accepting it at face value, it could not have come to the conclusion that it did. In particular, argued Miss Field, there were no invoices, delivery notes or shipping notes to support any supposed fraudulent chain at the relevant time.

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161. We do not accept Miss Field's submissions in this respect. It is not necessary for the tribunal to verify every transaction of the contra-trader, and every “dirty” chain involving the contra-trader in the relevant period.”

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130. HMRC also cited the decision of the Court of Appeal in *Fonecomp Ltd v HMRC* [2015] EWCA Civ 39 at [34] where Arden LJ endorsed Judge Bishopp's conclusion in *Universal Enterprises (EU) Ltd v HMRC* [2014] STC 1515:

35

“In conclusion, I agree with paragraph 22 of the judgment of Judge Bishopp in *Universal Enterprises (EU) Ltd v Revenue and Customs Comrs* [2014] STC 1515, cited by HMRC:

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"22. The argument that a trader in a clean chain cannot be affected by anything which happens in a dirty chain is in my judgment wholly misconceived. Mr Young argued that there is nothing inherently wrong with contra-trading, a statement which, put in that way, is true: a trader who both imports and exports may legitimately organise his sales and purchases so that, at the end of a VAT period, he has little to pay, or a repayment claim. If he does so for reasons of cash flow, his conduct is unexceptionable. But that is not the reason for the contra-trading seen in cases of this kind. As has been said many times, not least by the then Chancellor in *Blue Sphere Global Ltd v Revenue and Customs Commissioners* [2009] STC 2239, its purpose is to conceal the fraud in

the dirty chain and to make it harder to combat. The appellants' argument necessarily treats "clean" as synonymous with "innocent", but a clean chain in cases of this kind—that is, one in which each of the traders accounts correctly for VAT—is not innocent; it is an integral part of the fraudulent scheme. Even if I entertained any doubt (which I do not) that as a matter of EU law there is sufficient connection between a trader in the clean chain and the default in the dirty chain, there remains an insuperable connection with the fraudulent purpose of the clean chain.””

5  
10 131. Therefore, HMRC submitted that, if we concluded that each of the three alleged contra-traders was involved in a dishonest offsetting of its input VAT claimed in broker chains against the output tax liability generated by its acquisition deals, the inevitable conclusion was that Atec’s transactions in the alleged contra-trading deals were connected with fraud, without the need to trace every chain in which the contra-traders were involved. We agree for the reasons given above by Judge Bishopp (and approved by Arden LJ). We have found (Appendix Part 1) that each of the three  
15 contra-traders (A-Z, Jag Tec and Wetherby) were, as fraudulent contra-traders, involved in the dishonest offsetting of inputs and outputs in its broker and acquisition deals respectively. We have also, however, considered the evidence to determine  
20 whether Atec’s deals were connected to those three contra-traders – see Appendix Part 2.

132. At the main hearing of the appeal, only a relatively few points of principle were discussed in relation to the issue of “connection to fraud”. The parties’ detailed submissions in relation to the evidence of “connection” were contained written  
25 submissions accompanying the opening and closing submissions. When the Tribunal examined the submissions and the underlying evidence (the exhibits to one of Mr Saunders’ witness statements) it noted that in relation to a number of deal chains there were references to “deal listings” or “trader listings” in relation to the following  
30 traders: Easy MSI, IPartner and Venus. Although these listings were part of the evidence, there was no explanation concerning their provenance. The Tribunal considered that it required clarification of these exhibits and accordingly on 21 June 2016 it directed that HMRC should provide a further Witness Statement from Mr Saunders clarifying the source of these documents, the identity of the person  
35 compiling these lists, and the source of the information contained in the lists. We also asked whether the documents referred to in the lists (e.g. invoices) were available and whether they could be produced.

133. Mr Saunders produced a further witness statement (his fifth witness statement) in which he recorded that the deal sheets in respect of IPartner were supplied by IPartner and he provided an email chain supplied by one of his colleagues (Mr Berry)  
40 which demonstrated that the deal sheets had indeed been supplied by IPartner. In relation to Easy MSI, Mr Saunders’ evidence was that the records had been uplifted by HMRC officers and the deals scheduled onto a spreadsheet. Mr Saunders stated, however, that: “it seems that after scheduling the deals the paperwork was misplaced within HMRC and has not been located.” As regards Venus, Mr Saunders stated that  
45 he had spoken to the officer who previously controlled Venus who confirmed that he

had drawn up the deal schedule from the trader's sales and purchase invoices. Mr Saunders then said: "The records are not available to HMRC."

134. We have considered Mr Saunders' further evidence and the further submissions in relation thereto made by Atec at the Tribunal's invitation. We also offered Atec the opportunity to further cross-examine Mr Saunders in relation to his fifth witness statement, although Atec declined the opportunity to do so. In our view, we consider that we can place weight upon the evidence of Mr Saunders and that the listings referred to above can be treated as evidence of the relevant links in the chain for the purposes of establishing whether Atec's deals were connected to the fraudulent evasion of VAT.

135. We should observe, however, that we considered that the manner in which HMRC presented this evidence in relation to deal listings, without explanation, was less than satisfactory.

**Did Atec know, or should it have known, that its transactions were connected with the fraudulent evasion of VAT?**

136. HMRC argued that Atec's transactions were carried out as part of orchestrated schemes to defraud HMRC and that Atec either knew, or should have known, this to be so.

137. HMRC further argued that, if this Tribunal concluded that Atec's transactions took place as part of a highly orchestrated and efficient fraud, that was relevant to the question of whether Atec knew or should have known that its deals were connected with fraud.

138. In approaching the question whether Atec knew or should have known, we shall consider the various relevant topics individually. We shall, however, in our decision look at all the relevant evidence taken as a whole.

*Freitex GmbH ("Freitex")*

139. Unless otherwise indicated, the following is taken from the unchallenged evidence of Mr Saunders (including the exhibits to his witness statement), which we accept.

140. Atec dispatched (exported) to Freitex the goods concerned in deals 9-12, 13-15, 17-21, 24-29, 30-33 and 40-52. In other words, in 35 of the 52 deals under appeal Atec's customer was Freitex. Apart from deals 40 and 52, these deals were supplied to Atec and/or Wireless 5 by four suppliers: Zain, Team Mobile, LMC and Cybacomms. In all of the deals where Atec sold to Freitex, the goods were delivered to Freitex's transport contractor, MS Kurier.

141. Out of a total of £7 million in dispute in this appeal, £5,672,363.50 of the disputed VAT reclaim relates to the Freitex deals, representing more than 70% of the sums in issue.

142. The German authorities supplied HMRC with the following information.

143. Freitex was established on 26 April 2001. The general manager was Anneliese Gotthal, but according to the German authorities her son, Olaf Gotthal, was the *de facto* manager.

5 144. The objects of Freitex's business were originally to operate launderettes and squash, sauna and fitness centres.

145. A report by Dresdner Bank in relation to suspicious activity noted that the business operated as a dry cleaning business with little or no turnover in February – April 2006. Then, however, approximately €2 million suddenly passed through its account. Mr Gotthal explained to the bank that Freitex was buying and selling left-over stock of mobile phones.

146. Pursuant to enquiries made by the UK, the German authorities discovered that Freitex had, from April 2006 to June 2006, received supplies from various UK firms worth around €100 million. No such intra-community acquisitions or supplies had been declared by Freitex. During a search of Freitex's premises by the German authorities on 11 July 2007, sales and purchase invoices relating to the trading of mobile phones and navigation equipment were discovered, although it appears no books were maintained for the business.

147. The German authorities stated that, with the exception of two transactions (Freitex's sales to Silus BV on 3 July 2006 invoice number 06-20151 and 17 July 2006 invoice number 06-20155), the outgoing CMR documents were stamped with a forged transporter's stamp and the documents bore forged signatures.

148. Goods purportedly purchased by Freitex from Atec were sold to either International Mobiles SRL (Italy) or Koornmarkt BVBA (Belgium).

149. A further report by the German authorities stated that Freitex's main customer, International Mobiles SRL (variously referred to as "International Mobiles" or "International Mobile"), did not account for any acquisitions and was not equipped to receive such large quantities of goods.

150. According to the Italian authorities, International Mobiles SRL was a missing trader involved in carousel fraud and was believed to be involved in fictitious wholesale transactions. In a letter dated 15 February 2010 the tax Italian authorities stated:

35 "[International Mobile SRL] is a missing trader and has been involved in a carousel fraud that has taken place in 2006, in which participated also several UK traders. Currently our trader is in voluntary liquidation...From an audit carried out and information received by the tax authorities in the United Kingdom, it is believed that International Mobile SRL has been specifically set up to carry out fictitious wholesale transactions of mobile phones with other companies involved in the fraud, with the aim of allowing undue VAT refunds in favour of certain traders in the United Kingdom."

151. According to the Belgian authorities, Koornmarkt had been registered for the wholesale of books and periodicals and was run from a small and dirty office on an industrial estate. The company was deregistered by the Belgian authorities on 15 February 2007.

5 152. Mr Kalia told us that he had first met Mr Gotthal through Jurgen Schmitt of Mobile World GmbH (“Mobile World”) at a trade fair in Germany in March 2006. Mr Kalia had previously dealt with Mr Schmitt, who was one of his customers and he understood Mr Gotthal to be Mr Schmitt’s former bank manager.

10 153. In March 2006, Atec had sold stock worth £7,060,322 to Mobile World. In periods 04/06 to 07/06 there were, however, no recorded sales to Mobile World. Instead, Atec sold stock worth in excess of £33 million to Freitex.

15 154. Mr Gotthal was interviewed by the German authorities in Munster Prison on 20 and 31 August and 6 September 2007. Mr Gotthal was advised of his right, as an accused person, to refuse to give evidence. He nonetheless gave a statement which we summarise below.

20 155. Mr Gotthal said that he had been introduced to the mobile telephone business through Mr Schmitt. Mr Schmitt had previously been a client of Commerzbank and, at the time, Mr Gotthal was “looking after” this client’s involvement with the bank. At the time, Mr Schmitt was the managing director of Mobile World in Düsseldorf. At Mr Schmitt’s suggestion Freitex also began trading in the mobile telephone sector in 2006. Mr Gotthal’s statement continued as follows:

25 “Mr Schmitt showed me how the business was done at the firm of Mobile World Limited. This consisted in first of all looking for possible buyers and sellers of mobile phones and then developing the business of buying and selling mobile phones with them. Business payments in Freitex’s case were as a rule made through [FCIB], because this bank could operate the quickest money transfers. The business process was, as stated, very simple. I sought buyers and sellers of mobile phones, clinched the sales then I bought the equipment, and finally I then only had to make sure that I got the CMRs or the export certificates. I can state that I got the client list from Mr Schmitt and then contacted them by telephone at regular intervals.

30 Mr Schmitt did this because he had to share his profit with two other shareholders of the firm of Mobile World GmbH. He did not wish to do this any longer, and he preferred to conduct the business with me alone. Because of this we concluded a contract which gave him 50% of the gross income from buying and selling of mobile phones through Freitex... I can state that the majority of the monies went through the [FCIB].

40 ...

My main purchasing contacts were English companies, for example London Mobile, Atec or Cybercomms. When asked why [Freitex]’s operations stopped suddenly in the 3<sup>rd</sup> quarter of 2006, I can only state that the English were suddenly unable to supply. I discussed this with

Mr Schmitt who told me that the English had suddenly been having supply problems.

...

5 Atec was a big supplier of ours. The supply process as a rule meant that Atec supplied Freitex and Freitex generally forwarded to an Italian purchaser. When asked which transport contractor dealt with the Atec transactions, I can state that it was definitely the firm of MS Kurier....

When asked how many transactions went through MS Kurier, I estimate this to be more than 10.

10 The next accusation levelled at Mr Gotthal was that there were 50 to 60 invoices and documents which went through MS Kurier and delivered onto Italy. It was also revealed to him that investigations carried out at the firm of MS Kurier have shown that only in two cases had business gone through MS Kurier. Furthermore all the papers which are in the  
15 seas documentation and which show MS Kurier to be the transport firm, are to be classed as fake.

In response to this Mr Gotthal stated the following:

I cannot explain how this can have happened. I did not falsify the documents.

20 The interview was now interrupted briefly at the request of the defence counsel, who left the interview with Mr Gotthal for a consultation.

The interview was terminated when the defence counsel returned.”

156. The interview resumed on 31 August 2007, at Munster Prison with the same attendees. Mr Gotthal stated that he was now prepared to provide further statements –  
25 because the previous interview had been terminated at his request. Mr Gotthal described how Freitex’s business was transacted:

30 “The business transactions then took place as follows: in principle Mr Schmitt specified all the tasks which I was to complete on the day. I telephoned Mr Schmitt several times a day about this. In the mornings Mr Schmitt would tell me on the telephone where I could buy which goods and also specified the approximate price for these goods. At the same time he also told me where I could sell the goods onto. I then telephoned the companies and try to transact the business under the conditions specified. This always worked out as well as Mr Schmitt  
35 has said it would. At the beginning I tried, for example, to get a better purchase price, as I wanted to distinguish myself. However in the end this failed, because the price margins that Mr Schmitt had specified to me were always also the final possible prices. Mr Schmitt also specified the freight forwarding agents to use. I also then gave this  
40 information to the sellers. That is I specified the point of delivery to which the goods were meant to be delivered direct to the firm during the transaction procedures. By what means and through which freight forwarding agents the goods came to Germany was not one of my considerations. This was the seller’s responsibility and they had to  
45 select them. Payment for the supply of goods from England to Germany was done by the seller. As a rule my buyers also had to bear



the costs of the transport from Germany to their point of delivery. This thereby ensured that I was never burdened with transport costs, either for the purchase or the sale, apart from a few exceptions.

5 Asked about the document processing I can say that I arranged the deals on the telephone and then sent or received a pro forma invoice and purchase order by fax. The actual final invoices or documents relating to these deals were as a rule not sent to me until a few weeks later by post. The freight forwarding agents' confirmations and statements however were faxed to me by the freight forwarding agent  
10 on the same day of the transaction.

15 When asked again what happened with the payments connected with the business transactions, I can state that in 85% of cases the money was already in my account, although the goods had not yet reached my buyer. I then also arranged for my seller to be paid, although the goods were not yet with my freight forwarding firm. So in principle this was purely a cash in advance situation in the majority of cases."

157. Pausing there, Mr Gotthal, in the first paragraph quoted above, is clearly describing contrived trading. In his third paragraph, Mr Gotthal is saying that Freitex paid for the goods before they were delivered to Freitex's freight forwarding firm. In  
20 other words, Freitex was happy to pay money upfront without receipt of the goods – in which case, there was no obvious reason to "ship on hold".

158. Mr Gotthal continued by explaining that Mr Schmitt began introducing him to the suppliers in England, in particular in London. Mr Schmitt also introduced Mr Gotthal to the freight forwarding firms. Mr Gotthal then described his dealings with  
25 Atec:

30 "... I did get to know representatives from [Atec] personally. The Firm's representative whom I saw in London was Mr Kahlia [sic]. I had already met Mr Kalia at the CeBIT [digital industry trade show]. I also know his sister, Mrs Renee Kahlia [sic], by telephone.

35 I... discussed with Mr Schmitt whether we could not also use MS Kurier as a freight forwarding agent. I also went with Mr Schmitt once to meet Mr Schluter at the firm of MS Kurier.

40 It was during the first transaction which was to be conducted through the MS Kurier freight forwarding firm that I found out for the first time that in fact no goods had been delivered to Germany, that is to say to Munster. I had transacted the business in the normal way, as I had done with other transactions, that is to say I bought from the firm of Atec in London and sold to the Italian buyer International Mobile. However,  
45 after two or three days I asked MS Kurier whether the goods had in fact arrived. Mr Schluter then told me that no goods had arrived. I then contacted Mr Schmitt and confronted him with the problem. He said that everything was alright. I should not worry if there were no goods. However I did have the problem that money had gone through the account but there was no movement of goods. In addition, I did not of course have any documentation at that time either. It was also clear to

me that there could be no freight forwarding documents relating to these deliveries either.

5 Mr Schmitt did however then say to me that we [should] continue to undertake such transactions. And so I subsequently continued to carry out these types of transactions with the sellers and my buyers by telephone. But as a rule the movement of goods did not take place through the firm of MS Kurier in these cases. In initiating and concluding the business transactions I nevertheless did not mention either to my sellers or my buyers that there were in fact no goods. The goods were discussed by telephone, and the deals discussed on the telephone, as if actual goods deliveries were to be expected. I admit that from where we stand this is strange and at the time this seemed strange to me after a while, the business was conducted by telephone as if the transactions were normal transactions, but in fact were not based on any actual movement of goods. I frequently discussed the problem with Mr Schmitt, that there were just not any goods. But he repeatedly told me that I should not worry and everything would be alright. Mr Schmitt also told me that this was a matter of business practice. If we did not conduct this type of business, in principle fictitious transactions, we would be unable to undertake other business dealings with real goods. However Mr Schmitt did not tell me either whether, in the case of these transactions, where no goods went through MS Kurier, any actual goods had been delivered to other freight forwarding firms and other locations. What, therefore, the background to these business dealings was I was unable to ascertain at the time. I then pointed out to Mr Schmitt more and more often, when he specified MS Kurier to me as the forwarding agent, that he should see to it that actual goods were moved. As time went along it got to such a point with me that I said I no longer wished to undertake such fictitious transactions. If I am asked whether these types of fictitious business dealings could have taken place with other freight forwarding firms I can state that at the time there was no other case of a freight forwarding firm telling me that no goods had been presented. From where we stand now I cannot rule out that this had possibly happened with the involvement of other freight forwarding agents. Today I would not put my shirt on any other freight forwarding firm. In the case of the RTR company I am confident that things ran properly with them.

...

40 With regard to the fictitious business dealings, I urged Mr Schmitt to straighten things out so that the documentation could be in order. A few weeks after this I received a parcel via the DHL courier which contained the documentation slips for all fictitious business dealings. I then put these papers to one side and did not link them up with the transactions.

45 In July, after a number of fictitious transactions had been made, I then did a transaction with Atec and actually asked, during this transaction, whether any goods were even there or were to be expected. This was then confirmed. I then asked for the name of the freight forwarding firm through which the goods would be moved. I then called a freight forwarding agent in England to which I had been referred and assured

5 myself whether they did indeed have a goods order for me and the MS Kurier firm. They supplied this and there were then two cases in which the actual movement of supplies took place. The goods were then delivered to Munster and forwarded on by us again from there on the next day. My buyer for the supply of goods was not, however, an Italian buyer in this case, but the firm of Kornmarkt [sic] in Belgium. I had a higher margin with both these supply transactions, so that I took over MS Kurier's delivery costs these transactions.

10 After the last transaction was conducted with the firm of MS Kurier, which was in July, the entire business conducted in the mobile phone sector was virtually nil. As far as I know the movement of goods or transactions in this area came to an end in the middle of August at the latest. After the last transactions had been conducted the business – as I have already stated – was virtually nil.”

15 159. It will be seen from the second interview that Mister Gotthal confirmed the proposition put to him in the previous interview by the German authorities that an actual movement of goods took place in only two transactions with Atec.

20 160. In the third interview which took place in Munster prison on 6 September 2007, Mr Gotthal discussed companies with which he had dealt in in 2007. These transactions were not relevant to the current appeals. In the course of his statement, however, Mr Gotthal stated:

25 “[Mr Schmitt] explained to me [Mr Gotthal] on that occasion why the market for mobile phones had collapsed in 2006, namely, because at the time monies from the VAT advance payments, in particular England, had been lost. I then found out in this connection that turnover tax fraud could also be involved with these businesses.”

30 161. In her supplementary closing submissions, Ms Kalia drew attention to a reference in an exhibit included with the notes of the interviews with Mr Gotthal which explained that the indictment against Mr Gotthal was only approximately €1,385,000:

35 “which is the ‘true’ financial loss to the revenue in terms of VAT. This is based on the transactions in which the goods were sold on repeatedly within Germany. The additional ‘notional’ tax loss is derived from the fact that Olaf Gotthal did not process the trade operations forming the transactions correctly in his accounts or failed entirely to keep accounting records of these transactions, the result of which is that the legal requirements for the supply is to achieve VAT-free status are not satisfied.”

40 162. Ms Kalia submitted that this absolved the transactions in the present appeal and contradicted HMRC's inference that Mr Gotthal was held in prison because of the transactions with Atec. We do not accept this submission. We do not see that the terms of the German indictment “absolved” the transactions in dispute in these appeals. Mr Gotthal was plainly describing to the German authorities the background to the transactions which involved the onward supply in Germany of the goods  
45 originally supplied by Atec. Moreover, we did not understand HMRC to be

submitting or, indeed, in any way relying on the suggestion that Mr Gotthal was being held in relation to the deals presently appeal to this Tribunal.

5 163. Mr Gotthal's statement was plainly hearsay evidence. As such, the statement is admissible but it is a matter for the Tribunal to decide, in all the circumstances, what weight should be attached to it. We shall consider this point later in this decision.

10 164. Mr Kalia told us that, although he had previously dealt with Mobile World as his customer, he moved his business to Freitex because Freitex was paying Atec in advance. Eventually, in cross-examination, Mr Kalia had to accept that this was not correct. In most cases, Freitex did not always pay Atec in advance and, frequently, Atec gave instructions for the goods to be shipped before receiving any payment or a full payment from Freitex. In fact, in deals 40 and 52, Freitex was allowed time to pay Atec after goods had been shipped to them, effectively extending them credit.

15 165. Moreover, Mr Kalia was, in our view, unable to give any convincing explanation as to why he switched from dealing with Mobile World to dealing with Freitex. Mr. Kalia explained that Jurgen Schmitt allowed him to deal with Freitex, rather than his own company Mobile World. In our view, Mr Kalia effectively corroborated Mr Gotthal's account that Mr Schmitt introduced him to those in the UK who were to be his suppliers and that he got to know Mr Kalia at CeBIT.

20 166. In March 2006, Atec had sold stock worth £7,060,322 to Mobile World (Mr Schmitt's company). In periods 04/06 to 07/06 there were no recorded sales by Atec to Mobile World, whereas after the introduction by Mr Schmitt of Mr Gotthal to Mr Kalia, Atec sold stock worth in excess of £33 million to Freitex. It was clear, therefore, that after Atec was introduced to Freitex by Mr Schmitt it dealt exclusively with Freitex.

25 167. A report from the German authorities on Mobile World revealed that International Mobile was one of its customers. When Mobile World sold goods to International Mobile it received payment from Technology Plc. The evidence of Officer Dean in relation to FCIB showed that payments were made to Freitex by Technology Plc and that Freitex was introduced to FCIB by Mobile World.

30 168. In addition, information provided by the German authorities referred to evidence given by Mr Schluter of MS Kurier, Bernard Schluter Transporte, the company which Atec said had delivered the goods which it claimed to have sold to Freitex. Mr Schluter referred to having carried two transport operations which related to Freitex sales invoice numbers 06-20151 and 06-20155, both made out to Silus BV.  
35 The German authorities stated that:

40 "... as regards other supplies [i.e. supplies other than the supplies recorded on the above to invoice numbers], which were supposed to have been made via MS Kurier (purchase invoices of the firms Atec Associates Limited...), in respect of which demonstrably falsified papers we used, no further information is available. It is open to question as to whether there were no goods at the heart of the transactions (i.e. invoices purely bogus) or whether the goods did exist

but were supplied by another route. According to an interview of the accused, Olaf Gotthal, no goods existed; on the other hand payments (for purchase and sale) were made via FCIB's account. However, no forwarding documents or the like are available here."

5 169. As we have seen, Mr Gotthal claimed that there were only two transactions (both in July 2006) with Atec where the movement of goods actually took place. In each case, according to Mr Gotthal the onward sale by Freitex was to Koornmarkt in Belgium. Mr Gotthal stated that Freitex had a higher margin with both those supply transactions. In all transactions except two, Freitex's customer was either  
10 International Mobile or Koornmarkt. In the two exceptional transactions, Freitex's customer was Silus BV. The two Freitex sales invoice numbers which Mr Schluter said represented actual goods (invoice numbers 06-20151 and 06-20155) involved sales to Silus BV not to Koornmarkt. The schedule of information provided by the German tax authorities clearly indicated that those two invoices involved the sale of  
15 1000 units of Apple iPods and corresponded with deals 40 and 52.

170. Furthermore, analysis of a schedule provided by the German tax authorities of all the onward Freitex's sales in July 2006 which involved where, Atec was Freitex's supplier, showed that the two deals which attracted the highest gross margin were those sold on invoice numbers 1457 and 1470 (deals 40 and 52) (Freitex's invoice  
20 numbers 06-20151 and 06-20155), both of which were sold on by Freitex to Silus BV.

171. We, therefore, consider that Mr Gotthal was incorrect to state that the two exceptional deals involved sales to Koornmarkt – we consider that the two exceptional deals were goods were actually supplied involved sales by Freitex to Silus BV. Freitex's supplier was Atec in deals 40 and 52.

25 172. According to the Netherlands authorities, Silus BV was active from November 2005 and was deregistered for VAT in October 2006 because the business had no proper place of business from which to operate. The company's address was a mailing address only. No records for the second quarter of 2006 were supplied by the company. The manager of the company was a Mr Nadir Bin Ahmed Manghet, whose  
30 address was in Slough, Berkshire.

173. Ms Kalia referred us to Eurotunnel tickets and CMRs (standard form waybills for the international carriage of goods by road) which existed for each of Atec's transactions with Freitex – these were exhibited to Mr Saunders' witness statement. The CMRs itemised the number of pallets and type of goods concerned. The CMRs  
35 were essential evidence to demonstrate that Atec had exported (dispatched) the goods to an EU trader.

174. The freight forwarder in all but two of the transactions in which Atec sold to Freitex was Globe Distribution ("Globe"). In these transactions Globe shipped the goods to MS Kurier. In two transactions, however, the freight forwarder was Hawk  
40 Precision Logistics. These two transactions were deals 40 and 52. We note that in the aborted deal 53 the freight forwarder was also Hawk Precision Logistics.

175. Mr Kalia, in cross-examination, accepted that he did not visit the freight forwarder in respect of any of the appealed deals to inspect the goods.

176. At the time of the 2010 transactions, Atec had an associated company called Atec GmbH. The German tax authorities stated that Atec GmbH's head of sales was Mr Schmitt. Atec GmbH was said to be trading in electronics. Mr Kalia was a business partner of Mr Schmitt in a company called Atec GmbH. Mr Kalia recalled that he had invested approximately €15,000-20,000 in Atec GmbH. Mr Schmitt had put in approximately €100,000. Mr Kalia went into the venture with Mr Schmitt "way after" 2006. Clearly, therefore, Mr Kalia's relationship with Mr Schmitt – a man who, according to Mr Gotthal's statement, contrived the appealed 2006 Freitex deals with Atec – continued after the periods under appeal.

177. It was not clear whether criminal charges were eventually brought against Mr Gotthal. The German tax authorities indicated that Mr Gotthal was in pre-trial detention for several weeks but, because of his admissions, he was released subject to a requirement to report periodically. Mr Saunders did not know whether any action had been taken against Mr Schmitt.

#### *Patterns in Atec's trading*

178. All of Atec's deals in April 2006 were transacted between 20-28th day of the month. In May 2006, all of Atec's deals were carried out between 16-31 May. Similarly, in June 2006 all of Atec's deals were carried out between 16-28 June. In July 2006 all of Atec's deals were carried out between 4-5 July.

179. In deals 1-8 and 16 Atec dealt in mobile telephones which had "Central European Software". Evidently, these goods would have originated in mainland Europe and Atec was exporting the goods back to the EU. In deals 2 and 3 the goods were also described as being "2 pin" mobile telephones and thus were presumably not intended for UK use.

180. Mr Kalia was asked whether it occurred to him that, when he had European customers seeking to buy mobile telephones with a Central European specification, the best place to look to find a supplier at a good price would be in Europe. He replied that he never found a good price in Europe and thought the explanation was that Britain was a trading hub. We did not find his evidence on this point convincing.

#### *Profit margins and mark-ups*

181. The gross profit margin made by Atec (combined with that of Wireless 5 in those cases where Wireless 5 was Atec's immediate supplier) was consistently at or about 8%, regardless of the identity of the supplier or customer, the quantity or nature of the goods. The same gross profit margin, approximately 8%, was made in deal chains leading to a direct defaulting trader and in those deal chains leading to a fraudulent contra-trader.

182. In deals 1-3, 5, 6, 9, 10, 11, 13, 15-19, 21, 24-28, 31, 32, 34-36, 38, 39, 41-44, 47, 49 and 50 Atec's gross profit margin was 8%. In deals 7, 22, 29, 30, 33, 45 and 51 Atec's gross profit margin was 7.9%. In deals 4, 14, 20, 23, 37, 46 and 48 Atec's gross profit margin was 8.1%. In deal 8, Atec's gross profit margin was 5.3%,  
5 although we noted that in that deal one of the "buffer" traders, Letting Solutions Ltd, achieved an unusually high mark-up of £3.

183. In deal 40 Atec achieved a gross profit margin of 12.8% and in deal 52 a profit margin of 13.6%. Deals 40 and 52 were the deals which, according to Mr Gotthal concerned actual goods, and we shall consider those deals separately below.

10 184. In deal 12 the entire profit accrued to Wireless 5 which made a gross profit of only 1.4%. Mr Kalia described deal 12 as containing an "error" in the invoice that Atec sent. In fact, in the exhibits attached to Mr Saunders' witness statement there was an invoice from Atec to Freitex dated 28 February 2006 (we think this was a  
15 typographical error and the invoice should have been dated 28 April 2006) for mobile telephones at a unit price of £355 and a total price (for 4000 units) of £1,420,000. This was the invoice that Atec put forward as the basis for its VAT repayment claim in respect of this deal. Wireless 5 had bought the goods from Zain at a unit price of £350 and sold to Atec at a unit price of £355. In other words, Atec made no profit for itself on this deal.

20 185. The pro forma invoice was, however, correctly dated 28 April 2006 and specified the same type and quantity of goods. This time, however, the unit price was stated to be £378 giving a total purchase price payable by Freitex of £1,512,000.

186. In addition, we were shown schedules of Atec's invoices to Freitex which showed, in relation to invoice 1422 (deal 12), a unit price of £355.

25 187. Curiously, however, in Atec's exhibits, we were also shown another invoice for deal 12 from Atec to Freitex, in respect of the same type and quantity of goods, gave a unit price of £378. If this had been the correct invoice price, Atec (taken together with Wireless 5) would have made a gross profit of 8%.

30 188. Mr Kalia's evidence was that all the appealed deals in which Atec/Wireless 5 were involved were arm's length commercial deals. He confirmed that Atec want to buy for the lowest price and sell for the highest price and that the deals were heavily negotiated on price. He accepted that the profit that Atec would make would vary depending on the nature of the goods and the prevailing market conditions. Mr Kalia said that he would not do business for a profit margin of only 3% because he knew  
35 that he could make more money on other transactions. In cross-examination Mr Kalia accepted that he had noticed that Atec was making a consistent profit margin. He said that Atec had to "fight" for the profit it made. He attributed the fact that Atec could obtain a consistent gross profit margin to the fact that Atec commanded:

40 "…a good position. We had been in the industry for a long time and we could just turn around and say, 'Well, this is our final offer', and this is what we did on numerous occasions."

189. Mr Kalia was asked by Mr Holland whether he had asked for more than 8% as a gross profit margin. He denied that Atec asked for an 8% gross profit margin. He was asked whether it occurred to him that every time he bought goods he seemed to be able to sell them at a gross profit margin of 8%, no matter how hard he negotiated. Mr Kalia said that he had a “policy” of only doing a deal if Atec achieved 8% (having only a few moments before said that he did not ask for 8%). He said:

“There were lots of deals on the table and my policy was where we have 8% as a margin, we will do the deal, otherwise we will not do the deal...given that there is [sic] enough deals in the monthly period.”

190. Ms Kalia submitted, without referring us to any evidence, that since March 2004 Atec’s profit margin had always been an average of 8%. She argued, therefore, that HMRC should not be surprised that two years later Atec was still making the same margin and that this should therefore not be taken as an indicator of actual knowledge. With respect, this misses the point. Earlier periods were not in evidence before the Tribunal and were not the subject matter of these appeals. Ms Kalia’s submission did not, however, explain how it was possible for a trader in high value electronic goods constantly to make the same profit margin. In the real world, rather than the make-believe world of MTIC trading, traders aim for a particular profit margin and sometimes achieve it, sometimes achieve in excess of the target margin and sometimes fail to achieve it at all. But a constant repetitive profit margin, said to be achieved as a matter of “policy”, was simply unrealistic and incredible.

191. Atec’s gross profit from its deals with Freitex (excluding deals 40 and 52) was £2,124,190. Atec and Wireless 5’s combined gross profit from those same deals amounted to £2,472,690.

192. After the conclusion of the main hearing, Atec submitted to the Tribunal graphs prepared showing its profit margins for various periods. As regards periods prior to those involved in this appeal, there was no evidence to support these figures.

193. We shall deal shortly with the question of the distribution of profits to other members of the deal chains to which Atec’s appealed deals were connected. For the moment, however, we simply observe that Atec’s profits in the 04/06-07/06 periods usually represented between 45 % - 46.5% of the input tax on those deals for which Atec claimed repayment. The only exceptions to this remarkable consistency were deals 8 (30.5%), 12 (1.4%) 40 (73%) and 52 (77.9%). We have already discussed deal 12 and the conflicting invoices and we shall discuss deals 40 and 52 later in this decision. Moreover, Atec’s gross profit as a percentage of the tax loss caused by the defaulting trader at the end of the direct tax loss chains (there could of course be no correlation in relation to the tax loss in contra-trading “dirty” chains) was constantly between 45.5%-46.7%. Apart from the three exceptional deals noted above, the only other exceptions were deals 27 (43.7%) and deal 37 (47.3%). We note this because we agree with HMRC’s submission that normally there should be no mathematical correlation between the VAT lost through the fraudulent default and, several places down the chain, Atec’s profits – the defaulter could have sold at any price.



*Distribution of profits to deal chain members*

194. Based on Mr Dean's evidence, HMRC produced an analysis for five of the circular money flows in respect of the appealed deals (deals 2 and 3 (combined), 4, 35, 37 and 52). There were also similar tables in respect of the 2010 deals, which were no longer under appeal.

195. In the course of closing submissions, Mr Holland took us through the analysis in relation to deal 4. For convenience (because deal 4 involved single rather than multiple split payments), we will set out this analysis as an example. We have also reviewed the analysis in relation to the other four deals and consider that deal 4 is representative.

196. In relation to deal 4 (25 April 2006, invoice number 1414) the deal chain for the goods (1,500 units of Nokia N70 mobile telephones) from the defaulting trader to Atec's customer was as follows:

Woven Art Gallery (UK) → Wild Tower (UK) → Jos (UK) → New Order (UK) → Stardex (UK) → Atec (UK) → Sunico (Denmark)

197. Obviously, one would have expected that the payment chain should run from Sunico to Woven Art Gallery. The reality was somewhat different. Although Sunico did not have an FCIB account, Atec received a payment of £350,993.07 on 25 April 2006 at 14:55:47 p.m. and the narrative for the payment in Atec's FCIB account was "B/O SUNICO A/S FOR PFI NO SIE/1414 FOR."

198. The following payments all flowed through FCIB bank accounts.

199. Atec then made a payment to Stardex of £381,581.25 on the same date at 16:18:19 p.m. with a reference "1414".

200. Next, Stardex made a payment to New Order of £379,818.75 at 16:57:04 p.m. The reference on the payment was "1500 Nokia N 70".

201. New Order then made payment to Jos of £378,056.25 at 18:15: 24 p.m. on the same date.

202. Jos did not, however, pay its supplier, Wild Tower; instead, Jos paid the invoice amount of £377,175 on 26 April 2006 at 14:36:25 p.m. to a Spanish company called Bolbinata.

203. Bolbinata then paid £364,500 to Sunico on 26 April 2006 at 14:39:04 p.m.

204. Thus, the money has gone round in a circle. But it is the amounts received and paid by each participant in the payment chain which is important. HMRC set out these amounts in a table which we accept and reproduce as follows:

35

<b>Deal 4 (1414)</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>% of Total retained Funds plus Atec Profit</b>
	Bank In	Bank Out		
<b>Sunico</b>	364,500.00	350,993.07	13,508.93	23.76
<b>Stardex</b>	381,581.25	379,818.75	1,762.50	3.10
<b>New Order</b>	379,818.75	378,056.25	1,762.50	3.10
<b>Jos</b>	378,056.25	377,175.00	881.25	1.55
<b>Bolbinata</b>	377,175.00	364,500.00	12,675.00	22.30
<b>Atec Gross Profit</b>			26,250.00	46.18
<b>Total retained funds plus Atec profit</b>			56,838.18	
<b>Atec Input VAT</b>			56,175.00	
<b>Profit &amp; Retained funds as % of Atec Input VAT</b>			101.18	

205. Corresponding tables were prepared for deals 2 and 3, deal 35, 37 and 52. In addition, there are a number of tables in relation to the 2010 deals.

206. In relation to deals 2 and 3, Atec's gross profit was £160,450.00 which constituted 45.74% of total retained funds including Atec's profit. The total retained funds plus Atec's profit was £350,800.63 and Atec's input VAT was £346,206.88. Thus Atec's profit and the payment chain's retained funds as a percentage of Atec's input VAT was 101.33%.

207. As regards deal 35, Atec's gross profit was £46,250.00 which constituted 45.96% of total retained funds including Atec's profit. The total retained funds plus Atec's profit was £100,625.00. Atec's input VAT was £99,290.62. Therefore, Atec's profit and the retained funds as a percentage of Atec's input VAT was 101.34%.

208. Deal 37 featured a gross profit for Atec of £22,000 which constituted 46.56% of the total retained funds plus Atec's profit. The total retained funds plus Atec's profit was £47,250.00. Atec's input VAT was £46,250. Therefore, Atec's profit and the retained funds as a percentage of Atec's input VAT was 102.16%.

209. In relation to deal 52, Atec's gross profit was £27,000.00 which constituted 77.92% of the total retained funds plus Atec's profit. The total retained funds plus Atec's profit was £34,650 and Atec's input VAT was £34,387.50. Therefore, Atec's profit and the retained funds as a percentage of Atec's input VAT was 100.76%.

5 210. From this, it can be seen that, in relation to these deals (the analysis of the 2010 deals was to the same effect), the circularity in the money flows associated with Atec's transactions functioned as a way of dividing the proceeds of the input VAT refund between (some of) those traders that had participated in the transaction chains. The amounts retained in the FCIB accounts of those traders in the payment chains, plus the profit made by Atec, produced a figure close to 100% of the input VAT paid into the chain by Atec for each transaction where the analysis was performed. Atec paid out more than it was paid because its sales were zero-rated and its profit lay in the reclaim of VAT from HMRC. This simply could not, in our view, be an innocent coincidence and was powerful evidence of orchestration of these deals.

15 *Deal chain mark-ups*

211. There was a striking consistency in the gross profit margins achieved by a number of the buffer traders which featured in the deal chains. Thus, in the 26 deal chains in which Crescent featured as a buffer trader, its mark-up per unit was always 50p. Fair General Traders featured in nine of Atec's deal chains as a buffer trader and its mark-up was always 50p. Easy MSI featured in 22 deal chains as a buffer trader and its mark-up was 50p in every deal except deal 27 (£12.50). These identical mark-ups were achieved notwithstanding the variation in the dates of the deals, the type and quantity of goods. It is hard to understand how this would happen where deals were conducted at arm's length in the open market. Whilst we accept that Atec could not be expected to know the mark-ups made by traders higher up the deal chain, these repetitive mark-ups are an indication that the deal chains were not the result of genuine open market trading.

212. In addition, in the 21 deals in which Team Mobile featured as a supplier to Wireless 5, Team Mobile's mark-up was always 50p, with the exception of deal 21 where its mark-up was £1. In the 12 deals in which Cybacomms acted as Atec's supplier its mark-up was always £1. Again, as regards Team Mobile and Cybacomms, the mark-ups were (with the exception of deal 21) identical notwithstanding the variation in the dates of the deals, the type and quantity of goods. We think it is particularly significant that there was this consistency in mark-ups made by traders who were the direct suppliers of Atec and/or Wireless 5.

213. Mr Kalia's evidence was that he bargained vigorously with his suppliers and his customers to achieve the lowest purchase price and the highest sale price. If that is so, then it is hard to understand how Atec/Wireless 5, if they were negotiating hard with their suppliers on an arm's length basis, always inadvertently agreed on a price with their supplier which left that supplier with a mark-up (as regards Team Mobile and Cybacomms) in every deal except one. We accept, of course, that Mr Kalia would not, in the ordinary course of events, be aware of the purchase price paid by his supplier. We raised this issue with Mr Kalia at the end of his cross-examination but he was

unable to shed any light on this unusual phenomenon. It is true that Mr Kalia indicated, in the course of his evidence generally, that Atec's trading strength was such that it was able to make "take it or leave it" offers to its trading partners. Even if this trading position is accepted, it seems odd that the offer made by Atec always ended up consistently leaving its seller with a fixed margin.

*FCIB evidence – circularity of payment chains*

214. Mr Dean, an HMRC officer, reviewed data originating from FCIB's Paris and Dutch computer servers.

215. Ms Kalia challenged Mr Dean's evidence on the basis that the information Mr Dean examined had been transferred into a Microsoft Word Format and that the data may therefore have been corrupted. Ms Kalia put forward no evidence to support this submission. In other words, there was no evidence to support the contention that the data had been corrupted. Nonetheless, we have compared the FCIB statements which Mr Dean examined with the copies of Atec's own FCIB statements exhibited to Mr Saunders' witness statement and the information in the two statements corresponded exactly. We therefore reject Ms Kalia's submission on this point.

216. Ms Kalia also submitted that, because Mr Dean had indicated that the data was held in Microsoft Word, the data was therefore editable. Mr Dean's evidence was that he printed off the relevant bank statements. There was, however, no evidence that the data which Mr Dean examined had been edited or in any way overwritten.

217. Ms Kalia also challenged Mr Dean's evidence on the ground that Mr Dean as he himself stated, had received one day's training in relation to the FCIB information. She submitted that that amount of training was insufficient to enable him to make an allegation of serious fraud. We reject the submission. There was no evidence that Mr Dean's training was insufficient. Indeed, our impression of Mr Dean's evidence was that he examined the numerous payments and receipts in the various FCIB accounts in meticulous detail.

218. Ms Kalia also argued that Mr Dean's conclusions on whether payments were "circular" was an expression of opinion, not evidence of fact, and was therefore inadmissible (see e.g. *JDI Trading v HMRC* [2012] UKFTT 642 (TC) at [37]). We accept this submission. In our view, whether a series of payments can be described as "circular" is a matter of judgment for this Tribunal on the basis of the evidence before it.

219. Ms Kalia also challenged Mr Dean's evidence in relation to sub-accounts. She maintained that HMRC had not explained how the sub-accounts had come into existence. She submitted that no banking facility in the world allowed multiple sub-accounts without undertaking proper due diligence on the account holder. It seemed to us that there was no evidence to support Ms Kalia's submissions and we reject them. It seems perfectly clear from the evidence that sub-accounts existed and how they came into existence did not seem to us to be material.

220. Mr Dean obtained a printout of the customer account for each trader in the appealed deals who held an FCIB customer account. He focused specifically on the 53 appealed deals (now 52 deals). The customer account showed the funds that were debited and credited by each trader in relation to the relevant transaction chains. The  
5 FCIB account reference gave information about each account.

221. Mr Dean began his analysis by tracing payments made to Atec's FCIB account from its customers. He then traced onward payments from Atec through the deal chain to the EU supplier. Where possible, payments originating from FCIB accounts were reconciled with payments on deal sheets and supplementary paperwork provided by  
10 Mr Saunders. This included the value of sales invoices issued by companies in the deal chain. In those cases where there was no known payment information or invoices (e.g. where the payment chain diverged from the invoice or paperwork chain), Mr Dean had to use his judgement to decide the relevant onward payment. He described this as involving the "pairing off" of receipts and payments in accounts. Mr Dean  
15 looked at *inter alia* reference numbers, the amount and timing of payments as well as any narrative given in the FCIB account statement relating to the payment. Frequently, the narrative would refer to the invoice number and whether it was a full or part payment of that invoice. Occasionally, as Mr Dean accepted, the narrative description for the stock differed from the payments made and Mr Dean followed the  
20 flow of funds taking account of various factors including the sequencing of EBR numbers. We have paid careful attention to those instances where Mr Dean has clearly had to use his judgement and, after a careful review of the evidence, we accept his conclusions.

222. Mr Dean's evidence established to our satisfaction that three companies,  
25 Technology PLC ("Technology"), Whitehart Marketing Limited ("Whitehart") and Koornmarkt (the Belgian company to which Freitex purportedly on-sold goods which it had acquired from Atec) set up main accounts in their own names but also operated sub-accounts.

223. Thus, Technology had sub-accounts in the names of: Global Key SRL,  
30 International Mobile SRL (which, like Koornmarkt, also purportedly bought goods from Freitex, supplied by Atec), Sweet Storm Equipamento Electronica LDA ("Sweet Storm"), Priya Communications Ltd, Cassus FHU, Protophonia Telecomunicoes LDA ("Protophonia") and Universal Systems SCS ("Universal"). Technology was set up in the British Virgin Islands and the signatory to the FCIB account was a Mr Sajjad  
35 Sadiq, whose address was in Dubai.

224. The second main account was in the name of Koornmarkt which also had sub-accounts in the names: Protophonia, Universal, International Mobiles and Cassus. Koornmarkt was based in Belgium and the signatory to the FCIB account was Mohammed Akram.

40 225. The third main account was in the name of Whitehart which had sub-accounts in the names: Universal, International Mobiles and Cassus. Whitehart was based in the UK and the signatory to the FCIB account was named as Amir Nawaz.

226. Technology, Whitehart and Koornmarkt appear to be unrelated companies but the use of sub- accounts indicated that, in reality, those three companies as well as International Mobiles, Universal and Cassus were related. This reinforced the impression that all these companies and the individuals behind them were acting in concert.

227. Ms Kalia argued that HMRC had not shown how one company was able to have sub-accounts with FCIB. There was no evidence concerning how sub- accounts came to be established, but it was clear from Mr Dean’s evidence that such accounts had indeed been set up. We infer that the purpose of these accounts was concealment of an orchestrated scheme to defraud HMRC.

228. Atec and Wireless 5 both had accounts with FCIB. The signatories were Mr Kalia and Ms Kalia respectively.

229. In the appealed deals, Atec purportedly supplied goods to the following non-UK companies: Evolution Sarl (France), Freitex GmbH (Germany), H & H Import Export Sarl (France), Phone Connected Sarl (France), Silus BV (Netherlands), Sunico A/S (Denmark) and, finally, in the withdrawn appeal in respect of Deal 53, Wireless 5 FZE.

230. Mr Dean considered that his analysis of the FCIB data indicated that there was evidence of circularity in the flow of funds in 17 deals and that this demonstrated contrivance. Essentially, by circularity, Mr Dean meant that a payment was made to Atec by its customer and that that payment passed through the hands of various companies before arriving back at Atec’s customer. We have ignored matters of opinion in Mr Dean’s evidence. As we have said, we consider Mr Dean’s conclusions in relation to circularity and contrivance to be matters of opinion. The data on which he based his opinions were, however, plainly matters of fact. Having examined the evidence, however, we find that there was circularity and we do find that it demonstrates contrivance in relation to those 17 deals.

231. Circularity, by itself, does not show the probability of actual knowledge by Atec and was found to exist in only 17 of the appealed deals. However, in our view, it does indicate an orchestration of the deal chains consistent rather than the deal chains comprising transactions effected on an arm’s length basis.

232. The 17 deals were deals 2, 3, 4, 13, 14, 17, 18, 19, 20, 26, 34, 35, 37, 38, 39, 37 and 52.

233. Mr Dean, as part of this tracing exercise, considered the relationship between deals 17, 18, 19, 20 and 21. His analysis demonstrated, in our view, that the funds introduced into the payment chain of deal 17 (1428) were cycled through the payment chains of Atec’s next four deals. His evidence, therefore, was that one sum of money was used to fund all the payments in the payment chains for deals 17, 18, 19, 20, and 21. We consider this is a useful example of the tracing exercise pursued by Mr Dean and we therefore set out his evidence on these deals in some detail:

- (1) Freitex made three payments to Atec totalling £1,992,740.

5 (2) The funds originating from Freitex passed through the payment chain for deal 1428. Therefore, the funds passed through Wireless 5, Team Mobile (the account was named “TM Global”), Wetherby to Easy MSI. Easy MSI then paid International Mobiles (two payments) into an account which was a sub-account of Technology. At this point the money and invoice chains diverged, with the latter identifying Easy MSI’s supplier as ATB Enterprises (the defaulting trader in deal 17). This diversion of payments to International Mobiles makes it unlikely that ATB Enterprises could have paid its VAT liability to HMRC. Two payments, totalling £1,110,000, were then made from the International Mobiles sub- account to Freitex, which was Atec’s customer.

10 (3) Freitex split the £1,110,000 into onward payments of £500,000 and £610,000 to Atec in connection with deal 18. The funds then passed through the payment chain for deal 18 with Atec paying Wireless 5. Wireless 5 then paid Team Mobile which paid Wetherby, which paid Easy MSI, which paid Universal (a sub-account of Technology) a total amount of £1,151,225 in two instalments. At this point the money and invoice chains diverged, with the latter denoting Easy MSI’s supplier as ATB Enterprises (the defaulting trader in that deal chain). There was a transfer of £657,000 from the Universal sub-account to the International Mobiles’ sub-account. Three payments were then made from International Mobiles’ sub-account to Freitex (£660,000, £385,000 and £600 and £765,000, totalling £1,810,000). In other words, the money went back to Atec’s customer, Freitex.

15 (4) Freitex used the receipts to fund onward payments to Atec in part settlement of invoices 1430 (deal 19) and 1431 (deal 20). Freitex divided the £1,810,000 into four onward payments, two of which were paid to Atec in connection with deal 19 and two were paid to Atec in connection with deal 20. The payments passed down both payment chains (involving the same participants) ending up as a receipt by Freitex of £750,000 and £334,720. Freitex paid Atec £750,000 and £330,000 in respect of deal 21.

20 234. We therefore conclude that the movement of funds on these transactions was circular with money from one transaction funding the next. Although this was not representative of all 17 transactions, in the sense that the circular flow of money did not always fund the next transaction, it was typical of the methodical and careful approach pursued by Mr Dean. His conclusions in relation to circularity and contrivance regarding the 17 deals seemed to us to be sound.

25 235. In some of the transactions, the movements of money took place very rapidly. For example, in deals 2 and 3, Starbucks made the first payment at 12:03 p.m. on 24 April 2006. The money then travelled through A-Z, FAF (Italy), Scorpion Electronics (Portugal), Global Financial (Hong Kong), Valdemara (Latvia) and Phone Connected (France), Atec before arriving back with Stardex at 13:27 p.m. – a sequence of payments lasting one hour 24 minutes.

30 236. In deal 14 Atec made the initial payment to Wireless 5 at 17:42 p.m. to Wireless 5. The funds then flowed from Wireless 5 to TM Global, Wetherby, Photophonia,

International Mobiles (Italy), Freitex (Germany) before being paid to Atec at 18:36 PM – a sequence of payments lasting 54 minutes.

237. In 32 of the 52 appealed deals there was evidence of third-party payments. In other words a member of the deal chain would make a payment, not to its immediate  
5 supplier, but to a third party (deals 1,4, 6, 5, 9, 10, 11, 12, 17, 19, 20, 21, 22, 23,26, 27, 29, 30, 31, 34, 35, 36, 37, 40, 45, 46, 47, 48, 49, 50 and 51). Thus, for example, in deal 5, Easy MSI made a third party payment to Sweet Storm bypassing its immediate supplier Gara and its supplier (Apollo, the defaulting trader in that chain).

238. We also note that all of the payments were made in Sterling, notwithstanding a  
10 number of parties in the payment chain were based outside the UK.

#### *Deals 40, 52 and 53*

239. In the course of the hearing, it became clear that Atec was not pursuing (or had already withdrawn) its appeal in respect of the input VAT claimed on deal 53. It was  
15 accepted by Atec that the purported sale by Atec to Wireless 5 FZE (Dubai) of goods, originally destined for a company called Compucell, had not taken place and that in fact the transfer to Wireless 5 was, according to Atec, a gift. In any event, it was claimed that the goods had been brought back from Dubai for sale in the UK.

240. There was considerable discussion at the hearing in relation to deals 40, 52 and  
20 53. It was HMRC's submission that Atec had "carouselled" a single consignment of 1000 iPods (60 GB) in order to satisfy Mr Gotthal's (Freitex) requirement that there should be actual goods. Mr Gotthal is recorded as saying that there were two deals in July 2006 where actual goods were involved. HMRC claimed that deals 40 and 52 were the two deals where actual goods were moved but that the same goods simply moved round the two deal chains.

25 241. Atec had traded iPods in five other deals and in one of those deals (deal 31 on 16 June 2006) it sold a consignment of iPods to Freitex. In these five deals (deals 22, 31, 34, 35 and 36), which took place between 24 May to 16 June 2006, Atec's gross profit margin ranged from 7.88% to 8.4%. Atec's purchase price for the iPods ranged between £230 to £241 (net of VAT).

30 242. In deals 40, 52 and 53, Atec's profit margins were unusually large: 12.78%, 13.64% and 13.64% respectively.

243. In deal 40, Atec's supplier was Digitech. This is the only appealed deal in which  
35 Atec bought goods from Digitech on an invoice dated 3 July 2006. Atec exported the goods to Freitex which, as we could see from Freitex's deal log, sold to the Dutch company, Silus BV.

244. Atec's next iPod deal was deal 52. This deal involved an identical quantity and type of iPods. Atec's invoice in respect of this deal was dated 5 July 2006 – two days after deal 40. In this case, the chain started with Freitex which dispatched the goods to Silus BV (as evidenced by a warehouse file, a CMR and a release note). Silus BV sold



the goods to the defaulting trader Phone City (as evidenced by the warehouse file and an allocation note in favour of Star Express, a trader further down the deal chain). Phone City sold to Cirex which then sold to Star Express which then sold to Hendon Import & Export (a trader involved in the deal chains relating to the warning letters of  
5 March 2006) which then sold to Atec. Atec then dispatched the goods to Freitex and (as evidenced by Freitex's deal log) Freitex sold the goods back to Silus BV. In our view, Freitex was selling the same goods involved in deal 40 into the supply chain which underpinned deal 52. As we shall see, this conclusion is consistent with the circular flow of funds.

10 245. In relation to deal 40, Atec made the final payment to its supplier, Digitech, on 3 July 2006. The payment was made not, as usual, from Atec's FCIB account but rather from Atec's Barclays UK account. The freight forwarder used by Atec was Hawk Precision Logistics. In all other deals where Atec sold to Freitex Atec used  
15 Globe as its freight forwarders. The goods were shipped on 4 July 2006 and the goods were released by Atec to Freitex on 5 July 2006. 5 July 2006 was the same day on which deal 52 took place.

246. Mr Dean's evidence, which we accept, was that on 14 July 2006 (all the following transactions took place on that date), Atec paid Hendon £232,650 at 14:39 p.m. in respect of deal 52. Hendon then paid Star Express £231,475 at 15:54p.m. Star  
20 Express then paid Cirex £231,181.25 at 16:00 p.m. Cirex then paid Phone City £230,887.50 at 16:18 p.m. Phone City paid Silus BV £230,241.25 at 18:54 p.m. Silus BV then paid Freitex £228,000 at 18:57 p.m. Atec then paid Freitex £225,000 in respect of "Inv FRX 1457" i.e. deal 40.

247. In other words, Atec was paying, via the chain of traders, money to Freitex and  
25 Freitex was using that money (received in respect of deal 52) to pay for deal 40. Plainly, therefore, deal 40 could hardly be described, at least as regards payments, as being back-to-back.

248. We therefore conclude that there was circularity in respect of deals 40 and 52 both in respect of the goods themselves and the payments for them.

30 249. In relation to the circularity of goods, Mr Kalia claimed that he checked for circularity of goods by seeing whether the boxes were stamped with HMRC stamps. However, as we shall see when we consider the topic of inspection of goods, Atec's solicitors confirmed that Atec did not inspect the goods in, *inter alia*, deals 40, 52 and 53. Moreover, as already noted, Mr Kalia accepted that he did not visit the freight  
35 forwarder in respect of any of the appealed deals to inspect the goods

250. According to the FCIB evidence relating to deal 53, Atec paid Hendon £232,650 on 28 July 2006 (in respect of invoice 1473 i.e. deal 53) and Hendon paid Star Express £230,307.13 the same date (indeed, all the following transactions took place on that date). Star Express paid Cirex £231,181.25, also. Cirex then paid Phone  
40 City £230,946.25, although Phone City did not appear to be in the document chain. Phone City then paid Silus BV £230,300 and Silus BV paid Freitex £228,000. All the references on the FCIB payments indicated that the payments were for 1000 iPods.

Freitex then paid Atec £225,000 in respect of 1000 iPods, which settled the amount owed for deal 52, thus in our view linking deal 53 with deals 40 and 52.

251. Deal 53 involved the same type and quantity of goods as deals 40 and 52. Atec apparently intended to export the goods to a company called Compucell, according to  
5 a pro forma invoice to Compucell dated 31 July 2006. There were also shipping instructions from Atec to Hawk dated 31 July 2006 to the effect that the same goods were to be shipped to Compucell in the Netherlands. But there then appears to have been a change of plan and the goods were purportedly sold to Wireless 5 FZE (Dubai). There was a sales invoice and pro forma invoice from Atec to Wireless 5 FZE (Dubai) dated  
10 11 September 2006 for the same goods. There was also shipping documentation indicating that the goods were shipped to Dubai by air on 11 September 2006. This was accompanied by an insurance request for the goods dated 11 September 2006 and a release notification releasing the goods to Wireless 5 FZE dated 11 September 2006.

252. By a letter dated 30 November 2006, Ms Kalia informed HMRC (Mr Saunders)  
15 that the file in relation to deal 53 was ready for inspection by HMRC. Mr Saunders replied on 8 December 2006 stating that he would inspect the originals and collect copies of the paperwork for deal 53 when he next visited Atec. At this stage, Mr Saunders was envisaging collecting paperwork in relation to the deal by which the goods were sold by Atec to Compucell. In fact, the goods, according to the  
20 paperwork, had been shipped to Dubai on 11 September 2006. On 19 December 2006 Mr Saunders visited Atec and spoke to Ms Kalia. Mr Saunders' letter in relation to the visit recorded that the paperwork for the transaction was not available and that Ms. Kalia thought that the deal was being withdrawn. He requested copies of the paperwork by post as soon as possible. It appears that at no stage was Mr Saunders  
25 informed that the goods had already been shipped to Dubai.

253. Next, on 18 January 2007, Ms Kalia wrote to Mr Saunders saying that she was trying to locate the deal file for Mrs Saunders and would "revert back as soon as possible once we check with all parties involved." Ms Kalia then confirmed that no deal actually occurred and said that a voluntary disclosure would be sent to HMRC  
30 immediately. Although Ms Kalia claimed that deal 53 had been cancelled, no credit note was in fact issued.

254. On 31 January 2007, Mr Saunders wrote to Ms Kalia noting that deal 53 had been cancelled. He asked for an explanation for the cancellation and when the deal was cancelled. He asked whether Atec would be receiving a credit note for the input  
35 tax claimed or whether Atec would look for a new customer for the stock. Mr Saunders said that he would need to see the paperwork in due course.

255. On 14 February 2007 Ms Kalia wrote to HMRC (the letter was copied to Atec's solicitors) stating that the goods in deal 53 (1473) had been sold to the associated company Wireless 5 FZE in Dubai but that Atec had then made the decision to bring  
40 the stock back to the UK in order to attempt to sell it directly to customers on the internet and that the stock was currently located at Atec's warehouse. There was no documentation produced to show that the goods had been returned to the UK. No inspection report was produced by Atec to HMRC.

256. It is hard to understand why Ms Kalia did not convey to Mr Saunders the information set out in her letter of 14 February 2007 at a much earlier stage, particularly since Atec knew from September that the goods had not been sold to CompuCell but had been sold to Wireless 5 FZE. We do not accept the excuse that  
5 Atec was being bombarded with queries by Mr Saunders. Mr Saunders had made perfectly legitimate requests.

257. The earliest document produced by Atec in relation to deal 53 was the purchase order from Atec to Hendon dated 27 July 2006. There was, however, a document obtained by HMRC from the freight forwarder, Hawk, for deal 53 comprising a file  
10 sheet dated 18 July 2006 which referred to 1000 iPods having been shipped to the UK by Freitex and then being allocated as follows: “Silus/Star Express/Hendon Import Export/Atec – DXB.” The reference to “DXB” is clearly a reference to Dubai airport. The document is clearly stamped as having been collected by HMRC on 19 July 2006. It was plain, therefore, that Hawk knew of a deal chain in which Atec would be  
15 exporting 1000 iPods, purchased from Hendon, to Dubai as early as 18 July 2006, 13 days before the documents relating to CompuCell were entered into and 24 days before the transaction with Wireless 5 FZE took place.

258. When asked to explain Hawk’s file sheet of 18 July 2006, Mr Kalia said that: “This is a theoretical and potential deal.” We found this explanation unconvincing.  
20 Instead, it seemed to us that Hawk, the freight forwarder, knew about the entire deal chain before it actually occurred. This indicated, in our view, that the deal chain in deal 53 was contrived.

259. Furthermore, Ms Kalia was cross-examined about deal 53. She was asked why the deal with Wireless 5 FZE fell through. She said:

25 “something changed. I can’t remember what it was. It was definitely a new model or something. I can’t remember. I just cannot remember. I will have to read some of the paperwork. There was – there was something that changed, I remember. I just cannot recall.”

260. We did not find Ms Kalia’s evidence credible. This was, as we understood it,  
30 the first deal that Wireless 5 FZE did with Atec – the deal fell through but Ms Kalia purportedly could not remember why. We did not consider this to be plausible.

#### *Freight Forwarders’ knowledge of deal chains*

261. We have already discussed the significance of the freight forwarder’s file sheet in relation to deal 53. There were, however, other instances where freight forwarders’  
35 appeared to have knowledge of deal chains before the deals took place.

262. The exhibits to Mr Saunders’ witness statement contained Paul’s Freight Services files for deal 8, in which the chain was: Blue Star—>Megatek—> Midwest Communications (defaulting trader) —> Data Solutions—> Star Express—> AB International—> Letting Solutions—> Stardex—> Atec. Atec, Megatek, Stardex,  
40 Letting Solutions, Star Express, Blue Star and AB International were all mentioned on stock release forms dated 22 April 2006. In one of those stock release forms, Stardex

released goods to Atec on 22 April 2006 i.e. two days before Stardex's invoice to Atec. With the exception of Blue Star (the Danish company), Paul's Freight Services did not receive a document naming anyone else on the chain until 24 April 2006. Nonetheless, the freight forwarder seems to have been aware of a number of participants in the chain two days before the earliest document (dated 24 April 2006) relating to Atec's participation in the transactions.

263. When cross-examined, Mr Kalia accepted that Atec's purchase order and Stardex's invoices were dated later (i.e. 24 April 2006) than Pauls Freight Services release note. He said that it worked "on trust". He said that Atec had done a lot of deals with Stardex throughout 2004 and 2005.

264. Similarly, in relation to deal 16, there were two release documents, both dated 15 May 2006 in favour of, respectively, Atec and New Order. However, this pre-dated Atec's and New Order's transactions (17 May 2006) by two days. There was also a release note from Imanse releasing the goods to Red WM, bypassing intermediate members of the deal chain: Okeda, Time Corporates and Resolutions.

265. In our view, these documents indicated that in some instances the freight forwarder knew of the intended deal chain and Atec's participation in it before Atec actually entered into the transaction by buying and selling the goods. This was, in our view, consistent with contrivance. We considered Mr Kalia's assertion that the deal worked "on trust" to be implausible. The transaction in question was worth almost £400,000 and it is unlikely that parties dealing at arm's length in genuine commercial transaction would allow goods to be released two days before an invoice had been issued and five days (27 April 2006) before Atec paid Stardex for the goods.

#### *The wider contra-trading scheme*

266. Mr Humphries, an HMRC officer, examined Atec's transactions and the related deal chains. His evidence was unchallenged. He noted similarities in trading patterns with 13 other contra-traders. He compiled charts from the various deal sheets which particularly related to the three contra-traders concerned with these appeals: A-Z, Jag Tec and Wetherby.

267. As regards Atec's two alleged contra-trading transactions in April 2006 (deals 2 and 3), Mr Humphries' evidence was that these transactions formed part of a broader contra-trading scheme and that A-Z, the alleged contra-trader, operated as one of a group of 11 contra-traders. He described this as the "second contra-trading scheme". This group of contra-traders operated with a small group of suppliers, buffer traders, EU customers of the brokers and a larger group of traders acting as brokers. The transaction chains showed goods being sold into the UK by 10 EU suppliers. There were 41 brokers which had many EU customers in common, having only 11 EU customers between them. We agreed with Mr Humphries' conclusion that this was a very small customer base for 41 different UK broker traders. Nine of those EU suppliers also featured at the other end of transaction chains as the EU customers of UK brokers, although none of them received, as customers, goods which they originally supplied as suppliers.

268. The thrust of Mr Humphries' evidence was that goods had passed from a small group of EU suppliers then went through different UK traders and returned to roughly the same group of EU traders which had supplied them. There were nine UK buffer traders and, as we have said, 41 UK broker traders. The result was that the EU traders  
5 paid higher prices to re-purchase the goods which they originally supplied into the UK. Mr Humphries calculated the additional cost in relation to in relation to deals in May 2006 as approximately £2.4 million. We accept Mr Humphries' conclusion, which we considered to be well-founded, that there was no apparent commercial reason for the goods to have been imported and then exported to and from the UK.

10 269. Mr Humphries identified three "tiers" of EU suppliers and customers. The six "second tier" EU suppliers were controlled by four individuals who were resident in Malaga. The same group of companies also constituted the "second tier" of EU customers. These individuals were associated with one another and 24 of the contra-traders' EU customers. The "first tier" group of EU suppliers (i.e. those closest to the  
15 contra-traders in the dirty chains) were the same as the group of "first tier" EU customers.

270. Mr Humphries examined the details held by HMRC in relation to "first-tier" EU suppliers and customers. From information supplied by various EU tax authorities, these companies were considered to be, variously, issuers of false invoices,  
20 conducting fictitious activities, suspected of involvement in carousel fraud, traders which produced no documents and rendered no VAT returns, a missing trader or involved in non-existent transactions.

271. Mr Humphries analysed the effect of the contra-traders transactions in relation to UK VAT in a chart entitled "Overall Scheme Tax Summary". This showed that at  
25 the end of its VAT period each contra-trader had a small net VAT liability or refund. The total output tax on the 11 brokers' acquisitions was £38,380,189.35 and the total amount of input tax on dispatches was £38,525,797.26. The amount of input tax claimable from HMRC by the UK brokers in respect of their acquisitions was identical to the input tax in respect of the contra-traders in respect of their dispatches  
30 (i.e. £38,380,189.35) furthermore the net amount claimable from HMRC was almost identical (99.58%) to the tax loss. The overall VAT claim had been split among 41 different brokers. There was no tax loss in the direct supply chain ("the clean chain") leading to the brokers. Also, Atec's two broker transactions conformed to the same pattern as those of other brokers in the second contra-trading scheme.

35 272. Mr Humphries' evidence was that Atec's two contra-trading transactions in June 2006 (deals 38 and 39) formed part of a further contra-trading scheme involving five contra-traders – "the first contra-trading scheme". Mr Humphries had performed the same analysis on this scheme as on the second contra-trading scheme.

40 273. A chart prepared by Mr Humphries showed that, in deals between April and June 2006, the five contra-traders (which included A-Z and Jag Tec) all purchased goods from a single EU supplier, the French trader Kom Team. Information from the French tax authorities showed that Kom Team had no real business establishment in

France and had failed to produce documentary evidence of its intra-community transactions.

274. The goods in these transactions were sold via nine UK buffer traders to 32 UK broker traders who subsequently dispatched the goods from the UK to customers in other member states of the EU. Most of the broker traders had EU customers in common. There were only five EU customers with whom the brokers traded. In all but three transactions, the brokers sold their goods to either CEMSA in Spain or Evolution in France, with the majority going to CEMSA.

275. Again, Mr Humphries' conclusion, with which we agree, was that there was no obvious commercial reason why French and Spanish EU customers should purchase goods from UK suppliers which had been imported into the UK from EU suppliers. Mr Humphries, in this case, calculated that the overall additional cost to CEMSA and Evolution of purchasing from UK suppliers was over £8.3 million.

276. Information from the French tax authorities in relation to Evolution indicated that the company had no business establishment in France and had failed to produce documentary evidence of its intra-community transactions. In every case where the goods were purchased from UK brokers in the first contra-trading scheme, Evolution sold them to the Latvian company, Vundera. Information obtained by HMRC from other EU tax authorities under the exchange of information procedure indicated that Vundera had no business establishment in Latvia and that its *bona fides* are in doubt. Vundera's main suppliers in May and June 2006 were Evolution and CEMSA and that it appeared that Evolution and CEMSA were operating under the same direction.

277. There were common defaulters in the contra-traders' "dirty" chains. In all but 20 cases, the goods were sold by the five contra-traders in their broker transactions to the same customer in Cyprus, RCCI Hi-Tech.

278. Mr Humphries also analysed the overall effect of the first contra-trading scheme in the same way that he had with the second contra-trading scheme. Although the amounts of VAT involved in number of traders in scheme were different, the conclusions were the same. In other words, the amount of input VAT claimable from HMRC by the brokers was identical to the input tax on the contra-traders' tax loss deals. The overall net amount claimable from HMRC in the scheme as a whole was almost identical (99.8%) to the tax loss in the contra-traders' dispatches. The overall refund claim had been split among 33 different brokers. There was no tax loss in the direct deal chains leading to the brokers.

279. Finally, Mr Humphries analysed what he described as the "third contra-trading scheme". Three of Atec's May 2006 transactions were connected with this contra-trading scheme (deals 13-15), as we shall see.

280. Mr Humphries demonstrated that there was one EU supplier (Protophonia) and two contra-traders. The contra-traders were Wetherby and Fair General Traders. Fair General Traders also featured as a buffer trader in Atec's direct tax loss deals 5-6 and

24-29. There were nine buffer traders (including Team Mobile and Wireless 5). There were 10 brokers (including Atec) and four EU customers.

281. Information obtained from the Portuguese tax authorities indicated that Protophonia had never rendered any tax returns and that the trader denied undertaking  
5 any trade with companies outside Portugal.

282. The dispatch (export) transactions undertaken by the two contra-traders involved Freitex, H & H Import Export and World Communications – three of the four customers used by the brokers in the acquisition transactions. This seemed to us to link the acquisition and broker transactions undertaken by the contra-traders.  
10 Moreover, since the contra-traders were trading directly with three of the EU customers, there appear to be no commercial reason for the goods in the acquisition transactions to be imported into the UK. Mr Humphries' calculation was that the additional cost to EU customers of purchasing from UK suppliers was over £1.5 million.

15 283. We have already summarised the evidence in relation to Freitex. As regards H & H Import Export, this company was suspected by the French authorities of involvement in MTIC fraud. The director had refused to provide any records for verification. World Communications was a Spanish missing trader which was deregistered on 9 June 2006. 3G Trade, the fourth EU customer, was suspected by the  
20 Luxembourg authorities of involvement in fraud. 4 April 2006 its main customer was International Mobile (Italy), the same customer used by Freitex in the transactions involving forged transport documents. The Luxembourg authorities also reported that the goods in 3G Trade's transactions were never delivered to the customers' countries.

25 284. Mr Humphries performed an analysis which demonstrated the overall effect of the third contra-trading scheme. Each contra-trader had, at the end of its VAT period, a small net liability or reclaim for VAT in respect of a huge turnover. The net input VAT amounted to 99.8% of the amount of the tax loss in the dispatch transactions.

285. Mr Humphries' conclusion was that all three contra-trading schemes showed  
30 contrived patterns with the goods, in both the acquisitions and dispatches in each scheme, being kept within a very small group of traders. In the second contra-trading scheme, the group of tier 1 EU suppliers was almost identical to the group of tier 1 EU customers. The trading seemed to have no commercial logic. There was no commercial reason why goods should be imported into the UK from the EU pass  
35 through the UK and return to mainland Europe, incurring additional costs in mark-ups en route.

286. We accept Mr Humphries' evidence, which as we have noted was not challenged, and find it as fact. We also agree with his conclusions. His evidence, which was painstaking and detailed, revealed an elaborate series of orchestrated  
40 transactions. A high degree of organisation and sophistication was plainly required to coordinate such a large number of traders.

*Whether Atec's deal chains were similar to those of other traders*

287. Atec's deal 13 was very similar to the deal chain in which the broker was another company called EMJ Telecommunications Ltd ("EMJ"). The deal chains were as follows:

5 **Atec Deal 13**

Protophonia (Portugal) -> Wetherby (contra-trader) -> Team Mobile -> Wireless 5 -> Atec -> Freitex

**EMJ Deal 1**

Protophonia-> Wetherby (contra-trader) -> Team Mobile -> Cybacomms -> EMJ -> Freitex

288. Atec's deal 13 and EMJ deal 1 took place in the period 05/06. A consignment of  
10 6000 units of Tom Tom Go 910 satellite navigation sets were allegedly acquired by  
Wetherby from Protophonia in Portugal and then sold to Team Mobile which split the  
consignment into 4000 units which were sold to Wireless 5 and 2000 units which  
were sold to Cybacomms, and were then on sold to Atec and EMJ respectively. Both  
Atec and EMJ sold the goods to Freitex. All the invoices in both deal chains were  
15 dated 16 May 2006.

289. In our view, on the balance of probabilities, the fact that a single consignment of  
6000 units of goods arrived in the UK from a single Portuguese supplier, the  
consignment was then split into 4000 units and 2000 units which passed through a  
number of UK traders before being sold to a single German customer (Freitex), with  
20 all the invoices being dated on the same date, indicated that the deals were contrived.

*Atec's transactions and the characteristics of trading in the grey market*

290. Mr Peter Corkery, a partner at Ernst & Young LLP, gave expert evidence on behalf of HMRC in respect of the mobile phone distribution industry in 2006. In his evidence, Mr Corkery outlined the main characteristics of the "grey" market sector.

25 291. Mr Corkery identified five different types of grey market trading:

(1) Arbitrage from price differentials. Here the opportunity for arbitrage  
would be created by the presence of list price differentials between geographic  
markets or through asymmetric buying power for agents at different layers of  
the supply chain in a given market. Mr Corkery gave, as an example, of this  
30 form of grey market trading the case of a company which sourced stock from  
another company in a different market for a price which was lower than could  
be achieved in the local market. In seeking to maximise profit, the buyer would  
seek to minimise transaction costs. Changes in prices for older handsets could  
occur when new models were launched by manufacturers.

(2) Arbitrage from currency movements. Arbitrage opportunities could be  
35 created from currency movements where exchange-rate fluctuations were not  
reflected in manufacturers' list prices.



(3) Volume shortage. Agents operating in the white market may purchase from the grey market to fill short-term volume shortages resulting from higher than anticipated demand for a given handset (where it was not possible to source stock in a suitable timeframe from authorised, i.e. white market, channels).

5 (4) Dumping. Dumping occurred where market agents had excess stock of a specific handset, either as a consequence of over-estimating demand, or consciously over-ordering to take advantage of volume or other discounts from authorised channels.

10 292. Mr Corkery also referred to arbitrage opportunities from “box breaking” i.e. reconfiguring handsets to unlock them from the network to which they were configured. There was no evidence that Atec was involved in “box breaking” and we therefore do not consider this form of grey market trading further.

15 293. Mr Corkery considered that market forces would act in the grey market in the same manner as the white market. The market would seek to reach equilibrium and market forces would act as a constraint on both the length of the supply chain in the grey market and the level of competition at different points in the chain in the same way as the white market. Market forces would also limit the time periods which exist for grey market trading (e.g. arbitrage opportunities from currency movements may cease to exist following movements in exchange rates). The use of existing trading contacts, online trading sites were mechanisms which would allow sellers to find the most attractive buyer or provide information as to the market price of handsets which would have the effect of efficiently limiting the length of supply chains. They would increase the level of competitiveness across the supply chain, constraining profits and therefore incentivising agents to minimise the number of links in the chain in order to capture a greater share of the available profit. Sellers would be incentivised to identify buyers which were close to the customer i.e. retailers. Buyers would be incentivised to identify sellers which are close to the manufacturer in order to maximise their profit.

30 294. Barriers to entry in the grey market could be considered lower than in the white market, as handsets could be traded in the grey market in small volumes and some agents, acting as intermediaries, could conduct trades without taking physical ownership of stock. Mr Corkery considered that competition in the grey market suggested that the opportunities to make significantly higher margins than white market trading would be limited and that the length of the supply chain would typically not be considerably longer, with any additional “links” in the chain being economically rational and agents adding value through the activities they perform.

40 295. Mr Corkery’s evidence was that the nature of the grey market suggested that it was competitive from end to end so that, at each stage of the supply chain, entrants needed to demonstrate value-added activity or else be dis-intermediated. In relation to arbitrage from price differentials, Mr Corkery expected a trader to have relationships with other distributors, specialist multiples or retailers in other markets to understand where demand existed for specific handsets. In all of the types of grey market trading, Mr Corkery expected profit margins to be consistent with a competitive outcome at any given stage of the supply chain.

296. The need for grey market participants to add value and the need for short supply chains was a recurrent theme in Mr Corkery's evidence.

297. In our view, Atec's transactions exhibited none of these characteristics. Atec added no value to the goods. It simply bought (or purported to buy) from other UK grey market suppliers and sold to EU customers in deal chains where the goods simply passed from one trader to another. The length of the deal chains seemed to us extraordinary. In many chains there were six or seven traders from (and including) the defaulter to the EU customer. There was no reason why Atec, or any of its immediate suppliers could not have sourced the goods from traders higher up the chain in a way which would have allowed them to cut out the middlemen.

298. None of the appealed deal chains featured a manufacturer, an authorised distributor or a retailer. In other words, no "white" market participant featured in any of the deal chains.

299. Ms Kalia challenged Mr Corkery's evidence on the basis that much of his witness statement was based on his analysis of the Nokia mobile phone market. Most of the goods concerned in the appealed transactions were not Nokia mobile telephones. We do not consider this argument to be relevant to Mr Corkery's views, summarised above, on the characteristics of the grey market which we considered to be generic rather than related only to a particular type of mobile telephone.

300. In addition, Ms Kalia sought to criticise Mr Corkery's evidence in relation to his claim that a mobile telephone manufacturer may not honour a warranty in respect of a handsets sold outside the geographic warranty area. We understood Mr Corkery's evidence to be qualified in the sense that he expressly said that he was not able to give definitive evidence about all warranties and that the exact position would depend on the precise warranty arrangement. In any event, whatever the position regarding warranties may be, we did not consider that this aspect of his evidence detracted from the general thrust of his analysis which we have set out above.

### *Insurance*

301. On Atec's invoices to its EU customers it was stated: "Movement: DDU-Inco terms 2000." On its pro forma invoices there was a box headed "Incoterms 2000" and underneath the letters "DDU".

302. "Incoterms" (International Commercial Terms) are a series of pre-defined commercial terms published by the International Chamber of Commerce. "DDU" Incoterms stand for "Delivered Duty Unpaid" and means that seller is responsible for effecting a safe delivery of goods to a named destination, paying all transportation expenses but not the duty. The seller is, therefore, responsible for insuring the goods.

303. "CPT" Incoterms, however, stands for "Carriage Paid To". This means that the seller pays for the carriage of the goods up to the named place of destination. The goods are considered to be delivered when the goods have been handed over to the first or main carrier, so that the risk transfers to the buyer upon handing goods over to

that carrier at the place of shipment in the country of export. Therefore, the buyer will be responsible for insuring the goods in transit.

304. In a letter dated 19 September 2006 from Atec to HMRC, Atec addressed the question of insurance as follows:

5                   “Insurance for stock is undertaken based on the commercial agreement  
with customers. For all transactions where insurance was undertaken, it  
was carried out under Incoterms 2000-DDU (Delivered Duty Unpaid)  
– this includes the cost of freight and insurance as the risk associated  
with that stock is ours. Where there is no insurance information and  
10                   insurance was not carried out, it was done under Incoterms 2000 –  
CPT (Carriage paid to). Under these terms, the risk ends as soon as the  
goods leave the UK warehouse and the risk is with the customer.”

305. In deals 1, 4-8 and 16, Atec requested insurance. In addition, in deals 40 and 52  
Atec also requested insurance; these were the only deals with Freitex in respect of  
15                   which Atec requested insurance.

306. Under cover of the letter of 19 September 2006, Atec supplied insurance details  
in the form of a list of transactions for the quarterly VAT period ending 07/06. This  
list showed that 32 transactions were undertaken on CPT Incoterms. That information,  
however, was inconsistent with the terms of Atec’s invoices and pro forma invoices  
20                   which clearly referred to DDU Incoterms being applicable.

307. In his witness statement, Mr Kalia said he made it clear to HMRC on Atec’s  
“Intrastat” declarations made to HMRC (a method of compiling information and  
statistics concerning trade between member states of the EU) that Atec was shipping  
on “CPT” terms i.e. that the burden of insurance was on Atec’s customers. Mr Kalia  
25                   said that the discrepancy caused by Atec’s documentation was an error on the part of  
the company’s administrator at the time, Clare Hemsely.

308. It seemed to us remarkable that so many consignments of high-value goods  
should be exported without insurance and that any misunderstanding as to whether  
Atec dealt on CPT or DDU Incoterms should be repeated so many times. It also seems  
30                   to us remarkable that the only two deals with Freitex in which insurance was  
requested by Atec were deals 40 and 52. There were two deals in July 2006 where Mr  
Gotthal said that actual goods moved between the parties. It seems to us that the  
insurance position in relation to these two deals corroborated Mr Gotthal’s account.

#### *Due diligence*

35                   309. As we have seen, Atec was warned by Mr Gilley at a meeting on 13 May 2005  
that it had been dealing with traders using hijacked VAT registration numbers.  
Moreover, Atec had been served with Notice 726 and Mr Stone, in a letter dated 22  
April 2004, had emphasised the importance of Atec verifying its suppliers.

*(a) EU Customer due diligence*

310. **Evolution SARL (“Evolution”)** (Atec’s customer in deals 38 and 39) – Atec’s due diligence consisted of an undated and unsigned letter of introduction, a French VAT certificate, a copy of an extract from a business register, a copy of a  
5 British passport of Alfred Fritz Warner and a copy of his council tax bill for an address in Coventry, a copy of a blank trading application form, copy of Europa VRN validation dated 28 June 2006. We note that Atec carried out no financial checks on Evolution.

311. **Phone Connected SARL (“Phone Connected”)** (Atec’s customer in deals 2-  
10 **3**) – Atec’s due diligence in relation to Phone Connected comprised an undated letter of introduction apparently faxed on 26 October 2005. The letter claims Phone Connected was contracted to Nokia. The letter attached a client checklist. There was also a French VAT certificate, copy of an extract from the Dunkirk Chamber of Commerce listing, Redhill VRN validations and a copy of the page from a French  
15 passport. There was no evidence of Atec having carried out any financial checks on Phone Connected.

312. **Freitex GmbH (“Freitex”)** (Atec’s customer in deals 9-15, 17-21, 24-23 and  
20 **40-52**) – As we have seen, Mr Kalia was introduced to Mr Gotthal by Mr Schmitt at a trade fair. Mr Kalia had previously dealt with Mr Schmitt’s company but after this introduction dealt only with Freitex.

313. Atec’s due diligence in respect of Freitex was minimal. It consisted of a letter of introduction faxed on 18 April 2006 with banking details. There were details (in German) of what appears to be Freitex’s VRN and a Europa VRN validation dated 8  
25 May 2006 (after Atec’s first sale to Freitex on 28 April 2006). There were no Redhill VRN checks and no financial checks.

314. **H & H Import Export SARL (“H & H”)** (Atec’s customer in deals 1, 5-6,  
30 **22-23 and 34-37**) – Atec’s due diligence in relation to H&H comprised an undated letter of introduction which listed generic products in a different typeface from the rest of the letter, a French VAT certificate and translation, Europa VRN validations dated 20 April 2006 and 24 April 2006, Redhill clearance of H&H’s VAT number dated 2 May 2006 and some documents in French. There were no financial checks.

315. **Silus BV (“Silus”)** (Atec’s customer in deals 7-8) – Atec’s due diligence comprised an undated letter of introduction which described Silus as a “well-  
35 established supplier and distributor of clothing, toys, electrical and electronic equipment, handicrafts and tools, and office furniture, as well as the import and export of these products in all its broadest sense.” There was also a Dutch VAT certificate, correspondence and what appeared to be the Dutch equivalent of the memorandum and articles of association for the company. There was a Redhill and a Europa verification of the VRN. There were no financial checks carried out by Atec.

40 316. **Sunico A/S (“Sunico”)** (Atec’s customer in deal 4) – Atec’s due diligence in relation to Sunico comprised an undated Creditsafe report which showed that Sunico had a credit limit of DKr 7 million and a share capital of DKr 980,392. It appears that

the latest financial figures were based on 2003-2004 which showed a balance sheet surplus of DKr 192,817.

317. Conclusions on EU customer due diligence: In our view, the due diligence performed by Atec in respect of its EU customers could have provided no assurance that it was not becoming involved in MTIC trading chains. The due diligence was perfunctory and superficial. It is hard to avoid the impression that the due diligence documents were little more than a matter of window-dressing. There were no checks or enquiries of any substance undertaken. In all but one case, there was no financial due diligence at all. Ordinarily, particularly with transactions of such high value, we would have expected Atec to have been concerned about the creditworthiness of its customers and their ability to pay.

*(b) Atec's supplier due diligence*

318. **Cybacomms UK Ltd (Atec's supplier in deals 30-37 and 41-44)** – Atec's due diligence in respect of Cybacomms comprised a letter of introduction dated 21 November 2005 which noted that Cybacomms was an exporter. A copy of the certificate of incorporation dated 18 June 2006, a copy of its VAT certificate indicating that it was a retailer of mobile telephones, a blank trading application form and a trade application form completed by Atec on 8 June 2005, a Redhill clearance letter dated 22 November 2005, a Europa VRN validation dated 19 June 2006, a certificate of incorporation and a Cybacomms due diligence checklist (which showed that Atec had not obtained copies of its letterhead and a utility bill), a company return on Cybacomms' officers and shareholders as at 30 August 2005, abbreviated annual accounts for the year ended 30 June 2004 (showing the balance sheet surplus of £17,585 with a share capital of £1), abbreviated accounts for Cybacomms International showing a balance sheet surplus of £19,560, bank details and memorandum and articles of association.

319. There was, in our view, nothing in the due diligence information obtained by Atec in respect of Cybacomms that could assure Atec that Cybacomms was a *bona fide* company which was not involved in MTIC deal chains. Atec bought almost £1.2 million worth of electrical goods from Cybacomms. None of the financial information on Cybacomms indicated that its financial position was such that it could undertake transactions of this scale.

320. **Digitech Electronics Ltd ("Digitech") (Atec's supplier in deal 40)** – Atec's due diligence in relation to Digitech comprised of an undated letter of introduction faxed on 15 June 2006, a copy of its VAT certificate showing its trade class as "other electronic and equipment", a copy of its certificate of incorporation dated 18 October 2002, a Europa and a Redhill VRN validation dated 16 June 2006 and 29 November 2006 respectively (the latter being after the date of deal 40). There was no financial due diligence.

321. In our view, none of the (rather modest) due diligence materials held by Atec in respect of Digitech could have provided Atec with any assurance that dealing with

Digitech would not involve Atec in MTIC deal chains. There was no financial due diligence notwithstanding the fact that Atec had never dealt with the company before.

5 322. **Hendon Import Export Ltd (“Hendon”)** (Atec’s supplier in deal 52) – Hendon was also Atec’s supplier in deal 53 in respect of which Atec’s appeal was withdrawn.

10 323. Atec’s due diligence in relation to Hendon comprised of an undated letter of introduction (faxed on 17 March 2006) which claimed that Hendon was established and specialised in trading and distribution of electronic technology including mobile telephone communication and computer equipment. There was also Hendon’s VAT  
15 certificate stating that its business class was “computer equipment manufacture” or, on an earlier VAT certificate, “other clothing – wholesale of”. There were accounts to 30 June 2004 showing share capital of £1 and assets of £1. Companies House information confirmed that Hendon was dormant at 30 June 2004. Information from Creditsafe as at 1 October 2005 showed the company was dormant with no credit  
20 rating and a trade class of “wholesale of clothing and other”. There was a Europa VAT validation dated 20 April 2006, Redhill VRN clearances dated 11 August 2005 and 6 January 2006. There was also a letter from HMRC’s Redhill office dated 19 June 2006 stating that the VAT number could not be verified. There were also copies of Hendon’s memorandum and articles of association, certificate of incorporation dated 11 June 2003 and annual return declarations.

25 324. Mr Kalia was cross-examined about his due diligence in respect of Hendon. He was asked whether the fact that Hendon appeared to have been dormant worried him and he replied: “Not overly, no.” This was notwithstanding the fact that Mr Kalia thought he had done approximately £5 million of business with Hendon. He was asked about the fact that having been dormant, Hendon seemed to then manage to have a huge turnover and he replied: “That is not the impression I had from them, it was more that they were already trading....” Mr Kalia claimed to have known his contact at Hendon “quite well” and that he had had dinner with him and his wife. When pressed on this, he admitted that business was not discussed at dinner.

30 325. In our view, there was nothing in the information held by Atec in relation to Hendon that could assure Atec, by dealing with Hendon, it would not become involved in MTIC deal chains. Such financial information as there was, should have caused Atec to be concerned about the supplier. Moreover, it was clear that Hendon was not an established supplier of mobile phones or computer equipment, judging  
35 from the description of its trade as either a computer manufacturer or a wholesaler of clothing.

40 326. **London Mobile Communications Ltd (“LMC”)** (Atec’s supplier in deals 1, 5, 6, 22 and 23) – There was a Companies House annual return dated 19 September 2004, a notice of appointment of a director, a copy certificate of incorporation dated 19 September 2003, memorandum and articles of association and a copy of the company’s VAT certificate. There was an undated letter of introduction faxed to Atec on 4 July 2005 which stated that the business had been trading since November 1994. In addition, there was a Redhill clearance, copy of annual accounts for the period

ended 30 September 2004 showing that the company had been dormant for that year. There was only one entry in the balance sheet, viz £100 share capital. A Creditsafe report prepared on 24 August 2005 showed the company was dormant with a nil credit limit. A Creditsafe track change was received but this showed that the company lodged accounts on 9 August 2005.

327. Once again, none of this information could have assured Atec that by dealing with LMC it was not involving itself in MTIC deal chains.

328. **New Order Trading Ltd (“New Order”)** (Atec’s supplier in deals 7 and 16) – Atec’s due diligence consisted of a set of company accounts to 31 December 2003 showing a balance sheet surplus of £1,923, including share capital of £100. There was an annual return as at 20 December 2004, a certificate of incorporation dated 12 December 2002, a copy of the company’s memorandum and articles of association, a report on current appointments as at 29 September 2005, a copy of its VAT certificate with the trade classification of “other retail not in stores”, an undated letter of introduction, copy letter heading, a trade application form and an HMRC (Redhill) clearance dated 5 July 2005. There was a Creditsafe report dated 24 August 2005 which showed that there was a County Court judgment against the company and that its credit limit was nil on a credit rating of “credit against collateral”.

329. In our view, Atec’s due diligence in respect of New Order could have provided no reassurance that by dealing with New Order, Atec was not involving itself in MTIC deal chains.

330. **Stardex Ltd (“Stardex”)** (Atec’s supplier in deals 2-4, 8 and 38-39) – Atec’s due diligence material in respect of Stardex comprised an undated letter of introduction, a certificate of incorporation, a copy letterhead, a copy VAT certificate showing the trade class “computers, computer equipment and software”, a Redhill clearance dated 6 October 2005, financial statements for the year ended 31 March 2003, a list of current appointments from Companies House dated 28 September 2005, a copy of the company’s annual return declaration dated 24 April 2005 and a Creditsafe report generated on 1 October 2005 giving no credit rating. There was also a Europa VRN validation dated 21 June 2006.

331. The accounts to 31 March 2003 showed a loss of £193,595. Note 18 of the accounts stated:

“HM Customs & Excise have assessed the company for Value Added Tax amounting to £387,254 on transactions which it considers did not fulfil the requirements for zero rating of sales to VAT-registered customers in other European countries. The director considers that the company has a satisfactory defence and has contested the assessment. No provision has been made in these financial statements for any amount which may be payable, in the event that the company appeal against the assessment is unsuccessful.”

332. Moreover, note 19 to those accounts stated:

5 “During April 2003, new regulations resulted in the imposition upon the company of joint and several liability for the Value Added Tax liabilities of other companies which are deemed to be in the same supply chain. The director considers that such regulations entail an unacceptable commercial risk. As a result the volume of the business has been significantly reduced since the year end.”

333. During the periods 04/06 to 07/06 Atec bought mobile phones worth in excess of £4 million from Stardex.

10 334. In our view, there was nothing in the due diligence materials held by Atec in relation to Stardex that could have reassured Atec that by dealing with Stardex it would not be involving itself in MTIC deal chains.

15 335. **TM Global Ltd trading as Team Mobile International (“Team Mobile”) (Atec’s supplier in deals 45-51 and Wireless 5’s supplier in deals 13-15, 17-21 and 24-29)** – Atec’s due diligence materials in respect of Team Mobile comprised an undated letter of introduction (apparently faxed to Atec on 19 March 2006 and again on 21 March 2006), a copy VAT certificate a copy certificate of incorporation dated 5 July 2003, Europa VRN validations dated 21 March 2006 and 24 April 2006, a copy letterhead, copy trade application form, copy of terms and conditions relating to supplies to Team Mobile and a list of contact numbers.

20 336. Atec’s due diligence in respect of Team Mobile can have provided Atec with no reassurance that in dealing with Team Mobile it would not become involved in MTIC deal chains.

25 337. **Zain Communications Ltd (“Zain”) (Wireless 5’s supplier in deals 19-12)** – neither Atec nor Wireless 5 have reduced any due diligence documentation in relation to Zain. In a letter dated 12 March 2007, Ms Kalia informed HMRC that Wireless 5 had used Atec’s Creditsafe application to check the details for Zain. In a letter dated 9 May 2007, Ms Kalia stated:

30 “The relationship with Zain Communications was established in 2004 at CeBIT in Germany and this led together with Swedx and many others were given to our previous General Manager of Wireless 5 Ltd. As Wireless 5 Ltd has moved office three times, we have been unable to locate the documents. We did however contact Zain Communications in 2006 and established that they were still operating and updated our records accordingly...”

35 338. HMRC carried out a credit check on Zain using Experian in May 2007 which showed that the company was dormant. The latest company accounts as at 31 August 2004 showed an issued share capital of £1 and a net worth of £1.

40 339. It, therefore, seems unlikely to us that the due diligence carried out by Wireless 5 and/or Atec can have provided any comfort that by dealing with Zain Wireless 5 and/or Atec would not become involved in MTIC deal chains.



340. Conclusions on supplier due diligence – In our view, the due diligence performed by Atec in respect of its (and Wireless 5’s) suppliers could have provided no assurance that it was not becoming involved in MTIC trading chains. As we said in relation to its EU customer due diligence, it is hard to avoid the impression that the  
5 due diligence documents are little more than a matter of window-dressing. There were no checks or enquiries of any substance undertaken. There was very little substantive financial due diligence.

341. *Conclusions in respect of customer and supplier due diligence* – We have reached the conclusion that Atec’s due diligence in respect of both EU customers and  
10 its (and Wireless 5’s) suppliers was inadequate. We are, of course, aware of the comments of Moses LJ in *Mobilx*, *supra*, at [82] about the dangers of focusing unduly on the question whether a trader has acted with due diligence. But it is one thing for a trader who has asked all the appropriate questions to ignore the circumstances in which its transactions have taken place, it is quite another for a trader such as Atec to  
15 fail to ask appropriate questions in circumstances in which it was aware of the need to exercise caution.

342. As Atec now accepts, it received the two warning letters of 16 March 2006 from which Mr Kalia identified that LMC and Hendon were Atec’s suppliers in transaction chains which traced back to tax losses. Nonetheless, Atec’s due diligence in respect of  
20 LMC and Hendon was woeful. It is hard to avoid the conclusion that Mr Kalia simply ignored the warnings and carried on trading with these two companies regardless.

343. Ms Kalia submitted that it carried out satisfactory due diligence by sending what it described as “line check” request to HMRC prior to conducting a deal. A line check, as we understood it, was a request made by Atec to HMRC (Redhill) to verify  
25 a supply chain. Atec would fax or email HMRC with details of its supplier and customer, notifying HMRC of its intention to conduct a transaction with those parties. The document would request HMRC to “verify the supply chain”. In the two examples to which Ms Kalia drew our attention the fax said: “we provide you with a two hour window to action and respond.”

344. In our view, it was absurd to expect HMRC to respond to such a request within  
30 two hour window. In any event, it was not for HMRC to carry out due diligence but Atec. Furthermore, it was not clear to us how HMRC would be able to verify Atec’s supply chain. Ms Kalia suggested that HMRC should telephone the freight forwarder who would “have allocations.” We note that on the line check exhibits to which Ms  
35 Kalia drew our attention (both dated 22 May 2006) Atec did not identify the freight forwarder. In our view, these documents provided Atec with no assistance in its argument that its due diligence was adequate. We are inclined to agree with Mr Holland’s suggestion, put to Ms Kalia in cross-examination, that Atec was playing a “game” with HMRC, setting HMRC task which it could not sensibly perform.

#### 40 *Inspections*

345. Atec’s then solicitors, Hassan Khan & Co, wrote to HMRC on 29 January 2007 enclosing a schedule of transactions where stock had been inspected on behalf of

Atec, usually by the freight forwarder. In addition, there were a number of inspection reports produced by Globe Distribution Ltd (“Globe”). The schedule disclosed that Atec did not inspect the goods for any of the direct tax loss deals in April 2006 (but see below as regards deals 2 and 3). Atec did, however, commission inspections in relation to the remaining deals with the exception of deals 16, 18, 22, 23, 34-37, 40, 52 and 53.

346. The majority of the inspection reports related to goods which Atec sold to Freitex and in which Globe acted as the freight forwarder (the only exceptions in relation to Freitex deals were deals 40 and 52 where the freight forwarder was Hawk Precision Logistics). In other words, these were inspection reports which related to transactions which, according to Mr Gotthal, did not involve the shipment of real goods.

347. In addition (and notwithstanding Hassan Khan & Co’s letter), in deals 2 and 3, both of which were connected to the fraudulent contra-trader A-Z, the inspection reports were produced for Atec by a freight company called MSG Freight Ltd. The inspection reports were dated 6 May 2006. According to Atec’s FCIB bank statement, Atec had paid its supplier, Stardex, for both of these deals on 24 April 2006. We note, however, that the goods were shipped only on 7-8 May 2006. It seemed to us odd that Atec should pay for these goods, which had a (net of VAT) value of approximately £2 million, before obtaining an inspection report. Moreover, the date of the inspection was almost 2 weeks after Atec had been paid by its French customer, Phone Connected.

348. Both of Atec’s invoices deals 2 and 3, after recording that the mobile telephones were “Central European Software Specification”, went on to record:

25                                    “All stock two-pin euro, No loose stock, boxed and branded, No stamps or removed logos on boxes.”

349. This was odd because the invoices were dated 24 April 2006 i.e. well before the inspection report dated 6 May 2006. It was not clear to us how the invoice could describe in such detail the appearance of stock that had not been inspected.

30    350. In addition, in deal 13 Atec obtained an inspection report on 17 May 2006 from Globe (requested 16 May 2006) but gave shipping instructions to Globe to ship the goods to its customer Freitex on 16 May. In other words, Atec did not wait to receive the inspection report before instructing Globe to ship the goods to Freitex. Again, it seemed to us odd for Atec not to wait for the inspection report in relation to a consignment of goods worth approximately £1.6 million (net of VAT).

351. Moreover, in relation to deals 38 and 39, 1<sup>st</sup> Freight’s inspection report was dated 29 June 2006, but Atec gave 1<sup>st</sup> Freight shipping instructions on 28 June 2006.

40    352. The same sequence of events (i.e. shipping instructions being sent before the date of the inspection report) also occurred in relation to deals 42-51. In all of these deals, Atec’s customer was Freitex and the freight forwarder was Globe. In addition, in these deals, the goods had been shipped from the UK before Atec received the

inspection reports (although Globe claimed that this was due to the lorry being loaded late at night and the inspection report not being typed until the following day). Given the skimpy nature of the report, we found this delay in sending the report surprising.

5 353. This seemed to us a very strange way of doing business. It indicated that the inspection reports really did not matter to Atec.

354. We shared Mr Saunders' view that the inspection reports given by Globe were superficial with minimal information given on the stock inspected. In addition, as regards Globe, in relation to a number of deals (e.g. deals 30, 31, 32, 42, 43, 44 and 51) only a very small sample of stock was inspected frequently no more than 0.5% –  
10 although in two deals (deal 45 and 50) the sample was 1% and in deal 49 sample was 2%. This seemed to us a very small sample.

355. Perhaps the strangest feature of the inspection reports related to deal 29. Again, Atec's customer was Freitex. According to the invoices, the goods which Atec sold to Freitex were, supposedly, HP-iPAQ HX-2750 pocket PCs. The inspection report from  
15 Globe referred to 2000 units of "Ipaq HX 350". No one seems to have noticed that the goods inspected were different from the goods agreed to be sold by Atec to Freitex.

356. In our view, it seems highly improbable that any legitimate trader, dealing in consignments of high-value goods, would fail to have the goods inspected by an expert freight handler. This seems to us an elementary precaution to take to ensure  
20 that the goods were the correct specification, were undamaged and to ensure that there was adequate information and identification of the goods in the event of a subsequent claim by a purchaser or if it was necessary to make an insurance claim. Moreover, we would have expected Atec, if dealing in the ordinary course of business, to have obtained an inspection report before giving shipping instructions and certainly before  
25 the goods left the country. Furthermore, we have considerable doubts about the quality of the reports submitted by Globe: the description of the goods was extremely brief, they took very small samples, in one case misdescribed the goods, submitted reports after shipping instructions have been given and, indeed, after the goods had left the country.

30 *IMEI numbers*

357. IMEI stands for International Mobile Equipment Identity and is a unique identification for a mobile telephone, usually consisting of 15 digits. IMEI numbers are not applicable to the appealed deals concerning other types of electronic equipment.

35 358. On 27 April 2006, two HMRC officers, Mr Ian Simmons and Mr Steve Kenrick, visited Atec. Mr Simmons' manuscript note of the meeting was as follows:

40 "27/04 Visit to Atec. Entered premises at 15:55 accompanied by Steve Kenrick. Briefly asked about IMEI and whether or not the trader keeps IMEI numbers. Trader does, but he is not prepared to give these, as he feels he could incriminate himself. I explained that it is going to be law in the near future and your business should do anything that can reduce

the risk of them being involved in a fraudulent deal chain. Left premises at 16:10.

16: 40 Adopted and agreed [Mr Simmons's signature]

27/04/06 [Mr Kenrick's signature] S KENRICK ”

5 359. There was also a typewritten note of that meeting prepared by Mr Simmons. He could not be completely certain when he prepared it but thought it would have been prepared either of the same day or the following day. Mr Simmons confirmed that in preparing the typewritten note he would have had the handwritten note available to him. The typewritten note read as follows:

10 “Visit to PPOB in order to check credit note discrepancies. Discussed  
IMEI numbers. I asked Mr Kalia whether or not he keeps IMEI  
numbers. Mr Kalia said he does but he is not prepared to give these to  
HMRC as he feels he could incriminate himself. I explained that it [sic]  
15 a law will be passed in the near future which will enable the business  
to keep such records. I also explained to Mr Kalia that he should do  
anything that can reduce the risk of Atec being involved in the supply  
chain where VAT has gone unpaid.

Left premises at approx 16:40.

Ian Simmons”

20 360. Mr Simmons, in cross-examination, recalled meeting Mr Kalia but could not recall whether Ms Kalia was also present. Mr Simmons said that he would have made notes during the meeting even if it was held whilst the participants were standing. Mr Simmons also said that the notes had been agreed and adopted by Mr Kenrick at 16:40, when they had both returned to HMRC's office in Staines. Mr Simmons  
25 insisted that he always had his notebook with him when he visited a trader's premises.

361. Mr Simmons was asked by Ms Kalia about the clothes that he would have worn to the meeting. Mr Simmons said that he would dress smartly or would wear what he described as “smart casual”. However, he said that “99%” of the time he would wear a tie. He also would have brought a bag with him.

30 362. Ms Kalia put it to Mr Simmons that Mr Kenrick did not attend the meeting. Mr Simmons denied this and confirmed that Mr Kenrick was at the meeting.

363. Ms Kalia referred to a decision of this Tribunal in *HT Purser Ltd v Revenue & Customs* [2011] UKFTT 860 (TC) in which this Tribunal, referring to Mr Simmons, said:

35 107 The appellant's failure to take this action was, in Mr Simmons's view, an indication that it wished to avoid having incriminating information which could be seen by HMRC....”

364. Ms Kalia put it to Mr Simmons that his notes reflected a preconceived view. Mr Simmons denied having a preconceived view that traders would not give HMRC  
40 IMEI numbers because they were fearful of incriminating themselves.

365. In re-examination, Mr Simmons explained that HMRC would wish to see any IMEI numbers held by a trader because those numbers could be run through HMRC's database which would inform HMRC whether those mobile phones with those numbers had previously been in the UK.

5 366. Mr Simmons also confirmed that there was no commercial sensitivity, as far as he was aware, attached to IMEI numbers.

367. Mr Simmons explained that he recorded Mr Kalia's comments about self-incrimination in his notebook because it struck him as relevant and important.

10 368. Mr Kalia's evidence was that he could not remember the meeting with Mr Simmons. At one point, in cross-examination, Mr Kalia said: "I did not have a meeting with Mr Simmons." This statement, in our view, was incorrect and, at the hearing, it was accepted that the meeting took place.

369. Mr Simmons wrote to Mr Kalia on 15 May 2006 – just over two weeks after his visit – stating:

15 "I am writing with regards to our meeting on 27/04/06. We briefly discussed the recording and keeping of IMEI and serial numbers. You indicated that currently you have inspections carried out on all stock either by the freight forwarder or by A1 Inspections.

20 Can you please confirm that you have an inspection carried out on every deal?

...

25 You s[t]ated that you do keep a record of IMEI numbers. Can you confirm if you keep a record of every IMEI/Serial Number you have purchased? If so, what date did you start doing this from, and what is the purpose of doing this."

370. Mr Simmons' letter then went on to refer to an impending legislative change which would require businesses to record IMEI numbers. He then asked Mr Kalia to make available all IMEI numbers that he currently had in electronic form.

30 371. Plainly, therefore, when Mr Kalia met Mr Simmons on 27 April 2004 the subject of IMEI numbers was discussed.

372. In his witness statement Mr Kalia said that he did not claim to record IMEI numbers, nor did he state that they would not be made available to HMRC for fear of incrimination. Mr Kalia referred to Mr Simmons' letter of 15 May 2006 as follows:

35 "... I intended to correct Mr Simmons, however with the internal review taking place and the imminent extended verification, this did not proceed within the short time frames. I do not understand why this is in any way significant nor do I accept the allegations of the so-called comments made to me in relation to the storing of those numbers. As previously stated, in May 2006, Mr Simmons wrote a letter regarding

40 keeping IMEI and Serial numbers in relation to goods that were being

5 traded. In response to this letter, I instructed an internal review of trade activity by goods and quantity in order to determine the best approach, cost benefit analysis of including such a task as requested by HMRC as well as integration of the current systems plans that were already underway. So far as I was aware, there was no legal requirement for us to carry out our own checks and I note that it has not been alleged against Atec that we dealt in any recycled stock.”

10 373. It seems odd, however, that Mr Kalia did not reply to Mr Simmons, challenging Mr Simmons’ statement that Atec kept records of IMEI numbers. It seems to us, on the balance of probabilities, that Mr Kalia did make the statement attributed to him in Mr Simmons’ letter.

374. On 20 June 2006, two HMRC officers, Ms Bamford and Mr Westgate visited Atec’s offices. In his unchallenged witness statement, Mr Westgate said that:

15 “Mr Kalia was asked whether [IMEI] numbers were checked. Mr Kalia stated that on occasion, approximately 10% of the numbers would be checked but that more often would not be examined at all.”

20 375. Although Mr Westgate had not been required to attend as a witness by Atec, Mr Kalia purported to challenge Mr Westgate’s evidence. Mr Kalia, subsequently stated that he had produced IMEI numbers to HMRC on one occasion which, he believed, was in 2004.

376. In Ms Bamford’s unchallenged witness statement, she attached a note of the same meeting which read:

25 “Discussed IMEI numbers. Mr Kalia explained that on one occasion approximately 10% of numbers would be checked but that often none would be examined at all. He also stated that he was not willing to release any that he had to HMRC.”

30 377. Ms Bamford’s note of the meeting recorded that Ms Bamford said she would return for another meeting on 28 June 2006 with an HMRC accountant (Ms Harris). When that meeting took place on 28 June, Mr Kalia refused to cooperate in answering Ms Harris’ questions concerning aspects of Atec’s business, including funding. Mr Kalia indicated that he would not allow records for the 05/06 VAT return to be taken from Atec’s premises. Ms Bamford’s note of the meeting also records Mr Kalia asking:

35 “where in the law we could require these things, including IMEI numbers, and I advised I would put it in writing.”

40 378. Ms Kalia’s evidence was that Mr Simmons visited Atec’s offices on a couple of occasions to meet her and a Wireless 5 employee called Lara. She recalled that she showed Mr Simmons around the office. She did not remember Mr Kenrick being present. She took Mr Simmons upstairs and introduced him to Atec’s back office staff. She observed that Mr Simmons was :

“...not dressed in a way that I thought was usual for VAT, and that’s why I recollect it, because it was quite casual in some respects. He had

his hands in his pockets. There was change in there. There was some tingling with keys, and that's why I thought: that's very strange, but okay. It was nice and sunny outside."

379. At that point, according to Ms Kalia, Mr Kalia walked out of his office and introduced himself to Mr Simmons and they stood around having around having a "general chat". She then claimed that Mr Simmons said something along the lines of: "I wanted to discuss whether you take IMEI numbers are not." She said that Mr Kalia had replied that he did not and that he wanted some kind of database, if he did take them, so that he could crosscheck them. Ms Kalia claimed that this was a 60 second conversation, done in passing. She then continued to show Mr Simmons round the office.

380. Ms Kalia claimed that Mr Simmons did not take notes. She said:

"At the time, he didn't take any notes, because...he was wearing a shirt; it was short-sleeved. There was a pen in the side pocket and it was just that he had his hands in his pockets and there was change tingling. That is the only reason, as silly as it sounds, but I remember it, because I have never seen a VAT Officer do that before. So I thought: where is your notebook? Where is your – you are not making any notes but, you know, you are being shown around, so I understand in a way why you don't have it. But was he writing down? No. Was it in a meeting? Absolutely not. And when the letter came, I think it did say something about a discussion. To be honest, I didn't think anything of it. And when I saw the witness statement of Mr Simmons, my initial reaction was: he is mistaken. But then I saw the exhibits and then I thought: it's probably a bit more than a mistake now. Then obviously with the *HT Purser* authority, that kind of clarified the point."

381. In our view, the evidence establishes that Mr Simmons and Mr Kendrick did meet Mr Kalia and discussed IMEI numbers. Mr Simmons' letter of 15 May 2006 makes it clear that there was a meeting and that IMEI numbers were discussed.

382. Although Mr Kalia claimed not to recall the meeting, Ms Kalia gave a detailed account of the meeting, including where in the building it took place, Mr Simmons', keys jangling in his pocket, a pen in his shirt pocket etc. It was remarkable that none of this evidence, which was only given by Ms Kalia in examination in chief by Mr Kalia, was included in her witness statement.

383. We do not accept Ms Kalia's account that Mr Simmons did not have a notebook during his meeting. Nor do we accept Ms Kalia's allegation that Mr Simmons falsely recorded that Mr Kalia refused to hand over IMEI records for fear of self-incrimination.

384. Mr Simmons' manuscript record of the meeting, countersigned by Mr Kenrick, was included in the exhibits to his witness statement. We accept that these were contemporaneous (or nearly contemporaneous) notes made by Mr Simmons and agreed by Mr Kenrick. As such, these notes constitute the best evidence of what was said at that meeting.

385. Furthermore, Mr Simmons' letter of 15 May 2006 makes it clear that Mr Simmons did meet Mr Kalia on 27 April 2006 and that they did discuss IMEI numbers. In addition, Ms Bamford's note of her meeting with Mr Kalia corroborates Mr Simmons' evidence by confirming Mr Kalia's reluctance to hand over his IMEI records, although his motives for doing so at the meeting with Ms Bamford were not stated.

386. Ms Kalia alleged that Mr Simmons' account of the meeting of 27 April reflected the fact that he had prejudged the position. But Ms Kalia put forward no possible motive for Mr Simmons and Mr Kenrick falsely recording Mr Kalia's comments at the meeting. Nor was there any reason put forward by Mr Kenrick would falsely agree to notes of the meeting which he had not attended.

387. We should add that we do not consider the comments of the Tribunal in *HT Purser* at all relevant to this case. They are simply a record of Mr Simmons' opinion on the facts of that case – an opinion with which the Tribunal in that case disagreed. There was no evidence at all that Mr Simmons generally held the view that all traders refusing to hand over IMEI records did so out of fear of self-incrimination.

388. More positively, we should record that we found Mr Simmons to be an honest and straightforward witness.

389. It follows, therefore, that we reject Ms Kalia's evidence of the meeting with Mr Simmons and we reject Mr Kalia's apparent denial that he had met Mr Simmons and of the fact that he had told Mr Simmons that he kept records of IMEI numbers. We therefore find that Mr Kalia did make the statements attributed to him by Mr Simmons.

390. We also note that in a document prepared by Atec for NatWest Bank plc and HMRC dated 16 March 2004 and, apparently, updated on 9 April 2004, the explanation of Atec's deal processes indicated that Atec would request a full inspection report and delivery of IMEI numbers. Mr Kalia stated that during periods covered by the deals under appeal, Atec did not record IMEI numbers. He said that he had recorded approximately 10% of mobile telephone IMEI numbers in 2004.

391. In cross-examination, Mr Kalia accepted that he would not be able to identify the mobile telephones owned by Atec if they had been stolen and he also accepted keeping a record of IMEI numbers would have facilitated an insurance claim because he was been able to show insurers exactly what goods were the subject of any claim. Mr Kalia accepted that keeping a record of IMEI numbers would have made obtaining insurance cheaper.

#### *Transaction documentation*

392. There were numerous anomalies in Atec's documentation in relation to a number of the appealed deals. We shall examine the various instances individually.



393. As regards deal 2, Atec's customer, Phone Connected, did not send a purchase order to Atec until 24 April 2006 (the date on the fax, although the purchase order was dated 21 April 2006). Ms Kalia, however, raised a pro forma invoice addressed to Phone Connected on 20 April 2006. In other words, the documents were out of sequence. A pro forma invoice would usually only be raised after the receipt of a purchase order. Mr Kalia, when questioned about this point, accepted that the documents were out of sequence.

394. In relation to deal 3, Phone Connected's purchase order dated 21 April 2006 (faxed on 24 April 2006) was for "2650 Nokia 8800, CES, Never-Locked" mobile telephones. In response, Atec issued an invoice dated 24 April 2006 in respect of "2650 Sony Ericsson 8800 – Central European Software Specification". The net value of the goods on Atec's invoice was £1,095,775. On Atec's pro forma invoice dated 20 April 2006 the goods specified were "Nokia 8800 Central European Software Specification" mobile telephones. In cross-examination, Mr Kalia described this as a "silly error". There was, however, no evidence of Phone Connected querying the mistake.

395. Deals 2 and 3 also revealed anomalies in relation to Atec's shipping documentation. Atec's shipping instructions dated 20 April 2006 were addressed to MSG Freight Limited ("MSG") in Birmingham and instructed MSG to ship the goods to MSG in Belgium on hold. Atec's release notification relating to deal 2 dated 24 April 2006 was addressed to MSG in Belgium. The CMRs, however, stated that the goods were shipped to MDL in France. A further copy of the instruction contained in Atec's release notification relating to deal 2 dated 24 April 2006 was addressed to MDL in France. There was no release note in respect of deal 3. When the discrepancies were pointed out to him, Mr Kalia merely replied: "Yes, it is something that we will look into." He accepted that the documentation was not in "apple pie" order.

396. In Deals 9 and 10 it appears that the alleged consignment of goods left the freight forwarder before Atec received Freitex's purchase order. Freitex's purchase order was faxed to Atec at 17:43 on 28 April 2006 but the Eurotunnel ticket for the truck carrying the consignment showed that it checked in at 18:47 on the same date. Mr Kalia's only comment on this point was that: "a purchase order is not really of any significance. It is not really a legal document, is it?" This was a strange comment. The purpose of the purchase order is to support the shipment of goods. A purchase order usually lists each item that the customer wishes to purchase, the quantity and expected price of each item, the address where the goods are to be shipped, and the date by which the goods are required. A purchase order is an essential part of the documentation in relation to any commercial sale of goods.

397. As regards release notes, Atec failed to provide release notes the deals 1, 3, 5, 6, 9-15 and 22-29. In addition, no release notes were provided for the 2010 transactions. Usually, a freight forwarder requires a release note from its client before either delivering the goods to the client's customer or holding the goods to the order of the customer.

398. Mr Kalia was asked whether, on the basis that the goods were shipped on hold, the absence of release notes meant that the freight forwarder would still have the goods. Mr Kalia replied: “Yes, in theory, yes.” He agreed that a release note was an important document. When asked where the release notes that these transactions were,  
5 he merely replied: “It is something that we will have to look into.”

399. In relation to deal 4, Stardex (Atec’s supplier) released the goods to Atec on 26 April – the release note referred to the fact that the goods had been released to Stardex by New Order. In fact, however, New Order’s release note to Stardex dated 26 April 2006 noted: “Stock still to be released by the main supplier”. The main supplier was  
10 Jos (UK) Ltd. Nonetheless, Atec had shipped the goods (which evidently belonged neither to itself nor its supplier) on 24 April 2006.

400. In relation to deal 5, the invoice of Atec’s supplier LMC stated: “goods remain the property of London Mobile Communications Ltd until paid for in full.” Notwithstanding this retention of title clause, LMC nonetheless released the goods to  
15 Atec on 24 April 2006 even though Atec only paid LMC on 25 April 2006.

401. As regards deal 7, Atec gave its customer, Silus BV, permission to ship the goods on 25 April 2006. The permission was given by fax on that date at 15:45. Nonetheless, according to a P&O Ferries tracking document, Atec’s goods had been checked in for the Dover to Calais ferry at 01:38 in time for a 02:45 sailing on 25  
20 April 2006. The EU supplier to this deal chain, the Danish company called Blue Star Telecom, only released the goods to its customer, the Swiss company Integral Phone, at 16:59 on 25 April 2006. Therefore, Atec allowed its customer to ship the goods before they had been released into the deal chain. Moreover, it allowed the goods to be shipped before, according to Atec’s FCIB bank account, it was paid by Silus BV  
25 on 26 April 2006. Atec released the goods to Silus BV on 26 April 2006. HMRC claimed that Atec released the goods the day before its supplier had released the goods to Atec. We did not consider this to be correct. New Order also released the goods to Atec on 26 April 2006. It is not clear from the documents whether Atec’s release preceded that of its supplier, New Order.

30 402. Similarly, in deal 16, Atec granted permission for the goods to be shipped on hold to Silus BV on 18 May 2006 before, according to its FCIB bank account, it was paid on 19 May 2006. New Order, Atec’s supplier, also released the goods to Atec on 19 May 2006. New Order’s release note stated: “Stock still to be released by main supplier.”

35 403. The release anomalies were put to Mr Kalia in cross-examination. He accepted that freight forwarders would normally only release the goods on the basis of Atec’s supplier’s release. Where Atec had already shipped the goods on hold to its customer who had paid Atec for the goods but could not get release, Mr Kalia accepted that on a few occasions he had angry customers telephoning him. He said that he would then  
40 contact the supplier and request an immediate release. He accepted that there was no evidence of any such conversations nor had he referred to these telephone conversations in his witness statements.

404. In relation to deal 8 in which Stardex supplied Atec, according to a release note held by Pauls Freight, the goods were released to Atec on 22 April 2006. Atec did not, however, pay for the goods until 27 April 2006, according to its FCIB bank account. Stardex's invoice to Atec was dated 24 April 2006. Thus the goods were released to  
5 Atec before Stardex had issued an invoice and before Atec had paid Stardex. The value of the goods (net of VAT) in this transaction was £384,000. When this anomaly was put to him in cross-examination, Mr Kalia: "That works, I suspect, on trust. We have done a lot of deals with Stardex throughout 2005 and a lot in 2004 as well."

405. It seemed to us that releasing the goods before the issue of invoices and  
10 payment, indicated that this transaction was not an arm's length commercial transaction.

406. In respect of deal 30, Atec's supplier, Cybacomms, sent a fax to its freight forwarder, Global Distribution, on 16 May 2006 instructing it to ship the goods on hold to Atec. The facts stated: "These goods are to stay in full control of Cybacomms  
15 UK Ltd until payment has been received in full and a release has been sent to Global Distributions Ltd to confirm this." Cybacomms released the goods to Atec on 19 June 2006. Atec, however, instructed that the goods be released to its customer, Freitex, on 16 June 2006 i.e. three days before Cybacomms released the goods to Atec. Atec did not pay Cybacomms for the goods until 19 June 2006, according to Atec's FCIB bank  
20 account.

407. The same sequence of events also occurred in deals 31 and 32, where Atec's supplier and customer were Cybacomms and Freitex respectively.

408. Finally, as HMRC pointed out in their submissions, Atec released goods before it had received full payment in deals 8, 30-33, 37 and 40-52. For example, in deal  
25 Atec released the goods to Freitex on 5 July 2006 but only received full payment on 14 July 2006. It is hard to understand the commercial rationale behind this behaviour. It seemed to us to indicate that these deals were not concluded on an arm's length basis.

*Funding of Atec's transactions: cash flow*

30 409. In deals 9-12 Wireless 5 paid part of its supplier's (Zain) 4 invoices (all dated 28 April 2006) on 2 and 3 May 2006. It did not, however, pay the balance of the purchase price (£300,000) until 22 May 2006. Similarly, in deals 13-15 Team Mobile's invoices (all dated 16 May 2006) were not paid by Wireless 5 in full until 22 May 2006.

35 410. In deal 6 Atec did not make a final payment to its supplier, LMC, until 5 June 2006 when, according to Atec's FCIB bank account, it paid £436,684. LMC released the goods to Atec on 24 April 2006. Atec was paid in full by its French customer, H & H Import Export, by 24 April 2006. In other words, LMC released the goods to Atec almost 42 days before Atec settled its invoice and, effectively, allowed Atec credit of  
40 £436,684 for that period, notwithstanding the fact that Atec had already been paid by

its customer. There was no release note from Atec releasing the goods to H & H Import Export because, as Mr Kalia assumed, the goods were not shipped on hold.

411. Mr Kalia was cross-examined on this aspect of deal 6:

“Q: LMC have not been paid in full, have they?”

5 A: You are referring to the 400,000?

Q: Yes.

Q: Yes, I think they probably felt they were being paid in full.

Q: Did they?

A: I think so.

10 Q: Not very good with their accounting, are they, then?

A: I may have felt that I might have been able to get away with it, I think, for a while.

15 Q: I don't understand how “getting away with it” matches with wanting to be on good terms and show goodwill to LMC. How is this going to affect your goodwill when they notice you haven't paid them?

A: There is a principle, which is if you don't ask, you don't get.”

412. We should also observe that the manner in which Atec paid LMC's various invoices seemed to us chaotic. The payments frequently did not seem to match the invoice amounts.

20 413. Even though Atec did not pay LMC in full the deal 6 until 5 June 2006, LMC was apparently prepared to supply Atec in deals 22 and 23, both dated 24 May 2006 with goods worth in excess of £635,000 (net of VAT).

25 414. Mr Kalia, in cross-examination, could not remember why LMC waited for payment. He speculated that LMC may not have noticed that the £436,684 was outstanding or that they only asked for payment after six weeks. We found Mr Kalia's explanations implausible. Instead, it seemed much more likely on the facts that LMC was waiting until Atec received a VAT repayment from HMRC in respect of the 03/06 VAT period.

*Circular transactions: invoice chain*

30 415. In deals 9 – 12 Powerglen made third party payments at the direction of USM IT to Universal Systems SCS (Belgium), USM IT's supplier. Atec's customer, Freitex, at the other end of the chain, sold the goods to International Mobile SRL (Italy). Mr Dean's evidence, which we have already accepted, was that Universal Systems and International Mobile had FCIB sub-accounts created by Koornmarkt, 35 indicating that they were in effect the same entity or acting in concert.

416. Similarly, with deals 13-15, Protophonia (Portugal) sold goods to the contra-trader, Wetherby. At the other end of the chain Atec's customer, Freitex, sold goods to International Mobile. Protophonia and International Mobile had FCIB sub-accounts

in their names created by Koornmarkt. Once again, this suggested that they were in effect the same entity or at least were under common control.

417. In deals 17, 18, 20 and 21, Easy MSI made third-party payments to Universal Systems SCS. At the other end of the chain, Atec's customer, Freitex, sold goods to International Mobile. As we have seen from deals 9-11, Mr Dean's evidence established that Universal Systems and International Mobile had sub-accounts created by Koornmarkt, suggesting that they were one trading entity or at least were under common control.

418. In deals 27 and 29 Easy MSI made third-party payments to Universal Systems. Once again, at the other end of the deal chain, Freitex sold goods to International Mobile. Universal Systems and International Mobile had FCIB sub-accounts set up by Koornmarkt.

419. Finally, in deals 45-51, RK Brothers made third-party payments to Koornmarkt. At the other end of the chain Freitex sold goods to Koornmarkt.

420. The fact that circularity occurred so frequently is impossible to ignore. It strongly suggested to us that these deal chains were contrived.

#### *Atec's commercial accounts*

421. In Atec's opening submissions, it was claimed that Atec was reinvesting all of its profits from the business into the business itself and that it had instructed PricewaterhouseCoopers ("PwC") to deal with its tax affairs, which included a plan to consolidate all of its associated companies under one entity and included "a business pension and salary." PwC also, apparently, advised Mr and Ms Kalia in relation to a film scheme ("the film scheme") in which they both invested £205,000. The film scheme was set up in 2005.

422. On this basis, Atec claimed that if (as HMRC alleged) it did know that it was participating in fraud, it would make no sense for it to invest all the profits into the same company for the purposes of expansion and growth into distribution and retail, as well as to instruct PwC to conduct its tax affairs.

423. Mr Kalia was cross-examined at length on Atec's accounts for the years ended 31 August 2004, 2005 and 2006.

424. The 2005 accounts showed remuneration to Mr Kalia of £1.803 million and a loan written off to Mr Kalia of £645,000. Mr Kalia accepted that he would have taken the £645,000 amount between 2003-2005 and that he used part of this amount to fund the deposit on his house. In an interview with HMRC, Mr Kalia claimed that he did not understand why the 2005 accounts showed a written off loan of £645,000 to him.

425. Mr Kalia accepted that the amount of £1.8 million was intended to be invested in the film scheme and that £1.8 million was to be paid into the scheme by Ms Kalia.

426. Atec's 2005 accounts showed an operating loss of £644,967. Although the gross profit was £4,239,483, "Administrative Expenses" were £4,899,673. There seemed no basis for Atec's administrative expenses being approximately £4.9 million. The 2005 accounts also showed a dividend of £50,000. Although Mr Kalia accepted that he had received £205,000 for investment in the film scheme, it was unclear what had happened to the balance of the £1.8 million (£1.595 million). The 2005 accounts also showed a figure for "Other creditors" of £2,127,540. This was reduced to nil in the 2006 accounts. But no explanation was given in the accounts concerning the identity or nature of the "Other creditors". In cross-examination, however, Ms Kalia accepted that she and Mr Kalia had to be the "Other creditors" shown in the 2005 accounts. It followed, therefore, that £2,127,540 in total must have been paid to or for the benefit of Mr and Ms Kalia, because the "Other creditors" entry was reduced to nil in the 2006 accounts.

427. The 2006 accounts showed £430,000 was paid into a pension scheme on 31 August 2006. £205,400 was paid to Ms Kalia on 30 May 2006. The 2006 accounts also contained an unexplained amount of £896,692 in respect of "Administrative Expenses". The 2006 accounts, in addition, showed a directors' current account of £684,480.

428. Throughout his cross-examination regarding the accounts, Mr Kalia sought to give the impression that he did not understand the accounts or any accounting concepts. Moreover, he made many references to the film scheme put in place by PwC. Mr Kalia invoked the film scheme frequently although he did not appear to understand, or said he did not understand, the nature of the scheme. He appeared to us to use the film scheme as a cloak of vagueness behind which he sought to hide. He also seemed vague about his responsibility to file personal tax returns. We considered his evidence on all these points evasive. Mr Kalia is, in our view, an intelligent and experienced businessman. His professed lack of understanding of the financial position of his company as shown in its accounts, its tax position or indeed his own personal tax position in relation to money extracted from Atec, seem to us lacking in credibility. He was the sole director of Atec and he signed each set of accounts.

429. We also found Ms Kalia's evidence in relation to the accounts lacking in credibility. At various stages, Ms Kalia purported not to understand what a creditor of Atec meant. In addition, it was pointed out to Ms Kalia in cross-examination that the 2006 accounts did not show the VAT repayment claim (the subject of this appeal) as a debtor. Ms Kalia was asked:

"Q: If you are using the £2,127,000 [the amount in "Other creditors" accepted by Ms Kalia as a reference to herself and Mr Kalia] to finance the VAT ... payments, you are still owed... [w]hy doesn't it show up as still being a creditor?"

A: We were saying at – we were saying in 2006 that we just want to cancel it all. That's what we were saying. We were saying to Paul [Ross – company secretary and "auditor"]: 'all of this remuneration, don't want to do it.'"

430. It seemed to us that this answer was at odds with Atec's stated position that all Atec's profits were ploughed back into the business. It was clearly a recognition that substantial remuneration had been intended to be paid.

5 431. Furthermore, in common with Mr Kalia, in the further hearing Ms Kalia also seem to us to use the PwC tax scheme as an excuse for the vagueness of her replies when asked, in cross-examination, whether she had paid tax on the benefits received from Atec.

10 432. We should also note that there was no documentary evidence produced in relation to the alleged film scheme. In any event, as HMRC pointed out, the purpose of Mr Kalia investing in a film scheme would be to generate tax relief to offset (or at least defer) a personal income tax liability in respect of income he received from Atec and any other companies. In relation to the film scheme, we also found Ms Kalia's evidence unconvincing. The purpose of the film scheme was to generate tax reliefs which could be set off against the investor's other income. Ms Kalia was asked  
15 whether she had other tax liabilities that she wanted to set a tax loss against. She replied:

"A: Not that I am aware of, no.

Q: So why on earth would you invest in the film scheme?

20 A: That was part of the scheme we did with PwC. By understanding is it's still going today, so – it is approved by HMRC.

25 Q: Yes. Did you understand that the idea was, and the attraction to many wealthy people... was that if the film company made a loss, the special arrangements that the government was offering to encourage people to invest in the film industry was that you could put that loss against your other tax liabilities?

A: I don't think that would have occurred to me at the time.

30 Q: Because it is not really a very attractive idea unless you have some tax liabilities, is it? ... So why would you be doing it, if you did not expect to be having a lot of income of the sort we looked at in the [company] accounts earlier?

...

35 Q: Well, at the time when we did the scheme, you know, my recollection of it was: pay the taxes. We wanted to keep the majority of the funds in Atec, so that we could carry on with our trading and distribution activities, and then maybe at a later date we could look at it. But at the time, it was just a question of tidying – you know, if you have to pay a film scheme or you have to pay PAYE, whatever you have to pay, get that done, and then whatever funds remain in the business, we will use for the distribution. But when we went to do the  
40 scheme we were absolutely clear that we didn't want to take it at that time."

433. Ms Kalia's evidence was, in our view, not credible and that she was being less than frank with the Tribunal. It was self-evident that a film scheme would not be

entered into unless the investor had other taxable income. Ms Kalia struck us as an intelligent individual but her attempts to profess ignorance of the purpose of the film scheme lacked credibility.

5 434. In relation to Atec's accounts, we also note that the 2005 and 2006 accounts purported to have been "audited" by the company secretary, Mr Paul Ross, a highly irregular arrangement.

10 435. Our conclusion was that Mr and Ms Kalia had withdrawn substantial amounts of money, or certainly intended to withdraw substantial amounts of money, from Atec in 2005 and 2006 and that the statement in Atec's opening submissions that "the appellant was reinvesting all its profits from the business, into the business itself..." was untrue. The large and unexplained expenses under the heading "Administrative Expenses" in the 2005 and 2006 accounts, which neither Mr nor Ms Kalia could explain, seemed to us to be extraordinary and supported HMRC's submission that Atec was not, at least as regards its accounts, run as an ordinary commercial  
15 enterprise. It also seemed to us highly irregular that a business with a turnover of £108.5 million (2005) and £128.4 million (2006) should have its accounts "audited" by its company secretary, a person who was hardly independent.

#### *The HMRC cheque*

20 436. There was considerable discussion at the main hearing concerning a cheque from HMRC for £2,273,359.20 in favour of Atec in respect of Atec's 02/06 VAT repayment. The cheque was issued by HMRC on 19 April 2006 but was, however, only paid into Atec's Barclays bank account on 15 May 2006. In cross-examination Mr Kalia said that he had held onto the un-banked cheque for "three weeks or four weeks, something like that."

25 437. Mr Kalia was asked why he didn't bank the cheque and he replied

"Mr Kalia: Because I had banking issues.

Mr Holland: Because Barclays wouldn't let you?

30 Mr Kalia: No, no, no. I remember that this business current account I managed to get open on the back of us having a mortgage with Barclays for Victoria Street. So I had banking issues."

438. Mr Kalia then accepted that he could have paid the HMRC cheque into his FCIB account via Rabobank, although a fee would be charged for that service.

35 439. Mr Kalia said that he put the cheque in his drawer and left it there until "I had somewhere to put it into." When asked what had changed to permit him to pay it into Barclays, Mr Kalia was, in our view, evasive as to the reason why there was a difficulty with Barclays before 15 May 2006. Mr Kalia said that he could not recall and that he would have to see all the bank statements.



440. The dates on the Barclays bank statements indicated that the account had been opened in March 2006. He was then asked why he did not pay the cheque into the Barclays account when he received it in April 2006. At this stage, Mr Kalia said:

5                   “Well, because I had concerns that they were going to give me 30 days’ notice like everybody else was doing. That is why I didn’t put it in.”

441. Mr Kalia accepted that between 5 May and 11 May, Atec did not enter into any deals because it did not have the funding to do so. He was asked why he did not make an effort to get the funds represented by the HMRC cheque into Atec’s FCIB account so that Atec could trade. Mr Kalia replied:

10                   “Well, I didn’t at the time. I am sure there was a good reason, but I can’t think of it right now.”

442. Mr Kalia repeated his concern that if he cashed the cheque Barclays may close his account on 30 days’ notice. He was asked what had changed by 15 May and he replied:

15                   “Well, nothing changed. When I put the money into the bank account, I got 30 days’ notice, so I was correct.”

443. In fact, the Barclays account was not closed immediately. It was still open in July 2006. Mr Kalia’s evidence was that eventually it was closed down.

20 444. Atec did not undertake any deals between 26 April and 16 May 2006. On 16 May 2006, the day after Atec cashed the HMRC cheque in its Barclays account, it undertook deal 13. Deals 14-16 followed on 17 May 2006. Mr Kalia said that during the period in which Atec did not undertake any deals, Mr Gotthal of Freitex approached him asking him to supply Freitex with goods.

25 *Suppression of evidence*

*(a) Introduction*

445. In her closing submissions, Ms Kalia alleged that HMRC had effectively suppressed evidence and had engaged in a course of conduct in relation to these appeals which amounted to an abuse of process.

30 446. Mr Holland requested a further hearing to hear evidence in relation to Ms Kalia’s allegations. He submitted, rightly in our view, that the allegations once made could not be left unresolved and, to the extent that they related to HMRC’s legal team, could amount to an allegation of professional misconduct. Mr Holland offered Ms Kalia an opportunity to withdraw her allegations, which HMRC strenuously denied,  
35 but Ms Kalia declined to do so. Mr Holland also noted that if this Tribunal found against Atec in relation to these allegations, HMRC would consider applying for costs under Rule 10 of the Tribunal Rules.

447. We considered that these were very serious allegations. In order to deal with this appeal fairly and justly, pursuant to the overriding objective, it seemed to us inevitable that a further hearing was required so that evidence could be heard and a decision reached on these issues. Accordingly, the Tribunal directed that a further hearing should be held to consider this matter and this hearing took place on 5 November 2015 and 17-18 December 2015. In the following discussion, we will refer to the hearing which took place in March and April 2015 as the “main hearing” and the hearing that took place in November and December 2015 as the “further hearing”.

448. On 7 July 2015 the Tribunal gave Directions in relation to this further hearing, dealing with such matters as witness statements and skeleton arguments. Atec’s witness statements were to be served within 21 days after the date of release of the Directions.

449. It was common ground that the burden of proof in relation to the allegations made by Ms Kalia fell upon Atec. The standard of proof was the ordinary civil standard of the balance of probabilities.

450. It is fair to say that many of Ms Kalia’s submissions in relation to the further hearing were hard to follow, even allowing for the fact that Atec was effectively a self-representing litigant. Ms Kalia had difficulty in distinguishing between making submissions and giving evidence. Moreover, a number of Ms Kalia’s submissions seem to mutate in the course of argument and it was sometimes difficult to discern whether some submissions and allegations were maintained or conceded.

451. Nonetheless, with that unpromising introduction, we set out the facts and arguments as we understood them. We have included some lengthy portions of the transcript of the main hearing. This was unavoidable given the importance attached to them by HMRC.

*(b) The background – evidence given at the main hearing*

452. On the second day of his cross-examination by Mr Holland, Mr Kalia was asked about the two warning letters written by HMRC to the appellant on 16 March 2006. Mr Kalia about the letters which he wrote in reply to the two warning letters:

30 “Q. And are you saying that the others [letters from HMRC] that come by email, there would be an electronic database –

A. I think as far as –

Q. – or is that corrupted?

35 A. I think that the ones that came on email, Renee and Claire would have put together in the back office, back in Victoria Street, when we moved.

Q. Did you create the letters and reply electronically?

A. Yes.

Q. So they are on the database?

A. Yes.

Q. Why aren't they in the appendix to your opening?

A. Because the server was uplifted and when we got it back the hard drive was corrupted.

5 Q. Ah, the hard drive was corrupted. So the paper is missing and the hard drive was corrupted?

A. We had to revert to tape drives, which were back-ups."

453. The following day, Mr Kalia was cross-examined further about the corrupted server:

10 "Q. It is certainly right that nowhere in any of your statements do you suggest that you had any difficulties in preparing your statement because of lost records, do you?

A. No.

Q. if you had been aware of that –

15 A. Yes.

Q. You would have put it in your statement, wouldn't you?

A. Mm-hmm.

20 Q. Do you remember yesterday, perhaps somewhat sarcastically I asked you whether there was going to be a suggestion of a corrupted server, and I think you told me there was a corrupted server?

A. Yes, we had –

Q. Tell us about that, then.

25 A. Well, we had difficulty. We had to – I am not sure how long it was until we actually got it back, but I do recall actually buying another server and using the backup tape drives that we had to re-establish the new server.

30 Q. So when you agreed with me yesterday that there was some sort of corrupted server, did you just mean that you replaced the server and used a backup to move onto the next computer? So it is not a corrupted server.

A. Yes. I did check the old server and, yes, it was corrupted.

Q You had a backup?

A. Yes, we had backup tapes, yes.

Q. So nothing you expect you have lost there?

35 A. I expect not. I am not sure but...

Q:. So in terms of the records available to you, until October 2011 [the date when the appellant's servers were "uplifted" by HMRC], you had no reason to suspect that you had anything other than a full set of records available to you?

40 A. Yes.

Q. That is why there is no suggestion in your statement that you don't have records available to you?

A. Yes, that is what our understanding is.

Q. Is that right?

5 A. Yes.”

454. Mr Kalia was then asked about his witness statement dated 27 March 2009, which was made in the context of an application to have Atec's appeal reinstated, having previously been struck out. At that stage, Atec was advised by solicitors and counsel. Mr Kalia agreed that by 2009 Atec have been providing its legal advisers  
10 with papers. In his witness statement Mr Kalia noted that any reference in the body of the statement or an exhibited email or other correspondence should not be taken as a general waiver of legal professional privilege. Mr Kalia agreed that Atec's lawyers had presumably alerted him of the need to consider email. Mr Kalia's cross-examination continued:

15 “Q. In terms of arranging deals at this time, email might be quite revealing; do you agree?

A. Yes.

Q. Because there would be email between you and your supplier and you and your customer –

20 A. Yes.

Q. – dealing with the nuts and bolts of putting the deals together.

A. Yes.

Q. Do we see those emails anywhere, Mr Kalia?

A. In the exhibits?

25 Q. Yes.

A. I think not.

Q. No, so where are they?

A. I do recall we did have a problem with emails.

Q. Tell us about that.

30 A. But I don't know.

Q. Well, you know, and have known for some time, haven't you, that at the heart of these sorts of cases quite often are suggestions about circularity; you know that, don't you?

A. I do now, yes.

35 Q. And you had lawyers at this time.

A. Yes.

Q. And questions of whether deals are arranged by people outside the broker, or whether they are the result of negotiation by a broker acting freely in the market.

A. Okay.

Q. You say "okay", I am asking you effectively, Mr Kalia, you did know that, didn't you?

A. Effectively, yes, I had some awareness of circularity, yes.

5 Q. And also --

A. In 2006.

10 Q. And also at heart of these appeals is the suggestion that the broker is either knowingly involved in a contrived deal chain or should have known that. So central to what your contribution could be to this case is to show how the deals were put together.

A. Okay.

Q. Do you agree?

A. Yes.

15 Q. And the record that ought to survive are your emails to your customer and to your supplier, do you agree, and that would show how these deals were put together?

A. Yes.

Q. Where are they?

A. I don't know.

20 Q. You don't know?

A. No, but I do recall that we had lost a bunch of emails.

JUDGE BRANNAN: I am sorry, I didn't catch that. You do recall ...?

A. I do recall that we had lost a load of emails, yes.

JUDGE BRANNAN: You had lost a load of emails?

25 A. Yes, but I think that was the server issue, which happened at a later stage, so I am not sure about.

Q. Fortunately, your customer will have copies of our emails.

A. Yes.

Q. Let's hope they have not had troubles with their server.

30 A. Yes.

Q. So have you asked them for copies of the email exchanges between you?

A. No, I haven't.

Q. Why not?

35 A. Because I didn't think of it.

Q. There is nothing in your statement saying "I have lost my emails, I looked for them and I can't find them", is there?

A. Not that I can recall.

Q. I am going to suggest to you in clear terms there isn't.

A. Okay.

5 Q. Why isn't there, if that is the position? You could have said, couldn't you, "I have looked for my emails that would have demonstrated how I put my deals together, but unfortunately they have been lost or destroyed for whatever reason"? You could have said that, couldn't you?

A. Yes, I could have.

Q. When did you become aware of the issue?

10 A. Actually, it is Renee who knows a lot more about it than I do, and she is the one that reminded me of it.

Q. Can we safely say by 2009, as your statement in March is referring to email --

A. Yes.

15 Q. -- by then you must have established that you had lost it?

A. I am not sure, actually.

Q. You are referring to email and other correspondence.

A. Okay.

20 Q. That suggests that you have looked for email and other correspondence, doesn't it?

A. Presumably, yes.

Q. Your statement, Mr Kalia. Don't presume, you tell us, please.

A. Yes, well, I was helped to put this statement together.

25 Q. Can we deal with it at least this way: someone had looked for the email?

A. Yes.

Q. So by March 2009, your side must have been aware that they had difficulties over this email?

A. Yes, unless, of course --

30 Q. Why isn't it in a statement somewhere?

A. I think really it should have been in the exhibits, shouldn't it, looking at the witness statement.

Q. What do you mean "it should have been in the exhibits"?

A. I am not sure. I can't recall."

35 455. Pausing at this point, we will see that Mr Kalia's evidence contradicts the evidence which Ms Kalia was subsequently to give to the effect that neither she nor Mr Kalia looked for Atec's emails because HMRC did not indicate that they wanted emails. Mr Kalia's cross-examination continued:

Q. Mr Kalia, did you want the email traffic between you and your customer and suppliers to be before the tribunal to show how you put your deals together? Did you want that?

A. Well, I don't see any reason why not.

5 Q. That is not the question, Mr Kalia. Did you want to show --

A. It didn't occur to me.

Q. -- the email traffic to demonstrate how these deals were put together?

A. It didn't occur to me.

10 Q. I am going to suggest to you, Mr Kalia, that cannot possibly be a sensible answer.

...

Q. Are you saying [Atec's counsel in respect of the 2009 reinstatement proceedings] wasn't asking for documents and correspondence?

15 A. I am not saying that, no, I am saying that I think there should be emails. We have put it into the witness statement.

Q. Yes, it must have been a real shock to you when you were considering how much email would help your appeal to find that it had been lost.

20 A. Okay.

Q. You must have gone, without being sarcastic, words to the effect of, "Oh no, I have lost my email".

A. Yes.

Q. Sinking sensation, Mr Kalia, no?

25 A. Well --

Q. And then, "But it doesn't matter, because I can go to my customers and suppliers, who I also believe are legitimate businesses, and ask them for their copies." You didn't want your email to feature, did you, Mr Kalia?

30 A. I never actually considered it at all, to be honest.

Q. I suggest to you that cannot possibly be right. It is referred to here in your first statement.

A. In them days we did everything by fax and by phone."

35 456. We make the observation that Mr Kalia's evidence was that Atec was having difficulty recovering its emails prior to Atec's computer servers being uplifted by HMRC in October 2011, although it appears that Atec had emails available to it in 2009 when Mr Kalia's first witness statement was prepared. At the very least, Mr Kalia was not suggesting that, having uplifted the servers, HMRC were to blame for the fact that Atec's emails had gone missing.

*(c) Background evidence given at the further hearing*

457. The server used by Atec during the periods covered by this appeal was referred to as the Stone Mountain server. Stone Mountain was Mr Kalia's residence and the Stone Mountain server had previously been located at Atec's offices in Atec House.  
5 In 2008 the Stone Mountain server was put into storage and was replaced by a new server referred to as the Burfield Road Server. Burfield Road was Atec's registered office. The data contained on the Stone Mountain server was transferred across to the Burfield Road server by means of backup tapes. Thus the data contained on the Stone Mountain server relating to the deals under appeal, i.e. in 2006, was transferred across  
10 to the Burfield Road server albeit that the archive folder of emails was in a compressed file.

458. In October 2011 HMRC visited the Stone Mountain and Burfield Road premises and seized both servers. The Burfield Road server was returned to Atec after approximately three weeks. The Stone Mountain server, however, was only returned  
15 to Atec on 27 May 2015 i.e. after the end of the main part of the hearing of these appeals. In the meantime the Burfield Road server was moved to Stone Mountain. The seizure of the servers took place as part of an investigation by HMRC to determine whether criminal charges should be brought against Mr and Ms Kalia. Ms Kalia's evidence was that the backup tapes had been returned to her at some time  
20 around July 2012, although she subsequently stated in cross-examination that she could not find the tapes.

459. As part of the criminal investigation, Mr Kalia was placed on, what we understood to be, the equivalent of police bail from approximately December 2011 until some point in 2013. Ms Kalia was also placed on bail from October 2011 until  
25 some point in 2013. Furthermore a restraint order was made by the Crown Court on 20 July 2012 against Mr Kalia, Atec and another company owned by Mr Kalia, Outernational Ltd, prohibiting Mr Kalia and the two companies from disposing of or dealing with assets as more fully described in the order.

460. On 25 April 2013, Ms Jodie Allcock, an HMRC criminal investigations officer,  
30 wrote to Mr Kalia informing him that HMRC had decided not to initiate criminal proceedings. On 30 April 2013, Mr Malik, Mr Kalia's solicitor, sent an email to Ms Allcock requesting the return of the property seized from Mr Kalia.

461. On 15 July 2014, Mrs Shields, an HMRC civil investigations officer, wrote to Mr Kalia informing him that various assessments to income tax and national  
35 insurance contributions were being made against him.

462. When the two servers were seized by HMRC in October 2011 they were sent to a digital forensics laboratory, independent of HMRC, called CCL Forensics ("CCL"). CCL "imaged" the electronic contents of the servers. In her witness statement Ms Allcock explained that imaging was a process whereby a static copy of the material  
40 contained on an electronic device was captured – similar to a photograph. Ms Allcock stated that the image could not be manipulated. In her submissions, Ms Kalia objected that the statement that the image could not be manipulated was a statement of opinion by a non-expert witness. However, subsequently Ms Kalia appeared to accept either



that the image could not or had not been manipulated and concentrated rather on a submission that the server, prior to imaging, may have been manipulated or tampered with.

5 463. On 23 October 2011, Ms Allcock received an email from Ms Kalia stating that, *inter alia*, the material on the Burfield Road server was subject to legal privilege. Mr Mark Robinson, a senior investigation officer of HMRC, replied to Ms Kalia on 25 October 2011 requesting that Ms Kalia provide him with file paths or references to identify the information which was subject to the claim of legal privilege.

10 464. Ms Allcock's evidence was that the Burfield Road server had not been viewed by HMRC officers. Ms Allcock was, therefore, unable to say what the nature and content of the material contained on the servers was. Mr Robinson's evidence was that the images obtained from the Burfield Road server were not made available for the criminal investigators to view and that, indeed, they had not been viewed.

15 465. Ms Allcock was unable to state what was contained on the drive of the Stone Mountain server that could be imaged as the HMRC records containing that information had been removed from her office and sent to deep store.

20 466. Ms Kalia sent details to Mr Robinson of the file paths to material which she claimed was subject to legal privilege. Mr Robinson forwarded this to CCL in order that those files could not be viewed by HMRC investigators on the images that had been taken.

25 467. In the event, as Mr Robinson stated, this became irrelevant as far as the HMRC criminal investigation team were concerned because the decision was taken not to continue with the criminal investigation of Ms and Mr Kalia. Mr Robinson's evidence was, therefore, that the images of the Burfield Road server were never viewed by HMRC investigators.

30 468. Mr Robinson stated that the images of the other computers and digital items seized during the criminal investigation were viewed by HMRC's criminal investigators. The viewings were recorded in three "sift books." Mr Robinson had reviewed the sift books to confirm that none of the images in respect of the Burfield Road server had been viewed.

469. Ms Allcock also noted that the images taken by CCL had been retained by HMRC and were held in a secure store.

35 470. Ms Allcock's evidence was that the Stone Mountain server contained three hard drives of which, according to CCL, two were not capable of being imaged as they were faulty.

471. Mr Robinson, in his witness statement, stated that CCL had informed HMRC that the Stone Mountain server was faulty and that no data could be recovered from it and that, accordingly, it had not been imaged. In cross-examination, Mr Robinson accepted that his understanding was mistaken and that one hard drive from that server

had been imaged and said that Ms Allcock's evidence was more likely to be correct on this point because she had spoken to CCL.

472. Ms Kalia alleged that Mr Robinson had attended HMRC's "raid" on Burfield Road on 19 October 2011 at which the Burfield Road server had been seized.  
5 However, Mr Robinson categorically denied being present at either Burfield Road or Stone Mountain on that date. He was, he said, at HMRC's control room in Nottingham.

473. Ms Kalia wrote to Mr Robinson on 23 October 2011, just a few days after the seizure of the servers. In cross-examination, Ms Kalia asked Mr Robinson how she  
10 (Ms Kalia) had managed to obtain his name in order to write that letter if he had not been at Burfield Road. Mr Robinson, not surprisingly, was unable to give a categorical answer to this question. He did, however, suggest that his name may have been on one of the receipts in respect of the property seized on 19 October 2011; alternatively he suggested that he might have spoken by telephone to Mr Kalia on that  
15 day and that it was possible that Ms Kalia obtained his name from her brother. Ms Kalia subsequently appeared to accept that she was not sure whether Mr Robinson had attended HMRC's visit to Burfield Road on that date.

474. Our conclusion on the evidence was that Mr Robinson did not attend Burfield Road or Stone Mountain on 19 October 2011 and saw no reason to doubt his evidence  
20 on this point.

475. Ms Kalia questioned Mr Robinson intently on the subject of why Mr Robinson had omitted to mention their correspondence concerning legal privilege in relation to data which was contained on the Burfield Road server in his first witness statement (which related to the 2010 transactions involving Wireless 5). Essentially, Mr  
25 Robinson's evidence was that he did not consider it relevant to the matters with which he was concerned once the criminal investigation had been dropped. He also explained that Mr Kalia had been the subject of a restraint order because he believed that Mr Kalia had a US dollar bank account and that a large amount of US dollars had been credited to that account. Mr Robinson thought that the bank account in question  
30 was one with Habib bank. At that time, HMRC believed that the criminal investigation into Mr Kalia was likely to proceed and therefore the money had been restrained.

476. In relation to why Mr and Ms Kalia had been kept on bail after the criminal investigation was dropped, Mr Robinson's evidence was that during the investigation  
35 HMRC suspected that there had been large-scale evasion of income tax by Ms Kalia and Mr Kalia.

477. Ms Kalia put it to Mr Robinson that during the interviews of Mr and Ms Kalia conducted by HMRC in July 2012 in relation to their income tax position, questions were asked which indicated to Ms Kalia that HMRC had looked at the information on  
40 the servers that had been seized in October 2011. Mr Robinson denied this. He said that those interviews were based on an in-depth analysis of Mr and Ms Kalia's bank accounts in relation to what he described as "huge" payments into those accounts

which he said did not correspond to their tax returns. This was not material that was obtained from the computer servers but rather from information resulting from production orders issued by a court.

5 478. On 7 July 2015, after the main hearing but before the further hearing, Ms Kalia emailed the HMRC solicitor handling the appeal, requesting disclosure of the image files taken from the Burfield Road server and the Stone Mountain server. The email continued:

10 “None of the information should be viewed in accordance with HMRC’s submission to the tribunal that no records have been reviewed since the appellant stated that the records were of legal privilege.”

15 479. It should, perhaps, be noted that Atec had not previously maintained a claim to legal privilege in relation to the contents of the Stone Mountain server, presumably because its contents would have largely predated the institution of the current legal proceedings and the criminal investigation.

20 480. HMRC replied, on 8 July 2015, that this Tribunal’s directions did not indicate that disclosure should be made to Atec. HMRC assumed this had been done in order to protect Atec in that if the documents were disclosed HMRC would be entitled to see them. Accordingly, HMRC declined to disclose the documents until directed by the Tribunal to do so and in circumstances where it was made clear whether HMRC were permitted to review the material.

25 481. Mr Kalia, in his witness statement for the further hearing, stated that after the main hearing, he and Ms Kalia realised that the Stone Mountain server was still in HMRC’s possession. When this server was returned by HMRC on 27 May 2015 he delivered the server to a local computer company, GP Computers, instructing them to provide him with an image file.

482. Mr Kalia’s witness statement attached a letter from GP computers dated 10 July 2015. The letter stated:

30 “To whom it may concern,  
I am writing to inform you that following a thorough investigation of your Dell Poweredge server [i.e. Stone Mountain server] that you brought into us on 28 May 2015, we were unfortunately unable to recover any of the data from your hard drives, due to substantial water damage.

35 The water level had visibly reached at least 1 inch deep, and as all your hard drives are in a low bay inside the server, the water has corrupted the drives to such an extent that recovery of data is impossible.”

483. The letter was signed by a “Bobby Ivanov – Senior IT Engineer”.

40 484. The letter was subject to a challenge by HMRC on the first day of the further hearing on the basis that it contained expert evidence without complying with the formalities required for an expert witness. The letter contained no declaration of truth

and did not set out Mr Ivanov's qualifications or experience. Moreover, Mr Ivanov did not appear as a witness to be cross-examined. HMRC argued that little or no weight should be attached to the letter.

5 485. When the further hearing was resumed on 17 December 2015, Atec applied to have a witness statement of Mr Ivanov admitted as evidence. HMRC again objected to the admission of Mr Ivanov's evidence on the basis that the time for admitting new evidence on this issue had long since passed, the evidence did not comply with the rules for expert evidence and, finally, if the application were to be allowed an adjournment would be required in order to allow HMRC to consider whether it should  
10 obtain its own expert evidence, thereby entailing further delay and expense.

486. We considered the application and decided that it should be refused. The Tribunal had explained to Ms Kalia on 5 November 2015 the requirements for an expert witness statement. Ms Kalia was, in fact, already perfectly familiar with these requirements both from the interlocutory hearing but also from the evidence given by  
15 Mr Corkery. Ms Kalia described the evidence as "transactional" but, in our view, it was plainly expert evidence. We also took the view that it was being produced much too late in these proceedings on this issue and that there would be prejudice to HMRC in the sense that it would be necessary for them to consider whether to obtain their own expert evidence to rebut Mr Ivanov's evidence. This would lead to further delay  
20 and costs. Accordingly, we decided to exclude the evidence of Mr Ivanov. We admitted the letter of 10 July 2015 and stated that we would decide what weight, if any, we should give to it.

487. We note in relation to Mr Ivanov's letter of 10 July 2015 that, even if it is correct in stating that the drives were corrupted by water damage, it did not indicate  
25 when that damage occurred. It is true that CCL managed to recover data from one drive, but we know that the server was malfunctioning at some stage in 2008 or 2009 (leading to it being replaced by the Burfield Road server). It was impossible, however, to evaluate whether CCL were simply more adept at recovering data from damaged hard drives than Mr Ivanov and we could not, therefore, safely conclude that the  
30 irrecoverability of data from the third drive was caused by HMRC when the Stone Mountain server was in its possession. We have therefore accorded the letter little weight.

488. Ms Kalia's evidence in relation to the Burfield Road server was that emails from 2004 to 2008 were downloaded from the Stone Mountain server and archived on  
35 the Burfield Road server. Atec used the services of a company called Alphanet in this process.

489. However, Ms Kalia's evidence was that Atec's emails (including those emails the 2006) and other documentation were now missing from the Burfield Road server. Ms Kalia alleged that these items must have been deleted by HMRC whilst the  
40 Burfield Road server was in its possession from October to December 2011.

490. Ms Kalia's evidence, like that of Mr Kalia, was also that she and Mr Kalia did not realise that their emails and certain other documentation (e.g. freight

documentation) was missing from the Burfield Road server, after its return to Atec by HMRC in December 2011. They first became aware this when Mr Kalia was cross-examined on the whereabouts of the emails by Mr Holland at the main hearing in April 2015 – see the extracts from the transcript quoted above. As we have seen, Mr Holland’s cross-examination of Mr Kalia suggested that Atec’s emails would have been useful to Atec in establishing that its deals were negotiated on an arm’s length basis rather than, as HMRC submitted, with the product of contrivance. Ms Kalia’s evidence was that the importance of emails in establishing arm’s-length negotiations had not occurred to her before that cross-examination and that it had not occurred to HMRC either because HMRC (in particular, Mr Saunders) had not asked for those emails during the extended verification process.

491. It seemed to us that Ms Kalia’s evidence in relation to her awareness of the significance of Atec’s emails was inconsistent with that of Mr Kalia when cross-examined by Mr Holland during the main hearing in the passages from the transcript quoted above. As we have seen, Mr Kalia’s legal advisers were leading him to consider the contents of Atec’s emails.

492. Moreover, we consider the evidence of Ms Kalia that the significance of emails was not appreciated by Atec until the main hearing in April 2015 to be lacking in credibility. It was perfectly clear from HMRC’s Statement of Case that HMRC were arguing that Atec’s appealed deals were contrived and were not the product of traders dealing at arm’s length in the ordinary course of business (see paragraph 50 HMRC Statement of Case). It seems to us inconceivable that Mr and Ms Kalia would overlook the significance of emails which, if they could be produced, might show that Atec was negotiating and dealing in the ordinary course of business on an arm’s length basis with its customers and suppliers.

*(d) Discussion of suppression issue*

493. In her closing submissions at the main hearing, Ms Kalia alleged that HMRC had deliberately suppressed evidence which could have assisted Atec in its appeal.

494. In those closing submissions, Ms Kalia stated:

“7.5 The Appellant submits that the Respondents have acted with aggression and unjustly towards it throughout the appeal, and has no basis to assert that the appellant failed to submit evidence.

7.6 The Appellant further submits that given that HMRC have a copy of the Appellant’s server, they know full well what the email correspondence is and because it is of no benefit to their case, have chosen not to use it.

**Uplifting records from both Appellant addresses;**

- a) took all computers and the server
- b) removed or paperwork (business and personal)
- c) obtained or legally privileged information (before submitting their evidence)

d) failed to acknowledge this in Mark Robinson's [first] witness statement and exhibits."

495. Therefore, it was clear from Atec's closing submissions that it was alleging that HMRC had deliberately withheld evidence which might have benefited Atec. It was  
5 not clear whether this submission was maintained by Ms Kalia at the further hearing, because at one point she appeared to accept that data could have been deleted from the server accidentally.

496. These closing submissions of Atec evidently constituted a response to the suggestion made to Mr Kalia in cross-examination that Atec would have been  
10 expected to supply its emails in order to demonstrate that its deals with the result of bona fide arm's length bargaining.

497. Ms Kalia's closing submissions at the main hearing continued:

15 "7.7 The Appellant's duly made an application to submit correspondence evidence which was objected to by the Respondents thereby compelling the tribunal to dismiss its application.

7.8 The Respondents have no basis to complain about the applications when all they had to do was to confirm to the appellants that they intend to object to the application because there were no reasons provided, and that they might agree if the appellant provided reasons.

20 7.9 Instead, the respondents chose to be aggressive and seek a third strikeout against the appellant, including a straight objection of the appellant's application made to the tribunal directly.

25 7.10 The appellant fully understands that the tribunal had no choice but to dismiss the applications, but argues that the respondents could have behaved differently and sought to reach a mutual consensus with the appellant in relation to the witness evidence and correspondence evidence that it sought to submit. The Respondents have no basis to complain about the parts of the appellant's witness evidence or exhibits are insufficient [sic]

30 the Appellants submit that this was a deliberate strategy on the part of the Respondents and invite the tribunal to consider the events in their chronology and draw inferences from the Respondents continued commitment to having this appeal struck out."

498. In relation to Atec's complaint about HMRC objecting to its application to  
35 produce additional correspondence at a very late stage, we see no basis for this argument. Atec sought, a few weeks before the main hearing, to exhibit various unspecified "exhibits of the transactions for the period in question" and "the correspondence between the appellants and HMRC 2003 to 2007" without specifying why this was relevant. Not unnaturally, HMRC objected and this Tribunal upheld that  
40 objection. No further application was made. It seems to us impossible to characterise this as some form of abusive or oppressive behaviour by HMRC.

499. In Ms Kalia's oral closing submissions on the main hearing she said:

“What we said in the course of the hearing, and this is just if memory serves me correctly, is that the records were uplifted, and then when the server was returned it was corrupted.”

500. At paragraph 15.7 of her closing submissions, Ms Kalia said:

5 “The Respondents have complained that the appellant has not updated its witness evidence, or provided further information (i.e. emails). Given their attitude towards the appellant since 2006, and throughout the proceedings, they have demonstrated that their only objective is to win cases by all and any means necessary. Having lifted the appellant’s records, taken the appellant’s privileged information, HMRC have in  
10 their possession all of the information they later state that the appellant should have supplied. The Appellant is no longer in any doubt that if any of the information they found supported HMRC’s case, it would have been used, otherwise disregarded.”

15 501. Once again, Ms Kalia’s allegation appears to be that HMRC deliberately suppressed evidence which they knew might assist Atec.

502. At paragraph 8.1 of Ms Kalia’s supplementary closing submissions, she wrote:

20 “In conjunction with the Appellant’s written and oral closing submissions,... the appellants made an application to the tribunal by attaching the third witness statement of Renee Kalia dated 28 April 2015, and exhibit, which was a letter written to both HMRC officer Mark Robinson and Jodie Allcock on 23 October 2011 about their attendance to [sic] [Burfield Road] and they uplifted the server containing the commercial and legally privileged information.”

25 503. After referring to Mr Robinson’s witness statement Ms Kalia in her supplementary closing submissions, Ms Kalia said:

“8.4 ...On the face of it, it looks like Mark Robinson himself attended Stone Mountain and this is not the case.

30 8.8 Mark Robinson suppressed information in his witness statement by not making clear that he visited [Burfield Road] instead of Stone Mountain. The appellant was present at [Burfield Road] when Mark Robinson attended the premises, which was around 7:20 am. This in itself is suppression of information.

35 8.9 The appellant submits that it was the controlling mind of the Commissioners of HMRC that guided the pen of Mark Robinson in his suppression of the fact that he uplifted the appellant’s commercial and legally privileged information with his own hand.”

40 504. Mr Holland submitted that, in effect, Ms Kalia was alleging that HMRC had deliberately interfered with evidence and that she was singling out Mr Robinson as the prime suspect. Mr Holland noted that this allegation had not been actively pursued because Ms Kalia had accepted in cross-examination that she was unsure whether Mr Robinson had visited Burfield Road.

505. We have already accepted Mr Robinson's evidence that he did not visit Burfield Road on 19 October 2011. We considered his evidence to be truthful and we see no justification whatsoever in any allegation, express or implied, that he may have interfered with evidence. Indeed, there was no evidence produced to this effect.

5 506. Moreover, we saw no reason why, in his first witness statement, Mr Robinson should have referred to HMRC's seizure of the Burfield Road server. There was, therefore, no suppression by Mr Robinson of any information in this regard.

10 507. Ms Kalia alleged at the further hearing that the 2006 customer invoices, 2006 purchase orders, some bank statements, 2006 freight documents and emails were missing from the Burfield Road server when it was returned by HMRC to Atec in December 2011. As Mr Holland observed, this was a significant expansion of the categories of documents which had been mentioned as missing at the main hearing. He further submitted that if all these documents were missing it was implausible that this would not have been noticed by Atec in the period 2011 to 2015. Moreover, Mr  
15 Holland argued that it was hard to see what motive HMRC would have in destroying documents such as customer invoices. Thus the expansion of Atec's argument in relation to deliberate suppression, in Mr Holland's submission, made no sense at all.

20 508. We agree with Mr Holland's analysis. It seemed to us implausible, as we have said, that Atec would not have noticed that its emails for the relevant periods in 2006 had disappeared. It is even more inconceivable that Atec would not have noticed the disappearance of the expanded list of documents which Ms Kalia set out in her witness statement for the first time.

25 509. Furthermore, Ms Kalia appeared to accept in her witness statement that the backup tapes had been returned to her at some time around July 2012. In her oral evidence, however, Ms Kalia said that she could not find these tapes. Be that as it may, we consider that Ms Kalia accepted that the backup tapes had been returned to her by HMRC. There was no explanation as to why these backup tapes did not contain any of the missing relevant information.

30 510. As regards the allegation made in Ms Kalia's third witness statement that she did not believe HMRC's assertion that its officers had not viewed the images taken of the Burfield Road server, there was no evidence to substantiate it. It was directly contradicted by the evidence of Ms Allcock, who seem to us a perfectly straightforward and honest witness. Ms Kalia referred to questions being asked in her interviews with HMRC regarding income tax which, she said, suggested that HMRC  
35 had viewed the information on the Burfield Road server, but she gave no detail in relation to this allegation. Accordingly we reject this allegation and accept Ms Allcock's evidence.

40 511. In conclusion, we reject the allegations of suppression of evidence made by Ms Kalia on behalf of Atec. There seems to us to be no credible evidence that data was lost from the Burfield Road server. As regards the Stone Mountain server this was, according to Mr Kalia, to some extent corrupted as regards emails before it was seized by HMRC in October 2011. Furthermore, we have seen no evidence which persuades



us that the servers were damaged or corrupted while they were in the possession of HMRC.

512. In addition, we also reject the allegation that HMRC pursued an unreasonable and aggressive course of conduct towards Ms Kalia and Mr Kalia which amounted effectively to an abuse of process. There was no evidence which persuaded us that the criminal investigation, both as regards MTIC and income tax matters, was malicious or abusive. Similarly, there was no evidence that the use of restraint orders or bail in relation to Ms Kalia and Mr Kalia was abusive.

513. We should add, for completeness, that Ms Kalia withdrew any allegation that HMRC's legal team had been involved in any deliberate suppression of evidence.

514. We have, therefore, concluded that Atec has not discharged the burden of proof which it bears in relation to the allegations it has made. In our view, the allegations made by Ms Kalia were totally without foundation and were wholly unreasonable. We cannot refrain from concluding that by raising allegations of suppression of evidence and abusive course of conduct against HMRC, Atec was trying to deal with the awkward position in which Mr Kalia found himself in cross-examination in the main hearing that there were no emails (or indeed any other documents) which evidenced negotiation of the deals under appeal. To have done so, particularly by attempting to discredit Mr Robinson, was in our view reprehensible.

#### 20 **Credibility of witnesses – Atec's witnesses**

515. HMRC repeatedly challenged the credibility of Mr Kalia's evidence. In our view Mr Kalia was not a credible witness and we consider his evidence to be unreliable. We believe that in a number of instances Mr Kalia was untruthful. Even allowing for the understandable reticence a witness under cross-examination, we found Mr Kalia to be evasive. We shall give a few examples, which are by no means exhaustive.

516. We considered Mr Kalia was untruthful in relation to the warning letters of 16 March 2006 which he vehemently denied receiving, only to have it pointed out that he had replied to these letters. Those letters and the replies were the only items of correspondence missing from Ms Kalia's witness statement. We considered Mr Kalia's various reasons for his failure to produce this correspondence to be untruthful. At first, he claimed that the warning letters only identified his customers and not his suppliers (with whom he continued to trade). He then blamed the missing letters on an office move. Finally, he blamed the absence of the letters on the fact that the reply letters had been on a server which HMRC had uplifted and corrupted.

517. Furthermore, we consider Mr Kalia's claim that he was "phasing out" Hendon and LMC, whilst continuing to trade with them, was plainly untruthful. There was no evidence to support the suggestion and no such assertion to this effect was made in his witness statements.

518. We considered that Mr Kalia was casting around desperately for an explanation. In our view, the explanations that he did provide were simply not credible.

519. In our view, Mr Kalia's evidence in relation to the 8% profit margin made by Atec, as a matter of "policy", was untruthful. It was simply not credible that Atec  
5 continually made an 8% profit margin repeatedly as a result of arm's length negotiation. Similarly, we consider that the fact that Atec's suppliers make consistent (small) profit margins contradicted Mr Kalia's evidence to the effect that he bargained hard with his suppliers.

520. Mr Kalia accepted that his denial in his witness statement that he had received  
10 Public Notice 726 was untrue.

521. Mr Kalia claimed, in relation to deal 6, that LMC may not have noticed that Atec had failed to make the final payment of £436,684 for a period of some six weeks. Alternatively, he claimed that he might have felt that he had been able to "get  
15 away with it". We considered Mr Kalia's evidence in relation to this final payment to be palpably false.

522. We also considered Mr Kalia's evidence in relation to the HMRC cheque to be lacking in credibility. No normal commercial business would fail to bank cheque for an amount in excess of £2 million.

523. As regards Atec's accounts, as we have already said, we found Mr Kalia's  
20 evidence to be wholly lacking in credibility for the reasons given above. In relation to the PWC tax scheme, we found Mr Kalia's evidence evasive.

524. In relation to Ms Kalia, we did not find her to be a credible witness.

525. She produced a witness statement in relation to the warning letters of 16 March 2006 which omitted the four crucial items of correspondence, whilst asserting that the  
25 correspondence produced was complete. It plainly was not and we do not consider that it was an accident that those four letters were omitted.

526. In addition, we consider that her recollection of the meeting with Mr Simmons in relation to IMEI numbers was untruthful. Our impression of her evidence was that she embroidered the details of the meeting in order to give it verisimilitude. Her  
30 account suggested that Mr Simmons lied about what was said at the meeting and that Mr Kenrick, by agreeing to Mr Simmons' notes, wrongfully colluded in that alleged deceit. There was no motive for Mr Simmons to fabricate his account, much less for Mr Kenrick to be a party to such fabrication.

527. Furthermore, we did not find Ms Kalia's evidence in relation to deal 53 and the  
35 involvement of Wireless 5 FZE credible. It was plain from the correspondence with Mr Saunders that he was allowed to believe that the deal with Compucell, which formed the basis for the VAT repayment claim for that deal, had gone ahead. He was not informed until the letter of 14 February 2007 that Compucell had dropped out of the picture and been replaced by Wireless 5 FZE.

528. Moreover, we did not believe Ms Kalia's professed ignorance the purpose of the film scheme. Ms Kalia is an intelligent individual and she cannot have failed to understand that it would be pointless to enter into a film financing scheme unless she had substantial amounts of other taxable income. We believe that in this respect Ms Kalia's evidence was untruthful.

529. We therefore concluded that the evidence of Mr Kalia and Ms Kalia could not be relied upon.

#### **Credibility of witnesses – HMRC's witnesses**

530. Mr Saunders, Mr Dean, Mr Berry and Mr Corkery were, in our view, reliable and honest witnesses. Moreover, we had no reason to doubt the credibility of those HMRC witnesses whose evidence was contained in witness statements but who did not give oral evidence.

531. We wish, particularly, to address the position of Mr Simmons. We considered that Mr Simmons was a straightforward and honest witness. We saw no justification for the allegations made against him by Ms Kalia.

532. In relation to the further hearing, we found Mr Robinson and Ms Allcock to be honest and reliable witnesses.

#### **Discussion – knew or should have known**

533. We have already concluded that each of Atec's 52 deals was connected to tax losses arising from the fraudulent evasion of VAT, either directly or via three contra traders.

534. The remaining issue in this appeal is whether Atec knew or should have known that its 52 deals under appeal were connected to the fraudulent evasion of VAT.

535. We have approached our decision, both in relation to connection to fraudulent tax losses and whether the appellant knew or should have known of such connection, by looking at the evidence cumulatively. In doing so, we have applied principles set out by the Court of Appeal in *Davis & Dann Ltd & Anor v HM Revenue and Customs* [2016] EWCA Civ 142 at [60] where Arden LJ indicated that it was necessary for this Tribunal to look at the totality of the evidence and to avoid over compartmentalisation. We have also borne in mind the words of Christopher Clarke J in *Red 12 Trading Ltd v Revenue and Customs Comrs* [2009] EWHC 2563 (Ch) at [109]–[111], [2010] STC 589 at [109]–[111] (approved by Moses LJ in *Mobilx Ltd v HMRC* [2010] EWCA Civ 517) at [83]) quoted earlier in this decision.

536. We have carefully considered arguments raised by Atec in its submissions.

537. Ms Kalia argued that by denying Atec its right to deduct input VAT in respect of the appealed deals and by the delay caused by extended verification, HMRC had "ambushed" Atec unlawfully and denied them their basic right to legal certainty. It

seemed to us that this argument was misconceived. HMRC are entitled to investigate whether Atec had a right to deduct input tax in respect of its disputed deals. Furthermore, if HMRC formed the view that because of the application of the *Kittel* principle Atec had no right to deduct its input tax then it is hard to see how the principle of legal certainty could have been breached.

538. Ms Kalia also complained that that on a number of occasions when cross-examining Mr Kalia, Mr Holland had interrupted Mr Kalia's answers. That is true that on at least two occasions the Tribunal asked Mr Holland to allow Mr Kalia to complete his answer. Nonetheless, we did not consider Mr Holland strayed beyond the acceptable limits of robust cross-examination.

539. We have decided, after carefully considering all the evidence, that Atec knew that its 52 deals were connected to the fraudulent evasion of VAT. In the alternative, we have concluded that Atec should have known that its 52 deals were connected to the fraudulent evasion of VAT.

540. We set out our reasons for reaching our conclusion that Atec knew of the above connection as follows. We do not attempt to list these reasons in order of importance but, considering all these matters in the round, it is our view that they justify our conclusion that Atec knew that its transactions were connected with the fraudulent evasion of VAT.

(1) We have concluded that all 52 of Atec's deals – which comprised all of Atec's broker transactions in the relevant VAT periods – traced back to fraudulent tax losses either directly or via contra traders. We think it unlikely that this was a coincidence. Obviously, each case must be judged on its own merits, but the observations of Christopher Clarke J in *Red 12*, to which we have just referred, seem particularly apposite in this case.

(2) We have considered the statements of Mr Olaf Gotthal. Clearly, these statements constitute hearsay evidence. Whilst hearsay evidence is admissible, it is a matter for the Tribunal to decide what weight should be given to it.

In this case, we have decided to attach weight to Mr Gotthal's statements. First, Mr Gotthal's assertion that there were real goods in only two of the transactions with Freitex (both of which took place in July 2006) was an admission against interest. We therefore attach more weight to such an admission than to an exculpatory statement. Secondly, and more importantly, we take the view that Mr Gotthal's statements were corroborated by the fact that in respect of deals 40 and 52 Atec requested insurance for the goods. These were the only deals under appeal where Atec sold to Freitex in which Atec requested insurance. Moreover, Atec and Wireless 5's gross profit on deals 40 (12.8%) and 52 (13.6%) were significantly different from the usual gross profit of around 8%: this also suggested that these deals were different from other Freitex deals.

We noted that the inspection reports in relation to all Freitex deals apart from deals 40 and 52 were prepared by Globe. We have already noted a number of anomalies and inadequacies in respect of Globe's inspection reports. For example, the description of the goods appeared very brief, the sampling size

seem to be inadequate and a number of their reports were dispatched to Atec after shipping instructions had been given and in some cases after goods had left the country. This caused us to doubt the veracity of these reports.

5 Furthermore, although the CMRs in respect of the Freitex deals briefly described the goods, the CMRs were completed by Globe. In the light of the statements by Mr Gotthal, we considered it significant that the only deals in which real goods were alleged to have been involved (deals 40 and 52) were transactions in which a different freight forwarder (Hawk Precision Logistics) was involved. It is worth noting that in deal 40, Hawk Precision Logistics' 10 report was dated 3 July 2006 i.e. the same date on which Atec gave shipping instructions (the goods were shipped on 4 July 2006). This is in stark contrast to a number of inspection reports produced by Globe which were dated after shipping instructions had been given.

15 We have also taken account of the statement by the German tax authorities that the outbound CMRs (with the exception of deals 40 and 52) were stamped with a forged MS Kurier stamp and that the documents bore forged signatures. This was also hearsay evidence but we saw no reason to doubt it. The CMRs therefore had plainly been fabricated.

20 We have therefore concluded that the inspection reports produced by Globe and the CMRs in relation to the Freitex deals (with the exception of deals 40 and 52) were fabricated and, as regards the CMRs, this was consistent with Mr Gotthal's statement that he received documentation after the event via DHL.

25 Accordingly, we have concluded that the only Freitex deals in which Atec sold actual goods to Freitex were deals 40 and 52 and that no real goods existed in the other Freitex deals.

30 It seemed to us implausible that so many Freitex deals could be carried out where no goods existed (save for deals 40 and 52) if Atec was merely an innocent dupe. For fraudsters to involve an innocent dupe in such a large number of transactions involving non-existent goods would have been extremely risky. At any time, the innocent broker could have insisted on personally inspecting the goods or to have employed independent agent to carry out such an inspection. Indeed, in a genuine transaction involving small high value electronic goods, we would have expected the goods to have been inspected by or on behalf of Atec. Furthermore, as we have stated, the fact that 35 Atec exceptionally requested insurance for deals 40 and 52 indicated that it knew that those deals involved actual consignments of goods rather than the other Freitex deals, which were merely paper transactions. Moreover, we consider that both the use of a different freight forwarder in deals 40 and 52 and the fact that Atec made a higher than usual profit margin in those two deals 40 were significant and suggested that these deals were different from the other Freitex deals and that Atec knew this to be the case.

We should add, we did not accept Ms Kalia's suggestion in her closing submissions that Mr Gotthal's admissions were an attempt to protect other members of his family. That seemed to us to be mere speculation.

5 (3) Atec made a consistent profit margin in most of its deals of 8% (or thereabouts). This seemed to us to be wholly artificial. We did not accept Mr Kalia's explanation that he made an 8% profit as a matter of "policy". In our experience, in ordinary commercial trading where the parties bargain at arm's length, the profit margin will vary – sometimes it will be greater and sometimes it will be smaller, depending on a host of ordinary commercial factors. A constant profit margin seemed to us a clear indication that Atec's deals were contrived and that Atec was involved in that contrivance.

10 (4) In this context, we also note the fixed mark-ups made by many of the participants in the deal chains – often £1.50p or 25p. These traders frequently appeared in exactly the same position in the number of deal chains and made the same mark-up. It is hard to see how this repetition could occur in legitimate arm's length transactions. We accept that Atec would not necessarily have known of the mark-ups made by the buffer traders or of their position in the various deal chains. Nonetheless, this strongly suggested that the deal chains were the result of contrivance rather than genuine commercial trading.

15 (5) Furthermore, as we have noted, Atec's immediate supplier repeatedly made a consistent mark-up. Mr Kalia insisted that he bargained hard with his supplier to achieve the purchase lowest price. Whilst we appreciate that Atec would not, in genuine transactions, know the purchase price paid by its supplier it seems hard to credit that the price upon which Atec and its supplier struck a deal consistently, after the alleged hard bargaining, left the supplier with the same repeated mark-up if those transactions had been negotiated on an arm's length basis.

20 (6) We have considered the evidence of Mr Corkery, which we accept. In our view, Atec's transactions exhibited none of the characteristics which Mr Corkery identified as characterising legitimate grey market transactions. Atec added no value to the goods. It simply bought (or purported to buy) from other UK grey market suppliers and sold to EU customers in deal chains where the goods simply passed from one trader to another in an elaborate game of "pass the parcel". The length of the deal chains seemed to us extraordinary. In many chains there were six or seven traders from (and including) the defaulter to the EU customer. None of those traders altered or in any way added value to the goods. There was no reason why Atec, or any of its immediate suppliers, could not have sourced the goods from traders higher up the chain in a way which would have allowed them to cut out the intermediaries and, thereby, increase their profit. A recurrent theme of Mr Corkery's evidence was that in the legitimate grey market there would be significant pressure to dis-intermediate. In the direct tax loss deals in this appeal, there were lengthy deal chains and no evidence of dis-intermediation, but rather evidence of intermediation to an extraordinary and, frankly, incomprehensible extent.

35 (7) HMRC's analysis of Mr Dean's FCIB evidence (in relation to deals 2 and 3, 4, 35, 37 and 52) demonstrated that, in relation to these deals, the circularity in the money flows associated with Atec's transactions functioned as a way of dividing the proceeds of the input VAT refund between those traders that had participated in the transaction chains. The amounts retained in the FCIB

accounts of those traders in the payment chains, plus the profit made by Atec, produced a figure close to 100% of the input VAT paid into the chain by Atec for each transaction where the analysis was performed. Atec paid out more than it was paid because its sales were zero-rated and its profit lay in the reclaim from HMRC. It seemed to us that it was highly unlikely that this was coincidental and we considered that this was powerful evidence of orchestration of these deals.

(8) Atec's due diligence in respect of its trading partners was wholly inadequate. Such checks as were made were generally superficial and cursory. Atec cannot have drawn any comfort from the checks that it made that its trading partners were *bona fide* suppliers and customers. This, of itself, suggested to us that Atec had no real concern about the financial wherewithal or *bona fides* of its trading partners. It was clear from the evidence that Atec had been clearly warned by HMRC about the dangers of being involved in MTIC trading and had been issued with Notice 726. Those warnings, substantive checks to ensure that its trading partners were genuinely involved in legitimate commercial trade, seem to us to have fallen on deaf ears.

(9) Atec's lack of concern about its trading partners, reflected in its inadequate due diligence, was nowhere more apparent than in its due diligence in respect of Hendon and LMC. These were Atec's suppliers in deals in, respectively, 05/05 and 12/05. These were deals in respect of which Atec received the warning letters from HMRC in March 2006 – immediately before the periods under appeal. Having been put on notice that HMRC considered that Atec's earlier transactions with these suppliers traced back to tax losses caused by the defaulting traders we would have expected Atec to have been extremely circumspect in dealing with these companies again as it did in six of the deals currently under appeal (the appeal in respect of the seventh deal – deal 53 – having been abandoned). Yet there was no evidence that Atec took any special steps to satisfy itself that these two companies were involved in legitimate trade and that by dealing with these companies Atec itself would not be caught up in MTIC trading. Instead, Atec's due diligence in respect of these two companies was inadequate suggesting that Atec was not unduly concerned about the risk of being innocently implicated in MTIC transactions. It seemed to us that Atec's apparent unconcern about the *bona fides* of Hendon and LMC was consistent with Mr Kalia's cavalier attitude towards third-party payments in earlier periods.

(10) We considered that the way in which, in certain transactions, Atec's suppliers were willing to wait payment was uncommercial. For example, in deal 6, Atec had been paid by its customer on 24 April 2006. Nonetheless, it did not pay its supplier, LMC, until 5 June 2006 even though LMC had released the goods to Atec on 24 April 2006. We found Mr Kalia's suggested explanations as to why LMC would be prepared to wait that length of time for a payment in excess of £400,000 and, indeed, supply Atec with further goods in the meantime completely implausible. Again, this suggested to us that Atec was not dealing on an arm's length basis with its suppliers, in particular LMC.

5 (11) We have set out above the FCIB evidence of Mr Dean which indicated that a number of the deal chains were circular as regards payment flows. We accept that this evidence does not establish that Atec knew of the circular payment flows. It does, however, indicate that these deal chains were contrived. We have also set out the evidence in relation to circularity indicated by the chains of invoices. Again, in our view, this indicates that a number of the deal chains were contrived.

10 (12) In relation to IMEI numbers, we note that 11 of the appealed deals involved mobile telephones. We have rejected the challenge mounted by Atec to the evidence of Mr Simmons. We consider that Mr Kalia said to Mr Simmons that he did keep IMEI numbers but that he refused to give them to HMRC on the basis that he might incriminate himself. This was consistent with his reluctance to release IMEI, as recorded by Ms Bamford and Mr Westgate. It is unclear to what extent Atec did record IMEI numbers. However, we find that  
15 Atec did on occasion record IMEI numbers although on many occasions it did not. The reluctance of Atec to hand over its records of such IMEI number checks that it carried out was, however, not consistent in our view with the actions of trader which was anxious to cooperate with HMRC.

20 (13) We have concluded that in a number of instances the freight forwarder knew of the deal chains, including Atec's participation in those deal chains, in advance i.e. before receiving release notes before Atec entered into its transaction judged by the date of its invoice. We considered that this was evidence of contrivance which involved Atec.

25 (14) We have recorded a number of instances of errors and anomalies in the transactional documentation. We considered that these matters indicated that the deals concerned were not entered into on an arm's length basis.

30 (15) In relation to inspection reports, we note that Atec on some occasions either paid for, gave shipping instructions or shipped goods without waiting to receive an inspection report. In the deals carried out in 04/06, Atec did not inspect the goods. In addition Atec did not inspect the goods in relation to deals 16, 18, 22, 23, 34 – 37, 40 and 52. Bearing in mind the high value of the deals in question, we consider that this indicated that Atec was not dealing on an arm's length commercial basis in relation to those transactions. We had considerable doubts about Globe's inspection reports as we have explained above.

35 (16) We have taken into account the unchallenged evidence of Mr Humphries in relation to contra-trading. We accept that his evidence did not directly bear on whether Atec knew that its transactions were connected with fraudulent tax losses. The evidence was, however, a powerful indicator of the sophistication and degree of organisation which lay behind the orchestration of the contra  
40 trading deals.

(17) In relation to insurance, we considered it odd that that so many consignments of high-value goods should be exported by Atec without insurance and that any misunderstanding as to whether Atec dealt on CPT or DDU Incoterms should be repeated so many times. It also seems to us  
45 conspicuous that the only two deals with Freitex in which insurance was



requested by Atec were deals 40 and 52. Again, we consider that Atec's apparently lax attitude towards insurance was consistent with its knowledge that its transactions were connected with fraud and that, in many cases, there were no goods to insure or, alternatively, that its transactions were contrived.

5 (18) We considered that in relation to deals 40, 52 and 53 the evidence clearly established the "carouselling" of goods and payments. We considered that this also corroborated the statement of Mr Gotthal in relation to the existence of actual goods in only two transactions. Furthermore, we consider the conduct of Ms Kalia in relation to deal 53 and the information that she supplied to Mr  
10 Saunders in respect of the aborted Compucell deal demonstrated a singular lack of candour.

541. Accordingly, for the reasons given above, we have concluded that Atec knew that its transactions were connected with the fraudulent evasion of VAT. Indeed, in our experience of hearing MTIC appeals, the evidence in this case of Atec's  
15 knowledge that its deals were connected to fraud was particularly compelling. In relation to those areas where we have found contrivance we consider that those matters were relevant to the factual matrix in respect of which the Tribunal had to apply the *Kittel* test i.e. that Atec knew or should have known that its transactions were connected with VAT fraud.

20 542. HMRC also argued that Atec's transactions were carried out as part of orchestrated schemes to defraud HMRC and that Atec either knew or should have known of the same. In the event, we have found it unnecessary to decide this appeal on that issue because we have found in favour of HMRC on the ordinary *Kittel* test. However, had we been required to do so then, for the reasons given above in  
25 paragraph 540 (1) – (18) we would have concluded that Atec's transactions were indeed carried out as part of orchestrated schemes to defraud HMRC and that Atec knew or should have known this.

543. In the light of our conclusion that Atec had actual knowledge that its deals were connected to fraud it is, strictly speaking, unnecessary to consider whether Atec  
30 should have known that its deals were so connected. However, because HMRC's case was pleaded on the alternative basis of actual knowledge and means of knowledge under the *Kittel* test our conclusion is that Atec should have known that all its transactions under appeal were connected to the fraudulent evasion of VAT. In reaching this conclusion, we have applied the "only reasonable explanation" test put  
35 forward by Moses LJ in *Mobilx*. We reach our conclusion that Atec should have known that its transactions were connected with fraudulent evasion for essentially the same reasons that we have given in respect of actual knowledge. In particular, however, we consider paragraph 514 (3), (6), (8), (9) (10) (12) and (15) to be especially relevant. The extraordinary consistency of its profit margins (8% or  
40 thereabouts) should have alerted Atec that its transactions were unlikely to be genuine arm's length transactions. The fact that Atec repeatedly made a handsome profit margin without adding value to its goods, buying from one trader and simply selling to another, should have put Atec on notice that its transactions were too good to be true. Atec failed to carry out adequate due diligence and in respect of those checks  
45 which it did make, it failed to read the obvious warning signs (e.g. dormant

5 companies, unrelated trade descriptions etc.). It failed to carry out any adequate checks to reassure itself in relation to Hendon and LMC even though it had been warned that its previous deals with the suppliers had been connected to fraudulent tax losses. Furthermore, Atec's suppliers seemed willing to wait for payment after the delivery of goods. In respect of its mobile telephone deals, Atec rarely recorded IMEI numbers which one would have expected a reasonable trader to have done in order to ensure that it was not caught up in the carouselling of goods. In addition, in a number of the deals under appeal Atec did not inspect the goods at all.

**Decision**

10 544. We therefore dismiss these appeals.

15 545. 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.

20 **GUY BRANNAN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 24 OCTOBER 2016**

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## APPENDIX - Fraudulent Tax Loss and Connection to Fraud

### Part 1: Fraudulent tax loss

546. We set out in Part 1 of this Appendix our findings of fact and our conclusions in relation to the issue whether a fraudulent tax loss arose in relation to each of the 52 deals, the subject matter of this appeal.

#### *(e) Apollo Communication Centre Ltd – deals 1, 5 and 6*

547. Apollo Communications Centre Ltd (“Apollo”) was the alleged defaulting trader in respect of deals 1, 5 and 6. Mr Mandalia, an HMRC officer, provided a witness statement in relation to Apollo.

548. Apollo applied to be registered for VAT on 26 February 2004 and was registered with effect from 1 February 2004. Its trade classification was “retail of mobile telephones.” Mr Rahmann was appointed the director of Apollo on 12 February 2004.

549. Apollo’s total net turnover, according to its VAT returns, from the date of registration for VAT on 1 February 2004 to the period ending February 2006 was £200,999.

550. HMRC warned Apollo by letter about MTIC fraud in July and September 2005.

551. On 20 April 2006, Mr Rahmann informed HMRC by e-mail that its customers were: Gara Technologies Ltd, Park Supplies and AC Electrical EU Ltd and that Apollo had created a net VAT liability of £2,973,335.38 as a result of one day’s trading on 19 April 2006.

552. HMRC officers visited Apollo’s offices on 21 April 2006 and spoke to Mr Rahmann. Mr Rahmann said that Apollo’s wholesale suppliers were based in Portugal, Belgium and Cyprus. He explained that Apollo did not pay for the goods but instructed its customers to make payment directly to Apollo’s supplier. The officers established that Apollo’s turnover for April 2006 alone was approximately £150 million (net of VAT). At this level of turnover Apollo’s monthly net VAT liability would exceed £26 million. The officers uplifted the available records, which comprised 19 supplier/customer files relating to April 2006 and Barclays bank statements.

553. Three days later, on 24 April 2006, HMRC issued a Regulation 25 letter, a deregistration letter and an amended VAT return for the period ending May 2006. Under Regulation 25 (1) Value Added Tax Act 1995 Regulations, HMRC may, when necessary, vary the date of a trader’s VAT accounting period and due date for submission of its VAT return. The letter of direction brought forward the end of the period date from 31 May 2006 to 23 April 2006 and the due date for submission of the VAT return was brought forward from 30 June 2006 to 25 April 2006. HMRC also prepared an assessment to tax covering the revised period of the 05/06 return.

The VAT total for all the known April 2006 deals undertaken by Apollo in the period 7 April 2006 to 19 April 2006 was £23,880,467. The Regulation 25 direction letter, the Notice of Assessment and the amended 05/06 period VAT return were issued to Apollo on a visit by HMRC officers to Apollo's premises on 24 April 2006. Apollo was then deregistered for VAT.

554. Later that day, Mr Rahmann telephoned HMRC and said that Apollo would not be able to pay its £23,880,467 VAT liability. He claimed that his customers were supposed to pay him the VAT element but that he had not received anything from his customers.

555. The following day, on 25 April 2006, Mr Rahmann delivered Apollo's revised period 05/06 VAT return. According to the return, a sum of only £4,038.89 (i.e. total output less total input tax) was due to be paid by Apollo to HMRC. Mr Rahmann said that this was due to the issue by Apollo of credit notes reversing various deals which it had conducted in April 2006. Mr Rahmann, however, produced no documentation supporting this return. Later, however, on 26 April 2006 Mr Rahmann sent HMRC three e-mails containing credit notes addressed to Gara Technologies Ltd, Park Supplies and AC Electrical EU Ltd.

556. In relation to these alleged credit notes, there was no evidence produced of repayment of monies or return of goods. Further enquiries by HMRC revealed that there was no evidence that the credit notes allegedly issued by Apollo were ever received and actioned by its customers or that the actual supplies of goods did not take place as originally invoiced. From the deal documentation held by HMRC in relation to repayment claims by broker traders in respect of the goods dealt in by Apollo, it was clear that the transactions did in fact take place. Thus Apollo sought to evade its substantial VAT liability by the issue of false credit notes and the making of an incorrect declaration on its 05/06 VAT return.

557. HMRC revised Apollo's April deal log and calculated that its VAT liability was £26.3 million.

558. On 4 May 2006 HMRC was advised that Apollo was being placed into creditors' voluntary liquidation.

559. Additional assessments were subsequently issued to Apollo. Apollo's total VAT liability was approximately £51 million incurred on sales of £282 million in a three-week period in April 2006. Output tax due on Apollo's sales invoices (55410 – deal 1, 55508- deal 2 and 55509- deal 6) that, as we shall see, traced back to deals 1, 5 and 6 were included in the schedule of assessments issued against Apollo. None of the assessments issued to Apollo have been paid or appealed.

560. On 1 April 2008, Mr Rahmann gave an undertaking under the Company Directors Disqualification Act 1986 that he would not act as a company director for 13 years. He admitted that he caused Apollo to undertake millions of pounds of purchases and sales in April 2006, without undertaking adequate checks on Apollo's trading partners, acting against written advice provided by HMRC in instructing that

millions of pounds of Apollo's sales revenue be paid to an overseas company with which Apollo had no trading connection, causing Apollo to continue to sell to customers that had failed (and continued to fail) to pay Apollo the millions of pounds that they owed it for goods received, thereby causing Apollo to trade at significant risk of a value added tax fraud being perpetrated against HMRC and giving rise to an unsatisfied VAT liability estimated to be approximately £35 million.

561. HMRC submitted that the following indicated that Apollo's default was wilful and fraudulent:

- (1) Apollo's VAT registration appeared to have been completed to mislead HMRC into thinking that Apollo would be retailing mobile telephones;
- (2) Apollo's turnover of £282 million in three weeks was commercially incredible;
- (3) Mr Rahmann, the director, accepted a disqualification as a director for a lengthy period; and
- (4) Apollo's creation of the VAT default of £51 million in just three weeks and sudden disappearance were not the actions of an honest business.

562. In our view, there is no doubt on the evidence before us that there was a fraudulent tax loss created by Apollo and that that tax loss included output VAT in relation to goods which, as we shall see, were connected to deals 1, 5 and 6. Its turnover in April 2006 lacked any commercial reality. Apollo instructed its customers to pay third parties, leaving Apollo without the means to pay its VAT liabilities. It suddenly purported to issue, without explanation, credit notes to its customers once it was clear that HMRC were investigating. The admissions by Mr Rahmann in relation to the undertaking not to serve as a company director for 13 years were particularly significant.

*(f) Astar Central Limited – deals 30, 31, 33, 34, 35, 36 and 37*

563. Astar Central Limited ("Astar") was the alleged defaulting trader in respect of deals 30, 31, 33, 34, 35, 36 and 37.

564. Astar was incorporated on 20 November 2003. The director of Astar was Mr Muzzmal Khan and the company secretary was Saira Khan.

565. The company applied to be registered for VAT in July 2005. The undated application for registration form declared the main business activity of Astar to be the "management of real estate on a fee or contract basis." The form estimated that the company's turnover in the next 12 months would be £75,000 and forecast that the company would not undertake any trade with companies in other EU member states in the next 12 months. Later in July the company secretary stated that the main business activity of Astar was "Real estate Management and Accounting."

566. Astar was registered for VAT with effect from 1 June 2005. The company was finally deregistered with effect from 23 June 2006 as a missing trader. Astar was no

longer at the principal place of business and failed to notify HMRC of any change in address. In addition, the company had outstanding VAT returns and those returns that had been submitted were nil returns.

5 567. Nil returns were received for 10/05 and 04/06. The return for the second VAT period, 01/06 and the final VAT period covering 1 May 2006 to 23 June 2006 were not received by HMRC.

568. During June 2006, Astar made sales in excess of £50 million. Assessments totalling £9 .3 million were issued against the company as details of its sales emerged in the course of HMRC's investigation.

10 569. Exhibits to Ms Riley's witness statement showed that Astar was acquiring goods from an EC trader called Marubo International (Spain) and releasing them to a UK trader called Venus Computers. Astar instructed Venus Computers to pay Marubo International directly i.e. make a third party payment. This seemed entirely uncommercial behaviour i.e. to put one's customer in contact with one's apparent  
15 supplier. We noted from the exhibits to Ms Riley's witness statement that Astar repeatedly instructed its customers to pay Marubo International. Astar was also acquiring goods from a Belgian company called Universal Systems SCS.

570. Based on information obtained from freight forwarders and from Astar's customer trading records, HMRC raised assessments against Astar on 16 January  
20 2007, 7 June 2007 and 10 September 2007. Those assessments included output tax in respect of transactions which were connected, as we will see, with Atec's deals 30, 31, 33, 34, 35, 36 and 37.

571. There was no further contact from Astar or its officials. The outstanding assessments, which total more than £9 million, have not been paid or appealed.  
25 Letters to Astar's address were returned undelivered.

572. In our view, the evidence established that Astar was a fraudulent missing trader which had no intention of discharging its VAT liabilities. Astar's description of its business on its application for registration for VAT was misleading – the company never undertook real estate management and accounting and instead moved into  
30 large-scale wholesaling of iPods and other consumer electronic equipment. Moreover, the company's turnover increased from nil to £54 million in one month. The repeated third-party payment instructions to Venus Computers strongly indicated that Astar was involved in non-arm's length trading and that the tax loss incurred in respect of Astar was a fraudulent one. In addition, the fact that Astar disappeared without  
35 discharging its VAT liabilities or submitting its returns and without appealing or disputing the outstanding assessments also suggest that it was involved in the fraudulent evasion of VAT.

*(g) C & B Trading (UK) Ltd – deal 7*

573. Mr Taylor, an HMRC officer, provided a witness statement in relation to C & B Trading (UK) Ltd (“C & B”). C & B was the alleged defaulting trader in respect of deal 7.

5 574. C & B was incorporated in January 2001 and applied for registration for VAT Form VAT 1 dated 16 April 2003. Form VAT 1 was signed by Mr Delroy Chambers who was a director of C & B until 20 February 2006.

575. Form VAT 1 stated that C & B’s main business activity would be “car valeting” and its estimated turnover in the next 12 months would be £80,000. Form VAT 1 also  
10 stated that in the next 12 months the company would not buy from or sell goods to other EC member states and that it was not expected to receive any regular repayments from HMRC.

576. C & B (under its original name C & B Car Care Limited) was registered for VAT with effect from 1 May 2003.

15 577. In a telephone call with HMRC on 10 July 2003 Mr Chambers stated that the company’s turnover was expected to be £80,000, that its directors were Mr Chambers and Mr Philip Bunting and that the main business activity was car valeting. Mr Chambers added that he intended to sell second-hand cars.

578. On 18 June 2004 HMRC received returned mail from the premises of C & B  
20 and on 24 June 2004 Mr Chambers returned a Form VAT 484 stating that the new address of the company was another address in Stoke-on-Trent.

579. On 24 August 2005 HMRC received a letter advising that the company (with  
effect from 24 August 2005) had changed its name to C & B Trading (UK) Ltd. Mr  
Chambers advised that the change was as a result of the company changing its trading  
25 activities (from car valeting) to an unspecified activity.

580. On 1 September 2005, C & B’s accountants wrote to HMRC requesting that the  
company be placed on monthly VAT returns. On 21 September 2005, HMRC wrote  
to C & B advising it that its request to be placed on monthly (rather than quarterly)  
returns had been refused because monthly return status was generally only allowed for  
30 businesses that were entitled to regular repayments of VAT.

581. On 9 November 2005 an HMRC officer visited C & B but the company had  
evidently moved from its principal place of business. The company was traced to  
Crewe. Attempts to reach the company by telephone were unsuccessful.

582. On 22 February 2006 Mr Chambers wrote to HMRC advising HMRC of a  
35 change of trading address and stated that C & B would now be trading in the sale of  
chemicals and alloy wheels.

583. On 7 March 2006 C & B wrote to HMRC informing it of a change of director  
and company secretary. The new director was Mr D Heath and the company secretary  
was Mr B Mooney.

584. HMRC received an undated letter signed by Mr Heath on or around 16 March 2006 stating that C & B now bought chemicals, car components, alloy wheels etc. and requesting that their trade classification be shown as “general trading”. Around the same date another letter to the same effect signed by “S Dunn” was received.

5 585. In summary, an existing company appeared to have been taken over by new directors, moving address and changing its trading activity.

586. On 11 April 2006 another UK trader (Highbeam) asked HMRC by telephone to verify C & B’s VAT registration number. The note of the telephone call refers to C & B as being the supplier of mobile telephones.

10 587. On 26 April 2006, HMRC (Mr Taylor) made an unannounced visit to the principal place of business of C & B but were unable to gain access to the premises. The visit was prompted by the fact that HMRC had received information from a freight forwarder which showed that a European company (Integralphone GmbH in Switzerland) was releasing mobile telephones to C & B who were in turn releasing the  
15 goods to Highbeam.

588. On the same day, Mr Taylor telephoned C & B and spoke to Mr Mooney. Mr Mooney said that C & B dealt in mobile telephones which were purchased from a Czechoslovakian company and was selling the goods in the UK. Mr Taylor suggested that, in these circumstances, C & B would have a large net VAT liability to HMRC.  
20 Mr Mooney did not comment. Mr Taylor arranged a further visit but this visit was cancelled by C & B.

589. On 28 April 2006, HMRC issued a Regulation 25 notice which brought forward the due date for C & B’s 04/06 return to 2 May 2006. On 28 April 2006 HMRC wrote to C & B advising the company that its VAT registration had been cancelled with  
25 effect from 1 May 2006.

590. Mr Taylor visited C & B’s premises again on 2 May 2006 but was unable to gain access. In addition, there was no response to telephone calls. Further attempts to contact C & B were unsuccessful.

591. Mr Taylor obtained information from other HMRC officers to the effect that C  
30 & B had made substantial UK sales in the period 04/06. Consequently, assessments totalling in excess of £84 million for undeclared output tax on sales of £480 million by C & B in the period 04/06 were subsequently issued to the company as its transactions were uncovered. The output tax due on C & B’s invoice (240406/23) which, as we shall see, was traced to Atec’s invoice 1417 (deal 7) was included in the  
35 assessment for £22,614,728 issued to C & B 6 March 2008. None of the assessments have been appealed or paid.

592. C & B opened a bank account with First Curaçao International Bank (“FCIB”) on 19 September 2005 by Mr Chambers. This was approximately five months before the appointment of Mr Mooney as company secretary and Mr Heath as director and  
40 was six months before the commencement of trading in mobile telephones in early



March 2006. The FCIB statements showed that C & B paid away the VAT collected from its UK customers to Integralphone GmbH.

593. C & B was wound up by court order on 10 January 2007.

594. We are satisfied on the above evidence that HMRC incurred a tax loss and that that loss arose through the fraudulent evasion of VAT by C & B. It seems to us that the description of the business (e.g. dealing in chemicals, car components and alloy wheels) was deliberately misleading – C & B was in fact dealing in very large quantities of mobile telephones. C & B failed to declare the full extent of its trading in 04/06 and subsequent periods. Its officers and employees appear deliberately to have avoided meeting HMRC and subsequently disappeared without explanation. HMRC submitted that C & B's failure to appeal the Regulation 25 letter or its deregistration for VAT purposes indicated that C & B was not an honest business. We agree.

*(h) Taxable person purporting to be Clifton Communications Ltd – deals 17-23*

595. Mr Cook, an HMRC officer, provided a witness statement in relation to Clifton Communications Ltd (“Clifton”) regarding deals 17-23. As we have noted in the main body of the decision, Atec conceded that HMRC had suffered a fraudulent tax loss in relation to a taxable person purporting to be Clifton. HMRC concluded that Clifton's VAT registration number had been hijacked. We have reviewed the evidence of Mr Cook and consider that Atec was right to make this concession.

596. An assessment was raised for supplies made using Clifton's VAT registration number by HMRC on 7 June 2007 which included tax in respect of deals 19, 20, 21 and 22. An assessment issued on 3 July 2008 related to tax which was connected, as we shall see, with deal 23. An assessment was raised in respect of tax relating to deals 17 and 18 on 13 October 2010.

*(i) Crossview Consortium Ltd – deal 27*

597. Mr Duncan Smith, an HMRC officer, provided a witness statement in relation to Crossview Consortium Ltd (“Crossview”), the alleged defaulting trader in respect of deal 27.

598. Crossview was incorporated on 4 February 2003.

599. Crossview's officers, according to information from Companies House, were:

(1) Mr Winko Palan – director and company secretary appointed 10 October 2005;

(2) Mr Vara Prasad Arekapudi – company secretary from 16 September 2003 until 2 April 2006. He was also a director from 26 January 2006 until his resignation on 2 March 2006;

(3) Mrs Rajyi Lakshmi Arekapudi – director from 16 September 2003 until her resignation on 2 January 2006;

(4) Mr Pawal Wielkopolan – director from 5 November 2004 until his resignation on 1 February 2006.

5 600. Even though there were four directors and a receptionist (see later), HMRC were unable to find any PAYE records for Crossview.

601. Crossview was registered for VAT with effect from 17 October 2005 on the application of Mrs Arekapudi. It was registered under the trade classification “other software consultancy and supply”. Form VAT 1 indicated that the company’s  
10 turnover in the next 12 months would be £100,000. It also estimated that it would make sales of £25,000 to and purchases of £25,000 from companies in other EU member states. On 1 February 2006 Mr Arekapudi advised HMRC of a change of the principal place of business.

15 602. Crossview filed a nil return for the quarterly period 12/05 and its return for the period 03/06 showed a net VAT liability of £101.11.

603. HMRC visited Crossview’s offices on 27 February 2006 and met Mr Arekapudi. Mr Arekapudi indicated that he hoped that the company would begin to trade within two weeks and confirmed that the main business activity would be  
20 “wholesale of video games, Sony PSP, Xboxes, small DVD/TFT monitors, textiles, garment and related products.” He indicated that Crossview intended to carry out back-to- back transactions, purchasing mainly from China and selling in the UK. Mr Arekapudi said that the business had one bank account with Barclays and there was a loan for £20,000 from Halifax PLC in his wife’s name. Mr Arekapudi was issued with a letter warning about issues relating to MTIC VAT fraud.

25 604. On 2 June 2006 HMRC paid another visit to Crossview’s offices amidst concerns regarding the company’s pattern of trading. HMRC found that Crossview’s offices were in fact merely an accommodation address. Mr Arekapudi was not present and the HMRC officers were informed that he had not attended the premises “for the past few weeks.” HMRC also spoke to the manager of the premises who informed  
30 HMRC that the company was in arrears in respect of its rent. HMRC left a Regulation 25 letter shortening Crossview’s VAT return period. HMRC wrote a further letter on the same date which warned that the company would be deregistered with effect from 5 June 2006 if contact was not made with HMRC within 24 hours.

35 605. HMRC then telephoned Crossview and spoke to a Mr Rashid Khan, who identified himself as the receptionist for Crossview. HMRC were told that Mr Arekapudi was in a meeting and were asked to call back in five minutes. When HMRC called again five minutes later they were told that Mr Arekapudi was not in London but would be back after the meeting. HMRC asked Mr Khan to tell Mr Arekapudi that the company’s VAT return had been personally delivered by HMRC  
40 to its principal place of business and advised him that the company would be deregistered if there was no representative of the company when HMRC returned on Monday 5 June 2006 at 13:00 hours to collect it.

5 606. HMRC paid a further visit to Crossview's offices on 5 June 2006. Again, there was no director of Crossview apparent at the premises. After waiting, the HMRC officers left the premises. The VAT return that had been left with Crossview on 2 June 2006 had not been completed. The premises manager informed them that Mr Arekapudi had not collected the post from 2 June 2006. On returning to HMRC's offices after the visit, HMRC sent a letter dated 5 June 2006 deregistering Crossview.

10 607. Various assessments and amended assessments were raised in the period 2006-2008. None of the assessments has been appealed or paid. Crossview's tax debt to HMRC stands at £4,584,518.25. This did not include VAT in respect of Crossview's invoice in respect of deal 27. The details of the deal (Crossview's invoice number 1610) was not notified to Crossview's allocated officer from the records held by HMRC in respect of Easy MSI Ltd until after the deadline for an assessment to be raised passed and, therefore, was not assessed by HMRC.

608. Crossview was dissolved on 8 August 2008 owing the above tax debt.

15 609. Based on the above, even in the absence of a formal assessment, we have no doubt that Crossview fraudulently evaded VAT. It traded from 17 October 2006 until it was deregistered on 13 June 2006, when it was discovered that Crossview was no longer present at the premises. It left no forwarding address. Crossview has failed to make any contact with HMRC and has not appealed or paid any of the assessments. In  
20 addition, we consider that Crossview attempted to mislead HMRC by indicating that its main business activity was "software consultancy and supply". Also, the predicted levels of turnover and predictions as to trade with companies in other EC member states were misleading. Crossview has manifestly not accounted for VAT in respect of its invoice number 1610 and we consider that its failure to do so was fraudulent and  
25 that HMRC has thereby incurred a tax loss, regardless of the fact that no assessment was raised in respect thereof.

610. Accordingly, we conclude that, on the basis of the above evidence, Crossview caused a tax loss to HMRC by virtue of its fraudulent evasion of VAT.

*(j) Daraj Trading Ltd – deal 40*

30 611. Mr Chisman, an HMRC officer, provided a witness statement in relation to Daraj Trading Ltd ("Daraj") regarding deal 40.

612. Daraj was incorporated on 12 October 2004. The director was Mr Raj Khan and the company secretary was Ms Amreena Khan.

35 613. In its application to register for VAT dated 5 January 2005, Mr Khan indicated that Daraj's activity was "Commodity Trading, Importing goods, Bathroom Furniture, Lighting, China." Mr Khan indicated that the estimated value of taxable supplies over the next 12 months would be £300,000. Subsequently, Mr Khan stated that he planned to import bathrooms, furniture, bedding, lighting and china goods from Dubai which he planned to sell to the general public, builders and other retailers. Mr Khan stated  
40 that Daraj would deal with only UK trading partners.

614. Daraj was registered for VAT on 1 March 2005 and placed on quarterly returns.
615. Its accounts for the period ended 31 October 2005 showed Daraj's total assets as £2.
616. No reply was received to HMRC's letter to Daraj of 20 September 2005 offering support for a new VAT business.
617. On 14 November 2005, HMRC wrote to Daraj stating that HMRC had unsuccessfully attempted to contact the company regarding an outstanding VAT debt of £643 for the 08/05 VAT period. This VAT debt had resulted from the company's failure to submit VAT returns for the 05/05 and 08/05 VAT periods. An assessment was raised on 13 January 2006 for £641 for the 11/05 VAT period but it was returned as undelivered mail. A further assessment for £1,284 was sent to Daraj on 27 January 2006 but was returned to HMRC marked "addressee gone away" on 7 February 2006.
618. Mr Raj Khan and Ms Amreena Khan resigned on 22 February 2006 and Mr Tariq B Ahmed became the company director.
619. On 1 March 2006 the VAT return for the period 02/06 which had been issued to Daraj was returned to HMRC as "addressee gone away".
620. On 24 April 2006 an HMRC letter to Daraj warning of the scale and dangers of MTIC fraud, was issued to Daraj, together with a copy of Notice 726 on Joint and Several liability.
621. On 29 April 2006 HMRC cancelled Daraj's VAT registration. This appears to have prompted a telephone call from Mr Ahmed 2 May 2006 who complained that Daraj's VAT number had been incorrectly cancelled.
622. On 8 May 2006 HMRC received a VAT return for the period 08/05 signed by Mr Khan and dated 9 July 2005, claiming a VAT repayment of £2,390.75.
623. On 9 May 2006, Mr Ahmed telephoned HMRC again complaining that the cancellation of Daraj's VAT registration was incorrect. He said that he had bought a number of supplies from China in May 2005 and had slowly been building up his stock. Mr Ahmed was reminded of his responsibility as a director for submitting VAT returns and was warned that he was making false declarations to HMRC. Mr Ahmed, however, blamed this on his accountant who was responsible for the VAT returns of Daraj. HMRC told Mr Ahmed that if he wanted HMRC to reconsider the decision to cancel Daraj's VAT registration, he would have to provide evidence that Daraj had made taxable supplies.
624. HMRC visited Daraj on 7 June 2006. At first, Mr Ahmed denied that Daraj carried on other activities but then stated that he had sold mobile telephones from 25-28 April 2006 to the value of £52,453,893, bearing a VAT liability of £9,179,431. HMRC uplifted Daraj's records but no records were found for deals relating to sales invoices 6, 11, 23 and 45.

625. HMRC issued assessments in August 2007 which included the undeclared output tax in respect of Daraj's invoice to Excell Distribution Services Ltd for 252 Apple iPods (60 GB) which was subsequently sold down the chain to Atec as part of deal 40.

5 626. Daraj failed to declare this transaction on its VAT returns. No sales invoice or purchase order was ever produced by Daraj to indicate who had supplied it with the 252 iPods.

627. Although Daraj did not declare net sales to the value of £52,453,893, with a corresponding VAT liability of £9,179,431, Daraj was not finally assessed this full amount because the bulk of the sales of Daraj had been bought from UK suppliers who themselves had defaulted and been assessed by HMRC. Subsequent attempts by HMRC to contact Daraj in respect of the outstanding assessments were unsuccessful.

628. Daraj did not appeal against its deregistration and a debt of £393,331.69 has been assessed by HMRC and remains unpaid.

15 629. On 16 July 2008 Daraj was the subject of a compulsory winding up order.

630. Daraj repeatedly failed to reply to correspondence. It did not inform HMRC that it had moved away from its declared business into the trading of mobile telephones. The company seems to have little in the way of assets but managed to achieve a turnover of £52.4 million in a very short period of time. It created a significant VAT liability of approximately £9.2 million which it did not declare. Mr Ahmed disappeared. This disappearance and the failure to challenge either the deregistration or the assessments were not consistent with an honest business.

631. HMRC assessed Daraj in respect of undeclared sales. The total balance assessed was £16,669.69. This assessment covered the undeclared sales invoice (number 11) issued to Excell Distribution Services Ltd for 252 Black 60 GB iPods which were ultimately sold in deal 40 to Atec. Daraj failed to declare sales invoice number 11 on a VAT return and provided no information regarding the sale of those iPods despite the documents being requested from the directors by HMRC at a meeting on 7 June 2006. No sales invoice or purchase order was ever produced by Daraj in order to explain from where Daraj had procured the goods which it sold on invoice number 11.

632. On the basis of the above evidence, we concluded that Daraj's default was fraudulent and that HMRC suffered a tax loss in relation to that fraudulent default. As we shall see, that tax loss was connected to Atec's purchase through a deal chain (deal 40) described in greater detail below in Part 2 of this Appendix.

35 *(k) Golden Limited – deals 24, 25, 26, 28 and 29*

633. Ms Samuel-Blatch, an HMRC officer, provided a witness statement in relation to Golden Limited ("Golden") regarding deals 24, 25, 26, 28 and 29.

634. Golden was incorporated on 6 February 2004. Its Form VAT 1 (received by HMRC on 30 March 2006) was completed by a Mr Choudhry who described

Golden's business activity as: "Accountants". There was no evidence to indicate that Golden traded in this field. The estimated annual turnover was £130,000, whereas in fact Golden's turnover was over 80 times that figure. The section relating to trading with EU traders was left blank.

5 635. In a registration reply form received by HMRC on 11 May 2006, Mr Choudhry further indicated that Golden's main business activity was as "Accountants and tax consultants" and that the business was carried on from his home. He also confirmed that Golden did not intend to trade with companies in EU member states.

636. Golden was registered with effect from 15 May 2006.

10 637. On 18 May 2006 Mr Sardar Khan was appointed as company secretary and also, apparently, as a director of Golden.

638. Next, on 1 June 2006, HMRC received a fax, purportedly from Mr Khan, which stated that Golden had changed its principal place of business, and had changed its trading activities to "computer softwares (support and service)" and "computer  
15 networking services."

639. HMRC visited Golden's offices on 7 June 2006, but no one from Golden was available to meet the officers. HMRC left a letter informing Golden that it would be deregistered unless contact was made within 24 hours. When no response was received, the company was deregistered on 7 June 2006.

20 640. Thus, Golden was registered for VAT from 15 May 2006 and was deregistered on 7 June 2006. No VAT returns were submitted for this 23 day period.

641. Although HMRC were unable to obtain records from Golden, it did recover records from Golden's customers and freight forwarders. These records indicated that in the 23 day period of its registration, Golden made taxable supplies of more than  
25 £90.5 million.

642. The total tax loss created by Golden was approximately £10.1 million and the company was assessed for £7.6 million. As we shall see, Golden's sales traced back to deals 24, 25, 26, 28 and 29 and the VAT in respect of those sales was included in an assessment raised against Golden on 18 June 2008. Golden did not contact HMRC in  
30 respect of nor did it appeal any of the assessments and did not appeal or query its deregistration.

643. The activities of wholesaling mobile telephones did not correspond to the activities described when Golden registered for VAT. It estimated an annual trading figure of £130,000 but, in 23 days (between registration and deregistration), the  
35 company was able to make sales of £90.5 million. Of the four companies with which Golden traded, three were missing traders and have been deregistered for VAT in connection with MTIC fraud. Freight forwarders' records showed that Golden had been acquiring goods from other EC countries.

644. On the basis of the above evidence, we concluded that Golden's default was fraudulent and that, accordingly, HMRC has suffered a tax loss on account of the fraudulent evasion of VAT.

*(l) Midwest Communications Ltd – deal 8*

5 645. Midwest Communications Ltd ("Midwest") was the alleged defaulting trader in respect of deal 8. Mr Bycroft, an HMRC officer, supplied a witness statement in respect of Midwest.

646. Midwest was incorporated on 15 June 2004. Its directors were Mr Brent Ian Gardiner (who was also the company secretary) and Marion Rose Beckett. Mr Simon  
10 Powell-Smith was subsequently appointed as company secretary on 10 April 2006.

647. HMRC received Midwest's application to register for VAT on Form VAT 1 on 15 July 2005, completed by Mr Gardiner. The form stated that Midwest was engaged in the sale of telephones with the first taxable supply being made on 6 June 2005. The estimated turnover in the 12 months after registration was £100,000. The form further  
15 said that the company would not undertake any form of EC trade. On 28 July 2005 Mr Gardiner clarified the main business activity of Midwest as being "mobile telephones both as upgrades and new contracts." The company was registered for VAT with effect from 6 June 2005.

648. HMRC attended a meeting at Midwest's premises on 16 March 2006. Mr  
20 Powell-Smith stated that Midwest had not traded for six months and confirmed that the company had not bought, sold or allocated any stock.

649. During a meeting at Midwest's offices on 28 April 2006, HMRC were supplied with transaction documents which showed that all Midwest's sales were to UK customers and all purchases were from EC suppliers.

25 650. HMRC again visited Midwest's offices on 2 May 2006. HMRC served a Regulation 25 letter shortening Midwest's VAT period. Mr Powell-Smith was also given a letter informing him that the company was being deregistered with effect from 2 May 2006. Mr Powell-Smith promised to fax documents to HMRC relating to purchases from a UK company called Bestleg Ltd, with sales to an Italian customer  
30 (Umbria), but HMRC never received these documents.

651. On 4 May 2006 the Regulation 25 VAT return was collected by HMRC and it showed a total output tax of £116.28 million (£58.17 million output tax and £58.11 million acquisitions tax), input tax of £116.28 million and net tax due of £8,109. Net outputs were £664.76 million and net inputs were £664.4 million.

35 652. Mr Powell-Smith failed to attend or cancelled meetings with HMRC. Finally, on 12 May 2006, HMRC attended a meeting at Midwest's offices. Mr Powell-Smith gave contradictory information as to how the business relationships between Midwest and Bestleg and Midwest and Umbria arose. Mr Powell-Smith acknowledged that he had not done enough due diligence checks on Bestleg: he had not visited Bestleg's

premises, he did not know who Midwest had paid and had not checked any of the stock. He could not locate any stock inspection reports.

5 653. On 13 June 2006, HMRC were informed by Mr Powell-Smith that he had been dismissed by the director. He had failed to produce any further documentation for HMRC.

654. Liquidators were appointed for Midwest on 11 August 2006. Mr Gardiner was disqualified from acting as a company director for 13 years on 17 December 2008.

10 655. Subsequent investigations by HMRC revealed that Bestleg's address was a residential address which was used as a mailing address after the occupant had answered an advert in Exchange and Mart. Bestleg's VAT registration was cancelled with effect from 1 April 2006. Investigations into Umbria revealed that the company was in fact an Italian saddlery company and not a telecommunications company. According to the Italian tax authorities the company had never dealt in the goods which Mr Powell-Smith claimed had been sold to it.

15 656. An assessment was raised against Midwest for £57.6 million on 10 August 2006. The assessment has not been paid or appealed. The assessment included the Midwest sales invoice relevant to deal 8.

20 657. On the basis of the evidence, we have concluded that HMRC suffered a tax loss due to the fraudulent evasion of VAT by Midwest. Midwest's sizeable turnover lacked all commercial credibility, its sales to Umbria appeared to be fictitious (Umbria did not deal in the relevant type of goods), Midwest failed to carry out adequate due diligence in relation to Bestleg, Midwest repeatedly failed to provide documentation and Midwest did not challenge its deregistration or any of the assessments as would be expected of an honest business.

25 *(m) Okeda Limited – deal 16*

658. Okeda Limited ("Okeda") was the alleged defaulting trader in relation to deal 16. Mr Needs, an HMRC officer, supplied a witness statement in relation to Okeda.

30 659. Okeda came to HMRC's attention through the activities of a Mr Jhaj of a company called Time Corporates ("Time") in February 2007. Okeda was never registered for VAT.

35 660. HMRC began enquiries of Time as a result of deal paperwork found at a freight forwarder called Steve's Freight in April 2006. These papers related to deal chains involving the supply of Intel CPUs in which Time participated. Time operated out of a living room in a house belonging to a relative of Mr Jhaj. Mr Jhaj told officers on 2 and 3 May 2006 that Time wholesaled mobile telephones, CPUs and other electronic equipment. He did not carry out inspections and never saw the goods that he was purchasing. His customer made third party payments in all transactions. Mr Jhaj made a commission of 5p per unit. He had no insurance or transport and simply acted as a middleman. It appeared that Time purchased from a supplier called KEP 2004 Ltd



(“KEP 2004”) in the 06/06 period. As a result of enquiries, it appeared that KEP 2004 had not supplied goods to Time and that its identity had been “hijacked”. Therefore, HMRC created a dummy VAT registration number (i.e. a VRN for the “Trader purporting to be KEP 2004”).

5 661. Time was deregistered with effect from 30 May 2006. On 21 February 2007  
HMRC received information from Time about purchases it had made from Okeda in  
the period 9 May to 18 May 2006. On 22 March 2007 Mr Jhaj delivered various  
documents to HMRC which included 145 invoices from Okeda to Time that contained  
10 what purported to be Okeda’s VAT registration number, a VAT certificate purporting  
to have been issued to Okeda on 14 February 2006, a photocopy of the last page of a  
British passport issued to a Mr Perera, a photocopy of the bank statement in Mr  
Perera’s name and certain other documents relating to Okeda

662. Okeda’s purported VAT registration turned out, in fact, to have been issued to a  
company called Jool Ltd (“Jool”). Jool had been deregistered with effect from 15  
15 December 2003 by HMRC as a missing trader. HMRC examined the VAT  
registration certificate purporting to be that of Okeda and concluded it was not  
genuine and had not been issued by HMRC.

663. No trace of Okeda was found at the address on the invoices provided by Time  
and the domain name of the Okeda website was found to be for sale.

20 664. Attempts to contact Mr Perera of Jool were unsuccessful.

665. HMRC, therefore, treated Jool’s VAT registration number as having been  
hijacked and a dummy VAT registration number was set up for Okeda on 30 May  
2007. HMRC then issued an assessment for £8.98 million against this dummy VAT  
registration number based on the invoices received from Time. This assessment  
25 included the Okeda invoice in the supply chain, which as we will see, led to Atec in  
deal 16 (Okeda invoice number 04748 with a VAT amount of £61,923 75). In  
addition, HMRC raised an assessment on 2 July 2007 for £14.1 million which  
included deals involving contra-trader A-Z Mobile Accessories Ltd.

666. The total amount of assessments raised against the dummy Okeda VAT  
30 registration number was £28.4 million and related to supplies made to the two  
companies which had caused fraudulent tax losses, UK Communications and Time.

667. On the basis of the above evidence, we are satisfied that HMRC had incurred a  
fraudulent tax loss caused by a person purporting to trade as Okeda. The use of  
another taxable person’s VAT registration number was, in our view, clear evidence of  
35 fraud. No attempt has been made to account for or pay the VAT on the supplies  
purportedly made by Okeda.

668. Atec argued that, because HMRC’s evidence showed no invoice to Okeda,  
Okeda might not be the importer. HMRC’s evidence, however, included release notes  
in respect of exactly the same quantity of goods from a French company called  
40 Imanse to a company called Red W (a company further down the chain leading, as we

will see, to Atec), bypassing Okeda, Time and a company called Resolutions UK. We conclude that Okeda was indeed the importer.

669. Ms Kalia also argued that the fact that Mr Perera used the same VAT number for Okeda as was issued to Jool simply suggested naivete rather than fraud. That does not, however, explain why the VAT registration certificate was altered to make it appear that it was a genuine certificate relating to Okeda. This was, in our view, clear evidence of fraud.

*(n) Phone City Ltd – deal 52*

670. Phone City Ltd (“Phone City”) was the alleged defaulting trader in deal 52. Mr Edwards, an HMRC officer, provided a witness statement in relation to Phone City.

671. Phone City applied to be registered for VAT on 11 February 2005. The application form declared the main business activity of the company to be “contract mobile phone distributors”. The estimated turnover for the next 12 months was stated to be £350,000. The form stated that it was not expected that Phone City would undertake any trade with companies in other EC member states in the next 12 months. Phone City was registered for VAT with effect from 1 February 2005.

672. Phone City’s first return for the VAT period 05/05 was a repayment return for £3,506.49. Phone City’s sales were £3,683 and purchases totalled £23,719. As Mr Edwards noted, a repayment claim in a first return was quite common due to initial setting up costs and purchase of stock.

673. The second return for period 08/05 showed a dramatically different picture. The net tax payable, according to the return, was £10,326.83. However, sales had increased to £102,479,244 and purchases had increased to £102,420,293. This was clearly a huge increase in purchases and sales in a period when there was no major increase in capital and no extra staff were employed.

674. Sales and purchases for the third return period, 11/05, were slightly lower with sales totalling £96,876,443 and purchases totalling £96,945,779. In the fourth period, 02/06, sales had dropped to £19,700,842 and purchases to £19,683,169.

675. In the period 05/06 there was a repayment claim for £908,000.95, but sales had increased to £181,518,686 and purchases had increased to £181,431,061. In Phone City’s final period of trading (the period 1 June 2006-26 July 2006), a repayment claim of £246,970.37 was made. The sales in this period had further increased to £304,799,489 and purchases had increased to £302,800,156. For the year ending July 2006, Phone City’s turnover was £535.5 million – an extraordinary figure for what was essentially a small business (with a share capital, according to the previous year’s accounts, of £100).

676. At a meeting on 6 July 2005, held at Phone City’s premises, HMRC discussed joint and several liability, but noted that “neither the director or the company secretary took any interest in this at all.”

677. At a subsequent visit to Phone City on 17 August 2005, HMRC were told that the company business records were unavailable due to the member of staff responsible for them being “sick”. Phone City (Mr Rooke – Phone City’s business manager) stated that they held no inspection reports for the goods in which they dealt and agreed that they could not know whether the goods actually existed. In addition, Phone City carried out no credit checks on its customers. Mr Rooke said he did not know what insurance arrangements were in place for the goods.

678. Next, after a number of contacts between Phone City and HMRC concerning missing records, on 10 October 2005 HMRC wrote to Phone City stating that a number of the company’s transactions in July 2005 had been traced to defaulting traders with a resulting loss of VAT of £12.3 million.

679. At a later visit to Phone City, HMRC informed the company (represented by its finance director, Mr Husein) that all of its transactions from July to December 2005 had traced to fraudulent tax losses. In addition, all the company’s suppliers up to December 2005 had, so far, been deregistered. There was also one example of Phone City paying a third party. HMRC also noted that Phone City’s due diligence checks were weak. Mr Husein was not sure whether the company obtained IMEI numbers for the telephones in which it traded.

680. Eventually, on 26 June 2006, Phone City’s continuing failure to produce the records requested by HMRC resulted in its registration number being “blocked” by HMRC’s office in Redhill – the office through which traders were expected to verify VAT registration numbers of their trading counterparts.

681. On 11 July 2006, after having been threatened with deregistration by HMRC, Phone City provided the records that had been requested (although there were some omissions). These documents demonstrated that Phone City was acquiring goods from companies based in Latvia and Cyprus and was then on-selling the goods to UK companies.

682. Phone City was deregistered for VAT purposes from 25 July 2006.

683. All Phone City’s key employees and directors subsequently denied any involvement in running its business.

684. Assessments were raised against Phone City and its tax debt to HMRC was £34 million. The assessments included VAT in respect of a supply by Phone City (invoice reference PCSO 1686), which has been traced back, as we shall see, to Atec (deal 52). The assessments have not been appealed or paid.

685. Phone City was wound up on 25 April 2007. Two of its directors were disqualified for 12 years each in March 2009 on the basis that either they knew of or were reckless or grossly negligent as to Phone City’s involvement in MTIC fraud.

686. Based on the above evidence, we have no doubt that Phone City caused a tax loss to HMRC and that the tax loss was caused by fraudulent evasion. Its turnover was extraordinary for a small company to achieve in such a short period, its directors and

key employees appeared not to be involved in the running of its business or denied such involvement and Phone City did not inspect its goods. Its due diligence was inadequate, it is not clear whether it insured the goods in which it traded, it made third-party payments and it persistently failed to cooperate in producing records to HMRC when requested. Two of its directors were disqualified for a lengthy period. None of this is consistent with the manner in which a legitimate business would be run.

*(o) RX-Tech Solutions Ltd – deals 32 and 41-51*

687. RX-Tech Solutions Ltd (“RX”) was what was described as a “blocker” trader in relation to deals 32 and 41-51. HMRC have been unable to trace the transaction chain beyond RX. The term “blocker trader” or “blocker” is used to describe a trader inserted into a deal chain which will go missing or fail to provide evidence of its purchase invoices in an attempt to prevent tax losses and fraud being established by HMRC. Mr Eraclides, an HMRC officer, provided a witness statement in relation to RX.

688. RX was incorporated on 7 September 2004 and applied to be registered for VAT on 14 September 2004. Its application for registration stated that its business activity would be “IT Consultants” and estimated its annual turnover as £75,000. The application also indicated that EC trade would be “Nil”. RX was duly registered from 7 September 2004 on a quarterly return basis.

689. In its first year of trading, RX declared outputs of £7,469 but inputs of £31,513. The following two VAT returns for the periods 12/05 and 03/06 showed further losses of £15,133. RX’s return for the 06/06 period, the last return submitted, showed sales of £12,519 and purchases of £6,391.

690. There was a change of ownership of RX during the 06/06 VAT period (1 April-30 June 2006). The previous director and company secretary were replaced on 12 May 2006 by a Mr Ramzan who was appointed as both director and company secretary. Mr Ramzan, however, lasted only one month and was replaced by a Mr Muhammed Ovais. Mr Ovais resigned after only three weeks on 1 July 2006 and, thereafter, the company had no director. As regards the company secretary position, this was filled by Mr Mohammed Riaz, who resigned after three months to be replaced, after a five-day gap, by Mr Imtiaz Hussain.

691. On the day that he resigned as director and company secretary, 12 June 2006, Mr Ramzan wrote to HMRC informing them that the business had changed its address.

692. RX was not visited by HMRC prior to this change of trading address and had very little contact with HMRC. HMRC, however, had received information to the effect that RX had been dealing in large quantities of mobile telephones. Therefore, HMRC visited RX’s address on 12 September 2006. There was no one at the premises and HMRC left a standard letter under the door.

5 693. After receiving further information concerning the extent of RX's trade, HMRC visited its address again on 12 October 2006 but again there was no one present. HMRC enquired of the building management who informed them that the tenant had cancelled the tenancy because of illness. Accordingly, RX's VAT registration was cancelled on 19 October 2006

694. RX traded significant quantities of mobile telephones between mid-June and mid- August 2006, but HMRC were unable to trace anyone responsible for the trade or to recover any of the business records. The available information concerning RX has been obtained from the records of traders who were supplied by RX.

10 695. Assessments were raised based on the values of invoices found in the records of RX's customers. RX was, in HMRC's view, a missing trader and they concluded that RX had acquired goods covered by sales invoices from an EC supplier. However most of these assessments were subsequently amended or cancelled as further enquiries produced evidence that RX had not acquired goods from an EC supplier but was a  
15 customer of defaulting acquirers Pearl Cosmetics Ltd ("Pearl") for at least 15 deals. Based on the invoice sequence adopted by RX, HMRC estimated that there were 93 invoices. At least 57 of those 93 invoices were traced back to a defaulting acquirer, 12 could not be traced beyond RX and the remaining 24 were not found. Whether RX was a missing acquirer or a blocking buffer, the business issued sales invoices with a  
20 net value of at least £34,228,600 (excluding the missing 24 invoices) and had failed to account for any of the tax due.

696. After RX was deregistered on 19 October 2006, letters sent to RX's offices and the known home addresses of the company's officers received no replies.

25 697. The assessments raised in respect of the trade done by RX have not been appealed or paid.

698. RX was wound up on 28 November 2007.

30 699. HMRC submitted that, on the balance of probabilities, any sale by RX would have traced back to a fraudulent VAT loss, either by its own acquisition or by purchasing from a fraudulent defaulting trader. HMRC submitted that the following evidence was indicative of RX's involvement in fraud:

- (1) The dramatic rise in RX's turnover from £21,000 per year to £46.5 million from 14 June – 9 August 2006 has no sense of commercial credibility to it;
- (2) RX did not account for, or declare, the £46.5 million in trade to HMRC, leaving an unpaid debt of £4.3 million;
- 35 (3) despite extensive attempts by HMRC, RX and its personnel have evaded attempts by HMRC to contact them and now appear to be untraceable; and
- (4) RX have not appealed against or contested any of the assessments raised against them.

700. Ms Kalia submitted that the term “blocker” simply meant that HMRC were unable or unwilling to pursue the matter further and have therefore failed to discharge the burden of proof.

5 701. In our view, HMRC have established RX acted as a “blocker” trader which deliberately prevented HMRC from being able to verify the deal chains would trace back to a tax loss. We also note that in deals 45-51 RX’s customer, RK Brothers Limited was instructed by RX to pay the Belgian company Koornmarkt. Koornmarkt was a Belgian company which, as noted in the main body of this decision, operated various sub-accounts in its FCIB account. Also, in deals 45-51 Koornmarkt was  
10 purportedly the purchaser from Freitex and thus seemed to appear at both ends of the chain. We infer that Koornmarkt (a company which we will see was a customer of a company called Freitex) was part of an orchestrated scheme to defraud HMRC. The fact that RX repeatedly instructed its customers to pay Koornmarkt seemed to us to be uncommercial and a strong indicator that RX was engaged in fraud. We were satisfied  
15 that the nature of RX’s conduct and the factors identified above by HMRC allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

*(p) Universal Appliances Ltd – deal 40*

20 702. Universal Appliances Ltd (“Universal”) was the alleged defaulting trader in relation to deal 40. Mr Cole, an HMRC officer, provided a witness statement in relation to Universal. In Atec’s letter to HMRC of 31 March 2014, Atec conceded that HMRC has suffered a fraudulent tax loss in relation to Universal. Reviewing the evidence of Mr Cole, we considered that Atec were correct in making this concession.

25 703. HMRC raised a number of assessments against Universal. For present purposes, the relevant assessment was dated 18 July 2006. It was based on output tax not declared by Universal in respect of 13 transactions. Those transactions included Universal’s invoice 016 which, as we will see, was involved in Atec’s deal 40.

*(q) USM IT Suppliers Ltd t/a First Point – deals 9-12*

30 704. USM IT Suppliers Ltd t/a First Point (“USM”) was the alleged defaulting trader in relation to deals 9-12. Ms Davies, an HMRC officer, provided a witness statement in relation to USM.

35 705. USM was incorporated on 21 January 2004 and its director, Mahmood Aslam, applied for the company to be registered for VAT on form VAT 1 dated 20 August 2004. On that form, USM declared that the main business activity of the company would be “computer parts distribution, computer network support.” USM estimated that the company’s turnover in the next 12 months would be £305,000. The boxes on the form relating to EC trade were left blank.

706. At a visit by HMRC to USM on 13 April 2005, HMRC were told that the main business activity of the company would be the supply of IT services, mainly to

schools. It was expected that the business would achieve 10 contracts in the first year, although 18 per year would be needed to break even.

5 707. HMRC visited USM again on 14 March 2006 and were advised that the business had diversified into wholesaling as it had been struggling to make a profit through the supply of IT services. This diversification coincided with the appointment of a new director, Mr Jamil. Mr Aslam and Mr Jamil confirmed that they had read HMRC's public notice on Joint and Several Liability but had traded without taking into account anything they had read. USM informed HMRC that they had not made or received payments in relation to any of its deals and they advised that USM would only be receiving a commission because they had passed on third-party payment instructions to their customers. USM said that no deals have been carried out after 10 March 2006 and that there were none currently in the pipeline.

15 708. The records of USM, uplifted by HMRC on 14 March 2006, showed that, in the period 7 February 2006 – 10 March 2006, USM's sales were £44,080,583.15. The sales for the previous 12 month period were only £121,195. It was also clear from the information supplied by USM that it carried out little, if any, due diligence on its trading partners and the invoices issued to it by suppliers Ice Tum and the Export Company used a hijacked VAT registration number.

20 709. The HMRC officer dealing with USM became aware on 2 May 2006 that USM had completed deals after 10 March 2006 contrary to the assurances given in the meeting of 14 March 2006. HMRC attempted to visit USM 4 May 2006 but there was no one at the premises.

25 710. On 9 May 2006, USM was served with a Regulation 25 Notice which required it to submitted VAT return on 10 May 2006. Also on 9 May 2006 HMRC attempted to telephone USM but were told Mr Aslam were no longer involved with USM. However, when HMRC delivered the Regulation 25 direction later the same day, Mr Aslam was observed entering USM's premises.

30 711. HMRC returned to USM's premises on 10 May 2006 to deliver a letter informing USM that it had been deregistered for VAT. The premises were found to be unoccupied HMRC telephoned Mr Jamil. He claimed he had only purchased the business at the beginning of April 2006, contradicting the information that Mr Aslam had given in March 2006. When Mr Jamil was asked whether he had purchased any goods from Europe the line went dead.

712. USM was, accordingly, deregistered on 10 May 2006.

35 713. Further records obtained by HMRC's Criminal Investigation officers showed that USM had completed a large number of transactions in April and May 2006 which had not been declared to HMRC. Although the records are not complete, they showed that USM acquired goods from four EC base suppliers, Premisten OU in Estonia, Cassus in Poland, Marubo Internacional SL in Spain and SUS Universal Systems in Belgium.

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714. The Spanish tax authorities stated that Marubo Internacional SL was not organised to carry out an economic activity and did not have any workers or assets. It was described as “a defaulting company” which had dealt with traders involved in carousel VAT fraud.

5 715. The Belgian tax authorities stated that the activities of SUS Universal Systems were considered suspect. Its address was one at which no business was carried on and could be regarded as a bogus address. The address belonged to a food shop which had no connection to SUS Universal Systems. The manager of the company stated that she never carried out any commercial transactions in the name of the company and there  
10 were no accounting documents available. No periodic VAT return had been filed.

716. Assessments of £34.4 million in total were issued to USM in respect of undeclared supplies. Those assessments included output VAT due in respect of USM sales invoices (PG 45 and 46) which, as we shall see, traced to Atec’s purchases in deals 9-12. The assessments have not been appealed or paid. USM did not appeal the  
15 decision to deregister it for VAT.

717. USM was put into liquidation on 29 January 2007.

718. In our view, there is no doubt whatsoever that USM created a fraudulent tax loss. Mr Aslam’s statement in March 2006 that no further deals were in the pipeline was plainly false. USM made third-party payment instructions despite having read  
20 HMRC’s Public Notice in relation to Joint and Several Liability. USM’s turnover of in excess of £44 million in one month from virtually a standing start was commercially incredible. USM’s failure to appeal either its deregistration or any of the assessments was not the conduct of an honest business.

*(r) Woven Art Gallery Ltd (“Woven Art”) – deal 4*

25 719. Woven Art Gallery Ltd (“Woven Art”) was the alleged defaulting trader in respect of deal 4. Mr Monk, an HMRC officer, produced a witness statement in relation to Woven Art.

720. Woven Art was incorporated on 12 October 2004. Its application for VAT registration was completed by its director, Mr Jehangir. On its application form  
30 Woven Art stated that its business was “carpet sales, import and export.” It estimated the turnover of the business in the first 12 months to be £85,000 and stated that it was not expecting to acquire any goods from EU suppliers or submit any VAT reclaims.

721. On 23 February 2005 a Mr Hassan replied to HMRC’s request for further information stating that no trade with EC companies was expected. Mr Hasan  
35 provided details of a consignment of carpets imported from Pakistan.

722. Woven Art was registered for VAT with effect from 1 March 2005. The company changed its address in April 2005.

723. Woven Art submitted a nil return for VAT period 11/05 and did not render a VAT return for the period 02/06.



724. On 27 April 2006 HMRC issued a Regulation 25 letter to Woven Art shortening their 05/06 VAT period. The Regulation 25 letter was triggered by HMRC obtaining release notes showing that Woven Art was purchasing large consignments of mobile telephones from a company called Orange and Green Imports and Exporters (“Orange and Green”) in Spain. Orange and Green were known to be a company which supplied a number of UK defaulting traders. HMRC then visited Woven Art later that day and found that it was a residential address. No one from Woven Art was at the premises and Mr Hassan, one of the directors, had moved out of the address six months previously and had left no forwarding address.

10 725. Woven Art was therefore deregistered with effect from 30 April 2006.

726. On 20 August 2007 an assessment was issued in respect of Woven Art in the amount of £56,043.75, which covered the transaction that, as we shall see, traced to Atec’s purchase in deal 4 (1500 units of Nokia N 70 (Central European software) mobile telephones). The debt was written off by HMRC on 8 February 2008 as it was not possible to track down Woven Art or any of the company officials.

727. In our view, Woven Art created a fraudulent tax loss. It seemed plain to us that Woven Art’s business had nothing to do with the supply of carpets. Woven Art acquired goods from Orange and Green, a company which supplied defaulting traders. Woven Art made no effort to return or pay VAT in respect of its supplies of mobile telephones. The company has not appealed or paid any of the assessments and has not contested its deregistration for VAT purposes.

*Defaulting traders in the A-Z Mobile Accessories Ltd (alleged contra-trader) alleged tax loss chains*

728. A-Z Mobile Accessories Ltd (“A-Z”) was alleged to be the contra-trader in deals 2 (1412), 3 (1413) & 38 (1455). We now turn to consider the evidence in relation to alleged defaulting traders in the “dirty” chains relating to A-Z.

*(s) Advertising South Ltd (period 05/06)*

729. Ms Riley, an HMRC officer, provided a witness statement in relation to Advertising South Ltd (“Advertising South”). As we have discussed in the main body of the decision, in Atec’s letter of 3 March 2014 the issue of whether HMRC suffered a fraudulent tax loss in relation to Advertising South was conceded.

*(t) Taxable person purporting to be Eutex Ltd (period 05/06)*

730. Mr Siddle, an HMRC officer provided a witness statement in respect of Eutex Ltd (“Eutex”). In its letter of 3 March 2014, Atec conceded that HMRC had suffered a fraudulent tax loss in respect of Eutex.

*(u) GA Couriers (period 08/06)*

731. GA Couriers Limited (“GA Couriers”) was an alleged defaulting trader in one of the “dirty” chains leading to the alleged contra-trader A-Z. HMRC alleged that deals involving Atec had been traced back to supplies of goods made by A-Z. Mr McGuinness, an HMRC officer, provided a witness statement in relation to GA Couriers. The evidence of Mr McGuinness was supplemented by that of Ms Wheatcroft, another HMRC officer, who produced a witness statement in relation to the alleged fraudulent contra-trader A-Z.

732. GA Couriers was incorporated on 13 June 2006. The company directors were Yasin Buskh and Shabbir Jusab. Mr Jusab was also the company secretary. Mr Buskh and Mr Jusab resigned their positions with the company on 18 August 2006. On the same date, Mr Hanif Dar was appointed director and Mr Shamsuddin Moosa was appointed company secretary.

733. HMRC received the company’s application to register for VAT on 26 June 2006 signed by Mr Jusab. The application stated that the main business activity was “complete delivery service of parcel + pallets + documents”, that the expected annual turnover would be between £60,000 – £70,000 and that the box dealing with trade with other EC member states was left blank.

734. GA Couriers was registered for VAT with effect from 15 June 2006.

735. On 11 September 2006, HMRC visited GA Couriers at the address given on the VAT registration application. The visit was prompted by information obtained by HMRC from a freight forwarder, P & D Distribution. The visit established that the company had moved address on 18 August 2006 and had left no forwarding address or contact numbers.

736. A visit to P & D Distribution by HMRC produced release notes showing that GA Couriers had released cameras and camcorders to LWT Distribution (Int) Ltd (“LWT”). A total of five supplies by GA Couriers to LWT were identified. In two cases the deal chain led to the alleged contra-trader Jag-Tec (see below). During that visit, no documentation was obtained which identified the company from which GA Couriers had purchased goods, although Convention Marchandises Routiers (“CMRs”) obtained during the visit indicated that goods were acquired from Poland. HMRC telephoned GA Couriers during the visit and spoke to “Shabir”, who was unable to provide HMRC with information concerning the person from whom GA Couriers purchased the goods. HMRC requested a call-back from a “proper person”. Later during the visit, HMRC was contacted by a Mr Adam Patel, purporting to be from GA Couriers. Mr Patel was unable to say where the goods were purchased from and said that Mr Hanif Dar would know, but he was currently in Poland.

737. As we shall see, the evidence of Ms Wheatcroft was that three deals in August 2006 traced from the alleged contra-trader A-Z (which acted as the broker, i.e. the exporter) to GA Couriers. In addition, a fourth deal had features which showed that on the balance of probabilities it also commenced with GA Couriers (viz the goods were similar, the invoice sequential numbering was the same as that for the other three

deals, the deals were on around the same dates and the number of companies in the supply chain below LWT were the same as in the other three deals).

738. Following HMRC's visit to GA Couriers on 11 September 2006, the company was deregistered as a missing trader with effect from 11 September 2006 on the basis  
5 that the business had moved away from the address held by HMRC and had left no forwarding address.

739. On 4 July 2008, HMRC issued an assessment following the examination of available records, for £495,923.75 of undeclared output tax. The assessments did not include the A-Z deals which, according to Ms Wheatcroft, traced back to GA  
10 Couriers. Assessments in respect of these deals were not raised against GA Couriers because the VAT period had fallen out of the prescribed time limits for the making of assessments.

740. In our view, GA Couriers was a fraudulent defaulting trader. Although it registered as a delivery company, it changed its business to deal in electrical goods. It  
15 appears to have had only one customer, viz LWT. It left its principal place of business without leaving any forward address or contact details and went missing. The assessments raised against GA Couriers have not been paid or appealed. In addition, there appears to be no attempt by GA Couriers to pay account for VAT in respect of any of its deals.

20 *(v) Taxable person purporting to be Grange Solutions UK Ltd (period 08/06)*

741. Grange Solutions UK Ltd ("Grange Solutions"), also known as Wade Tech Ltd ("WTL"), was alleged to be a defaulting trader whose deals traced to Atec via the alleged fraudulent contra-trader, A-Z. Ms Vivian Parsons, an HMRC officer, provided  
25 a witness statement in relation to Grange Solutions/WTL. Her evidence was supplemented by that of Ms Wheatcroft, another HMRC officer, who produced a witness statement in relation to A-Z. The thrust of Ms Parsons' evidence was that the VAT registration number for WTL/Grange Solutions had been hijacked and had been fraudulently used by someone purporting to be WTL or Grange Solutions.

30 742. In Atec's letter of 3 March 2014, Atec accepted that HMRC had suffered a fraudulent tax loss in relation to Grange Solutions/WTL.

743. Assessments totalling £81 million were raised against the taxable person purporting to be Grange Solutions/WTL and remained unpaid. As we shall see, included in those assessments were assessments in respect of 29 deals in the 08/06  
35 period raised against the taxable person purporting to be Grange Solutions/WTL. In all 29 deals the goods were dispatched (i.e. exported) by A-Z. Assessments in respect of the tax loss relating to the 29 deals were included in an assessment dated 22 March 2007 in a total amount of £6,336,103.

40 744. We have reviewed the evidence of Ms Parsons and consider that Atec was correct to make this concession.

*(w) Taxable person purporting to be Okeda Ltd (period 05/06)*

745. Okeda Limited (“Okeda”) was the defaulting trader in relation to deal 16 in the alleged direct deal chains leading to Atec. However, HMRC argue that Okeda was also a defaulting trader in deal chains leading to the alleged contra-trader, A-Z. Mr Needs, an HMRC officer, supplied a witness statement in relation to Okeda. His evidence was supplemented by that of Ms Wheatcroft, another HMRC officer, who produced a witness statement in relation to A-Z.

746. We have already found that Okeda created a fraudulent tax loss and we do not need to repeat the details. Eight of A-Z’s broker deals in the period 05/06 commenced with Okeda. The tax losses in respect of these deals (i.e. the undeclared output tax on sales by Okeda) were included in an assessment raised on 2 July 2007 in the amount of £14,151,739.19 covering the period 2 May 2006 to 31 May 2006. The total tax loss traced to the taxable person trading as Okeda was £1,746,700.97.

*(x) Phone City Ltd (periods 05/06 and 08/06)*

747. Mr Edwards, an HMRC officer, provided a witness statement in relation to Phone City and this was supplemented by a witness statement from Ms Wheatcroft in relation to the alleged fraudulent contra-trader, A-Z.

748. Phone City Ltd (“Phone City”) was a defaulting trader, as we shall see, in relation to in the alleged direct deal chains leading to Atec. We have already found that Phone City created a fraudulent tax loss and we shall not, therefore, repeat the details.

749. In addition, however, HMRC allege that Phone City was also a fraudulent defaulting trader in deal chains leading to the alleged contra-trader, A-Z. In period 05/06, A-Z undertook 112 broker deals. All these deals have been traced back to tax losses caused by a variety of fraudulent defaulting traders. One of these defaulting traders was Phone City.

750. In the VAT period 05/06, nine of the deals commenced with the defaulting trader Phone City which failed to declare these transactions. The tax losses caused by Phone City in respect of these transactions (i.e. undeclared output tax) were included in an assessment of £2,750,411.66 issued on 6 December 2007. The total value of the tax losses traced to Phone City was £1,950,270.36. The assessments were not appealed.

751. In the 08/06 period, three of A-Z’s deals were traced back to Phone City (via Worldwide Wholesalers Ltd). The total tax loss (i.e. undeclared outputs) arising from these three transactions was £492,849 and was included in an assessment issued on 6 December 2007 for a total of £2,872,435.

*(y) P & M Transport and Communications Ltd (period 05/06)*

752. P&M Transport and Communications Ltd (“P&M”) is an alleged defaulting trader with deals tracing to A-Z. A witness statement in relation to P&M was

provided by Ms Tressler, an HMRC officer, and this was supplemented by the evidence of Ms Wheatcroft in relation to A-Z.

5 753. P&M was incorporated on 18 November 2002. The company applied to register for VAT on Form VAT 1 on 20 February 2003. The form was signed by a director, Mr Philip Temme. The registered address of the business was given as an address in Birmingham and its main business activity was described as "Haulage Contractor". The estimated annual turnover was £150,000 and the box on the form estimating trade with EC member states was left blank. P&M was registered for VAT with effect from 1 August 2003.

10 754. After giving its Birmingham address on Form VAT 1, P&M changed the address of its principal place of business five times.

15 755. As noted, Mr Temme was a director and a Mr Nicholls was appointed company secretary on 30 September 2003. Mr Nicholls was also the company secretary of three associated companies which went insolvent with significant amounts of unpaid tax due to HMRC. The directors of these three companies were all members of Mr Temme's family.

20 756. Ms Tressler visited P&M's offices and described them as containing two desks and a fax machine. She observed the director using a laptop computer. No employees were seen at the principal place of business and HMRC's records showed that there were no other employees of the company apart from Mr Temme.

25 757. The annual accounts for the period 21 December 2003 to 30 November 2004 showed a trading turnover of £58,631. The annual accounts for the period 1 December 2004 to 30 November 2005 showed a turnover of £23,662. No accounts were filed by P&M for the periods ending 30 November 2006 and 30 November 2007 i.e. the periods relevant to these appeals and in which mobile telephones were traded by P&M.

758. During the period 1 August 2003 to 31 October 2005, P&M traded as a haulage contractor.

30 759. On 31 August 2005, Mr Temme wrote to HMRC informing it of a change of company name, change of address and that its trading activities had changed to dealing in transportation and selling of navigation systems, small screen televisions, iPods, flat screens, CD radio equipment etc.

35 760. P&M's VAT return for the period ending 01/06, which had been due on 28 February 2006, was received late by HMRC on 7 April 2006. The declared sales for this period were £33,000,344, a dramatic increase from the £1,237 of sales declared in the previous three month period. This sudden increase in turnover appeared to have been achieved even though Mr Temme's business experience seemed to be that of a haulage contractor. In the next VAT period (04/06), P&M's declared sales were £172,802,736.

761. The return for the period 07/06 indicated that the trading activities involved the purchase and resale of mobile telephones. The declared sales for this period were £9,574,917. The return recorded EC supplies of £2,144,730 and EC acquisitions of £2,413,461. The VAT return for the period 10/06 was a repayment claim for £178,649.54 and recorded outputs of £7,677,671. In this period, EC supplies had risen to £3,140,559 and EC acquisitions were £2,115,207.

762. HMRC sent a hand-delivered letter on 5 December 2006 to P&M requesting deal documentation. HMRC visited P&M on 15 December 2006. Further requests for documentation were made but Mr Temme failed to respond. In the meantime, further undeclared transactions came to the attention of Ms Tressler (including five sales invoices raised by P&M to a company called Zinc Mobile Limited). Further requests the documentation were made to P&M but again Mr Temme failed to respond.

763. A further undeclared transaction came to HMRC's attention and, after Mr Temme failed to respond, a meeting with HMRC took place on 7 November 2006 at which Mr Temme provided copies of deal documentation which he claimed that, due to an omission, had not been included in the VAT return for the period 07/06.

764. Further undeclared transactions came to HMRC's attention and assessments were raised on P&M in July 2007. Then, on 16 August 2007, a further assessment for £1,790,598 was issued and sent to Mr Temme's home address. This assessment included one transaction that was traced from A-Z back to P&M relating to period 05/06. The tax loss caused by P&M's failure to declare the transaction was £416,053.

765. Apparently, HMRC did not deregister P&M because it continued to carry on a trade as a haulage contractor.

766. P&M was wound up on 3 September 2008. The company failed to pay a total tax debt due to HMRC of £5.2 million.

767. We have concluded that P&M was a fraudulent defaulting trader and that HMRC incurred a tax loss in the period 05/06 as a result of its fraudulent default. The extraordinary increase in turnover described above, the persistent failure to provide documentation, the history of unreturned transactions and the failure to contest any of the assessments satisfies us that, on the balance of probabilities, P&M was a fraudulent defaulting trader.

*(z) Prestige 29 Limited (period 05/06)*

768. In Atec's letter of 3 March 2014, Atec conceded that HMRC had suffered a fraudulent tax loss in relation to Prestige 29 Limited ("Prestige 29"). Ms Hirons, an HMRC officer, provided a witness statement in relation to Prestige 29. Having reviewed the evidence, we consider Atec was correct to make this concession.

(aa) *Samson Traders Limited (period 05/06)*

5 769. Samson Traders Limited (“Samson”) is an alleged defaulting trader in deals that traced back to A-Z. Mr Johnson, an HMRC officer, provided a witness statement in relation to Samson. His evidence was supplemented by Ms Wheatcroft in relation to A-Z.

770. Samson was incorporated on 11 January 2005. Its directors were Mr Anthony Rajah Samson and Mr Donald Elwell. Mr Fred Hesse was the company secretary.

10 771. HMRC received an application for VAT registration on Form VAT 1 on 3 March 2005. Samson’s intended business activities were described as “General Traders”. The estimated total for taxable supplies was stated to be £100,000 and the box on the form in relation to expected EC trade was left blank.

772. Samson was registered for VAT with effect from 1 February 2005.

15 773. HMRC visited Samson on 21 April 2006. Samson was suspected of being a potential MTIC defaulter. The purpose of the visit was to ascertain whether genuine sales of £2.4 million had been made as identified in the purchase records of The Routers Group Ltd (“Routers”). The address was found to be a private house with no evidence of a trade being carried on and no reply at the door. A deregistration letter was completed by HMRC and posted through the letterbox.

20 774. On 4 May 2006, HMRC visited an address in Edgware (the same address as Samson’s accountants) in order to verify alcohol related sales made by Samson. The address was a serviced office and no response was received.

775. HMRC had arranged a meeting with Mr Samson and his accountant on 16 May 2006 to review the company’s books and records. Mr Samson and his accountant failed to attend.

25 776. Samson failed to submit VAT returns for the period 05/05, 11/05 and 02/06.

777. An assessment was issued against Samson on 22 May 2006 in the total amount of £36,730,983.99 covering the period 01/03/06 to 24/04/06. Subsequent enquiries resulted in further assessments being issued against Samson with the result of the total assessments were £37.5 million.

30 778. Information obtained from the HMRC officer responsible for Routers indicated that Samson had sold 45,855 individual units of computer chips, hardware and mobile telephones. Samson had issued third-party payment instructions to Routers which meant that Samson would not be in a position to meet its VAT liabilities. Samson’s output tax liability was identified as being £36.7 million and an assessment in that amount was issued by HMRC on 22 May 2006 for the period 1 March – 21 April 35 2006. Further assessments probably total assessment to £37.5 million.

779. Six of Samson’s deals were traced to A-Z. A-Z sold the goods to the same EC customer, BST Best in Sweden Trading. The VAT in relation to these transactions was included in the 22 May 2006 assessment.

780. Samson failed to get in touch with HMRC and has not appealed the assessment issued against it.

781. In our view, it is clear that Samson was a fraudulent defaulting trader. It did not declare its supplies and its consequent VAT liability. It appears to have avoided  
5 contact with HMRC. No business activity appears to be carried on at the company's principal place of business. The VAT assessments have not been appealed. None of this is consistent with a legitimate, honest trader. We are satisfied that HMRC incurred a fraudulent tax loss in relation to the six deals included in the 22 May 2006 assessment.

10                    *(bb) UK Communications Ltd (period 05/06)*

782. UK Communications Ltd (“UK Communications”) is an alleged defaulting trader in relation to deal chains leading to A-Z. Ms Medcroft provided a witness statement, which was supplemented by the evidence of Ms Wheatcroft in relation to A-Z.

15 783. UK Communications was incorporated on 19 August 2005. The director on incorporation was Mr Juber Ahmed Miah and the company secretary was Mr Jasim Ali. Mr Miah signed UK Communications' application for registration for VAT on 31 August 2005. He described the business activity of the company as an Internet  
20 cafe/phone shop with an expected annual turnover of £60,000. The boxes requesting the value of goods likely to be bought from and sold to other EC member states were left blank. UK Communications was registered for VAT with effect from 1 September 2005 and was placed on the usual quarterly returns.

784. On 7 June 2006, UK Communications was issued with a letter from HMRC's Redhill office regarding the need to verify the VAT status of new or potential  
25 customers and suppliers who traded in goods regularly involved in MTIC fraud. The letter included HMRC's Notice 726 in relation to Joint and Several Liability.

785. On 22 June 2006, HMRC visited UK Communications but found the premises closed. HMRC left a letter requesting that UK Communications contact HMRC to make an appointment.

30 786. The following day, on 23 June 2006, HMRC visited the premises of Hawk Precision Logistics Ltd (“Hawk”). HMRC noted a release note from Imanse Eurl which showed 1000 mobile telephones had been released from Imanse Eurl to Ultimate Wholesale. HMRC then contacted Ultimate Wholesale who advised that they had purchased the goods from UK Communications.

35 787. HMRC contacted UK Communications by telephone and eventually spoke to a person called “Jay” who advised that UK Communications had purchased the goods from a company called Rukford Ltd. HMRC's records indicated that Rukford's VAT return for the period 07/05 had been returned as undelivered mail on 12 July 2005. Accordingly, Rukford's VAT registration number was cancelled.



788. UK Communications submitted its first VAT return for the period 02/06 on 20 March 2006, showing tax due of £801.76. The declaration was signed by Mr Shah Amran. The return for the next period 05/06 was not submitted by the due date of 30 June 2006.

5 789. On 14 July 2006, HMRC visited UK Communications by arrangement. They met the director, Mr Miah (“Jay”), the shop manager and a third person. In the course of the meeting, Mr Miah said that since April 2006 UK Communications had branched out into the wholesale trading of mobile telephones and CPUs. He said that he had met Ms Angela Perera of Okeda at a trade fair in December 2005 and had  
10 agreed a flat rate of commission of 5p per unit irrespective of type or quantity of goods. Mr Miah had not checked with HMRC that Okeda was VAT registered but he had checked their VAT number on the Europa website. UK Communications did not have an FCIB account but had a UK bank account with HSBC.

15 790. UK Communications were not paid for their supplies by their customers. Instead, Okeda, their supplier, would advise them orally of the payment details that they had to pass on to their customers. Nothing in writing was received from Okeda and nothing in writing was issued by UK Communications to their customers. Mr Miah could not remember any further details and did not retain notes of telephone calls. He was due to receive his commission from Okeda but so far had not received  
20 any payment – he estimated he was owed about £3,000. Mr Miah indicated that the position was the same as regards Rukford – he supplied the same customers for Okeda and Rukford. Among these customers, were Phone City Ltd. UK Communications were unable to meet its VAT liability because it was not paid by its customers. Mr Miah said that he did not know how he would pay his VAT liability. He was unable to  
25 produce payment instructions or stock release notes.

791. On 1 August 2006, HMRC issued a notice shortening UK Communications’ VAT period from 09/06 to 1 August with a due date for the return of 2 August 2006. The notice was issued to the office manager.

30 792. On 29 August 2006, the VAT return for the period 05/06 was received by HMRC. The return declared output VAT as £801.89 and total net sales of £4,582 and input tax £750.19 and total net purchases of £5,539, resulting in a net tax liability of £51.70. This did not include any of the wholesale trading disclosed during HMRC’s visit on 14 July 2006.

35 793. On 2 November, HMRC visited UK Communications premises and found that the retail unit was now occupied by another business. HMRC deregistered UK Communications on 22 November 2006.

40 794. In short, UK Communications was buying from two suppliers, Okeda and Rukford who appeared to be the UK acquirers (i.e. importers) in the transactions. They both charged UK Communications VAT on their sales. UK Communications appeared to be acting as a buffer trader selling the goods onto other UK buffers and charging them VAT.

795. UK Communications was made the subject of a winding up order on 1 November 2006. Mr Miah was disqualified as a company director for a period of 10 years from 8 October 2008 to 7 October 2018.

5 796. In period 05/06, 22 of A-Z's broker deals traced back to UK Communications. All these deals took place in May 2006. Eighteen deals were included in the assessment raised on UK Communications on 11 December 2006 in a total value of £17,977,691 and notified to the trader in a letter sent 12 December 2006. In addition, four of A-Z's deals were included in the VAT assessment of 4 September 2006 in the amount of £3,282,724.17.

10 797. UK Communications' unpaid and un-appealed VAT liability amounted in total to £34,545,312. For every deal it entered into, UK Communications did not receive payment from its customers nor did it pay its suppliers. Instead it always issued verbal instructions to its customers to make full payment directly to 3<sup>rd</sup> parties, the details of which were not retained. Therefore, the conclusion is inescapable that by trading in  
15 this way UK Communications knew that it was unable to meet its VAT liability and yet UK Communications continued to undertake transactions. In addition, UK Communications disappeared from its principal place of business.

798. We are, therefore, satisfied that there was a fraudulent tax loss created by UK Communications.

20 (cc) *Vision Soft UK Ltd (period 05/06)*

799. Vision Soft UK Ltd ("Vision Soft") is an alleged defaulting trader in relation to deal chains leading to A-Z. Mr Walton gave evidence in relation to Vision Soft and his evidence was supplemented by that of Ms Wheatcroft in relation to A-Z.

25 800. Vision Soft was incorporated on 8 October 2000 and for. The director was a Mr Motha, who resigned on 2 June 2006. The company secretary was a Mr Venumuddala (sometimes referred to as "Kris"). Mr Venumuddala resigned on 3 April 2006. On 1 June 2006 Mr Muhammed Shafiq was appointed as director and Ms Tina Malik was appointed as company secretary on 3 April 2006. The company was wound up on 28 April 2010.

30 801. Vision Soft applied for registration for VAT on Form VAT 1, which was received by HMRC on 10 January 2005 and was signed by Mr Venumuddala. The business activity was stated to be "Software Development, Consultants and Supply." The estimated annual turnover was £80,000 or more. No purchases or sales were anticipated from or to other EC member states because this section was left blank.  
35 Furthermore, Vision Soft did not expect to receive regular repayments of VAT.

802. Vision Soft further informed HMRC that it did not supply hardware goods, had not made any taxable supplies and the date of the first supply would be 15 March 2005.

803. Vision Soft was registered for VAT with effect from 15 March 2005.

804. Following its registration for VAT, Vision Soft submitted five quarterly nil VAT returns which indicated that no trading had occurred. These returns were for the period 05/05, 08/05, 11/05, 02/06 and 05/06.
- 5 805. On a “New Supplier Assessment Form”, sent to Vision Soft by another company, dated 7 February 2005, Vision Soft estimated its turnover to be £1 million. Two such supplier assessment forms related to companies which were known to deal in MTIC-type goods or were, in HMRC’s view, involved in transactions tainted with MTIC fraud.
- 10 806. HMRC identified sales invoices (dating from July 2006) and freight forwarder release notes (also dating from July 2006) indicating that Vision Soft had entered into transactions selling mobile telephones to a company called Gemini Technology Ltd and Cirex Corporation Limited and that it acquired the mobile telephones from EC based companies.
- 15 807. HMRC visited Vision Soft on 6 July 2006, after receiving the above documentation which indicated that the company was importing MTIC-type goods. The company’s address was found to be a residential block of flats. An immediate request to deregister Vision Soft was issued and the company was deregistered for VAT with effect from 13 July 2006.
- 20 808. VAT assessments totalling £12,068,084 were issued against Vision Soft. The company was compulsorily wound up on 16 January 2008. The assessments have not been paid or appealed.
- 25 809. HMRC made unsuccessful attempts to contact Vision Soft. Since February 2005 all contact was instigated by HMRC. The company made no attempt to establish contact with HMRC since February 2005 and did not reply to letters sent by HMRC.
- 30 810. It appears that Vision Soft did not trade prior to the resignation of Mr Motha as director, but after the appointment of Mr Shafiq and Ms Malik, the company achieved a turnover millions of pounds in a very short period of time (in excess of £60 million in just two months, viz June and July 2006). None of this turnover was declared by Vision Soft for VAT purposes.
- 35 811. One transaction concerning A-Z in the period 05/06 was traced to Vision Soft with a tax loss of £152,040. This amount was included in an assessment dated 8 April 2009 for the period 1 June 2006 to 14 July 2006.
812. On the basis of the above evidence we had no doubt that Vision Soft created a fraudulent tax loss. It failed to declare a VAT liability in excess of £12 million, which was generated by an astonishing increase in turnover from zero to over £60 million in two months. Vision Soft had disappeared from its principal place of business and has made no attempt to contact HMRC. These were not, in our view, the actions of an honest trader.

(dd) *Worldwide Wholesalers Ltd (period 08/06)*

813. Worldwide Wholesalers Ltd (“WW”) is an alleged defaulting trader in relation to deal chains leading to A-Z. Ms Ndoinjeh gave evidence in relation to WW, supplemented by Ms Wheatcroft in relation to A-Z.

5 814. WW was incorporated on 18 March 2005. On incorporation the director was Mr Waquas Ahmed and the company secretary was Mr Azar Khan. Between March 2006 and November 2006 there were numerous changes of the director and company secretary. During the periods relevant to these appeals (08/06) in which HMRC alleged deals traced from WW to A-Z, there was apparently no director and no  
10 company secretary.

815. WW submitted an electronic Form VAT 1 which was received by HMRC on 29 September 2005. The declaration on the form was made by “Wiqas Ahmed” who described himself as the company secretary. WW stated that its intended business activity would be: “Supply in bulk to trade. We will [source] the product for the  
15 client, buy from wholesalers and sell on to [the] customer. Only do business with trade and sell in bulk.” The trade categories listed were: furniture, household goods, hardware and ironmongery wholesale of, other wholesale, textiles, clothing, footwear and leather goods. The estimated annual turnover was anticipated to be £65,000. No purchases from, or sales to, other parts of the EU were declared. The application  
20 stated, however, that WW expected to receive regular repayments of VAT.

816. On 6 October 2005, HMRC telephoned the landline number contained in the registration form and spoke to Mr Ahmed. He stated that the registered address was a retail outlet and, notwithstanding the information contained on Form VAT 1, that the main business activity would be selling accessories for mobile telephones.

25 817. WW was registered for VAT on 1 November 2005. On 25 January 2006, HMRC received a letter signed by “Wiqas Ahmed” which stated that the company had not yet started trading, although it was anticipated that trading would commence in near future and gave a different business address from that used on registration. Undelivered mail was returned to HMRC in April 2006 from this new address. On 9  
30 and 15 May 2006 HMRC received notification of a change of address.

818. Between 9 May 2006 and 17 May 2006, HMRC’s Contact Centre received 13 telephone calls from a Mr Mahmood who stated that he was the director of WW and that he wanted to verify VAT registration numbers. Subsequent checks at Companies House indicated that Mr Mahmood was not a company official on any of the dates  
35 upon which he made the calls. He did not become a director of WW until 1 December 2006 and had briefly been company secretary for one day on 8 November 2006.

819. On 15 May 2006 a further change of address letter was received by HMRC on WW’s letterhead.

40 820. On 16 May, in line with normal practice of the companies that rang HMRC to verify other VAT registration numbers, WW was issued with a “Redhill verification letter”. This letter, sent from HMRC’s Redhill office, asked companies that dealt in

high-value goods to check the validity of the VAT numbers of potential suppliers and customers when buying or selling high-value goods. HMRC's Notice 726 (Joint and Several Liability for and pay VAT) would have been sent with this letter.

5 821. On 9 June 2006, HMRC telephoned WW to discuss the change in its principal place of business. HMRC were informed that the business activities of WW were wholesaling iPods and electrical equipment.

822. On 28 June 2006, a Mr Sakim telephoned HMRC to validate a VAT number on behalf of WW. A similar call was made on 16 September 2006 in relation to a company involved in MTIC activity and which was subsequently deregistered.

10 823. After further requests for information and abortive attempts to arrange a meeting (which Mr Mahmood cancelled), Mr Mahmood left one box of documents at HMRC's Uxbridge office on 19 October 2006. His attendance was unannounced and he left without waiting for a receipt for the documents. The box contained WW's trading records for May and June 2006. These were the only trading records provided  
15 by WW to HMRC. Subsequently, Mr Mahmood failed to make, or respond to, any further contact with or from HMRC.

824. Due to WW not making any further contact with HMRC and outstanding VAT returns being due, WW was deregistered for VAT from 10 November 2006. No VAT return was submitted for 07/06. The records in the box left by Mr Mahmood disclosed  
20 transactions which WW did not declare on its VAT returns.

825. On 19 February 2007, HMRC officers visited WW's principal place of business but were informed that the company had vacated the premises and had left unpaid rent.

826. HMRC's subsequent investigations disclosed that WW had suddenly begun to  
25 trade in May 2006 – in six months of trading its turnover was £5,583,015. This related to sale of electrical goods: a trade sector that apparently the company had not previously dealt in.

827. On 25 June 2007 an assessment was issued to WW with £1.8 million relating to undeclared output tax for the period 07/06, based on sales invoices obtained from A-Z. There was a further assessment for £146,654 issued on 5 July 2007. These  
30 assessments included all 16 of the deals identified as commencing with WW and leading to A-Z. Fifteen of A-Z's broker deals (i.e. export deals) undertaken in July 2006 have been traced to WW. One deal undertaken by A-Z in June 2006 was also traced back to WW.

35 828. WW has not paid or appealed the assessments.

829. On 30 November 2007 a winding up order was made against WW.

830. On 13 April 2010 Mr Mahmood was disqualified from 4 May 2010 for 13 years from being a director on the basis that he knowingly cause WW to become involved

in MTIC trading or, if he did not so know, was reckless or grossly negligent as to whether WW was concerned in such trading.

5 831. On the basis of the above, we were satisfied that there was a fraudulent tax loss caused by WW in the period 08/06. The sudden increase in turnover in May 2006 in a business sector of which the company apparently had no previous experience was not commercially credible. During this period, WW had no director or company secretary. Mr Mahmood cancelled appointments with HMRC and then attended HMRC's offices, unannounced, leaving business records but without waiting for a receipt. Mr Mahmood failed to make any further contact with HMRC thereafter. Transactions  
10 undertaken by WW resulting in VAT liabilities were not returned on WW's VAT returns. WW has not paid or appealed any of the VAT assessments referred to above.

*Defaulting traders in the Jag Tec Ltd (alleged contra-trader) alleged tax loss chains*

15 832. Jag Tec Ltd ("Jag Tec") was alleged to be the contra-trader in deal 39. We now turn to consider the evidence in relation to alleged defaulting traders in the "dirty" chains relating to Jag Tec.

*(ee) D9 Connections Ltd (period 06/06)*

20 833. D9 Connections Ltd ("D9") was an alleged fraudulent defaulting trader in a tax loss chain leading to the alleged fraudulent contra-trader, Jag Tec. Mr Ruler gave evidence in relation to D9 and his evidence was supplemented by that of Mr Elms in relation to Jag Tec.

25 834. D9 was incorporated on 8 August 2005 and was registered for VAT on 3 March 2006. Form VAT 1, the application to register for VAT, indicated that a Mr Dakri was the director and Mr Patel was the company secretary. D9 declared that its main business activity to be: "I intend to set up an online retail store to sell mobile telephones, accessories and monthly tariffs." The estimated annual turnover was £65,000 and the director did not expect to buy from suppliers or sell goods to customers in the EU.

30 835. HMRC carried out an unannounced pre-registration visit to D9's premises on 4 April 2006 and met Mr Dakri. D9's principal place of business was a former post office, refurbished as a retail shop. Mr Dakri's previous business experience was that of a partner in a cafe in Bolton. The stock of mobile phone accessories was purchased from wholesalers in Manchester and valued at approximately £500. At the time of the visit, D9 had made sales of approximately £100. Mr Dakri intended to sell contract mobile telephones to retail customers. HMRC explained the risks of MTIC fraud and  
35 issued Notices 700 (requirement to give security) and 726 (Joint and Several Liability). A Redhill verification letter was sent to D9 on 14 June 2006 which explained the importance of verifying VAT numbers with HMRC's office in Redhill. Mr Dakri agreed to contact Mr Ruler, the HMRC officer conducting the visit, if he decided to add wholesale trading to his business activities.

836. HMRC visited D9's premises again on 26 July 2006 – the visit was prompted by the fact that a trader involved in MTIC trading had made a request to HMRC's Redhill office to verify the VAT status of D9. The shop was closed and shuttered. A neighbour said that the shop had been closed for some time, probably since early June. Consequently, HMRC was immediately deregistered for VAT.

837. During August 2006, Mr Dakri requested a change of trade classification and enquired about the status of a VAT repayment claim for the period 06/06. HMRC then wrote to D9 on 25 August 2006 informing it that the company had been deregistered for VAT.

838. D9 submitted only one VAT return covering the three month period ending 06/06. The return gave details of sales of £395, purchases of £1,316 leading to a repayment claim of £195.40.

839. HMRC's enquiries indicated that D9 had completed more sales than were declared on the VAT return. Therefore, assessments were raised in respect of undeclared output tax. The assessments totalled £3.1 million. Three of Jag Tec's deals amounting to £827,906 in the period 06/06 traced back to D9. These deals were included in the assessment issued to D9 on 16 November 2006. The assessments have not been paid or appealed.

840. A winding up order was made against D9 on 24 October 2007. The overall debt of VAT due to HMRC was £3,894,661 (later reduced by £186,086). D9 has not made contact with HMRC since August 2006.

841. On 22 June 2009, the Insolvency Service wrote to HMRC informing them that on 12 May 2009 the Secretary of State for Business, Enterprise and Regulatory Reform had accepted a disqualification undertaking from Mr Dakri that he would neither be a director of the company nor an insolvency practitioner. The disqualification came into force on June 2009 and lasts for 13 years. The basis for the disqualification undertaking was that Mr Dakri caused or allowed D9 to undertake a method of trading which involved it in, and put HMRC at risk of being subject to, MTIC fraud and that, if he did not so know, then he was reckless or grossly negligent as to whether D9 was concerned in such a fraud. In particular, Mr Dakri caused D9 to issue sales invoices for wholesale quantities of digital cameras and mobile telephones for at least £21,020,005.03 including VAT of £3,130,638 to UK customers. He failed to ensure that D9 collected and/or retain sufficient proceeds of its sales to discharge its liability to VAT, only receiving £1,340 into its only known bank account after 16 June 2006. He further failed to deliver up trading records to HMRC and as a result it was not possible to confirm the full extent of D9's trading. As a result, HMRC raised assessments totalling £3,130,638, which D9 could not pay and which remained outstanding at 3 October 2007, the date of the winding up order against D9.

842. On the basis of the above evidence, we have concluded that D9 was a fraudulent defaulting trader and that it created a fraudulent tax loss. D9 simply disappeared leaving a VAT liability in excess of £3.1 million. The director, Mr Dakri, accepted a disqualification undertaking in the circumstances outlined above. The assessments

have not been paid or appealed. None of this conduct is consistent with an honest and legitimate trader.

843. The evidence of Mr Elms was that D9 appeared at the start of three of Jag Tec's 37 broker deals.

5                    *(ff) Taxable person purporting to be Grange Solutions (period 06/06)*

844. The taxable person purporting to be Grange Solutions, also known as Wade Tech Ltd ("WTL"), was also alleged to be a fraudulent defaulting trader in respect of six of Jag Tec's tax loss chains.

845. In Atec's letter of 3 March 2014, Atec accepted that HMRC had suffered a  
10 fraudulent tax loss in relation to Grange Solutions/WTL.

846. We have reviewed the evidence of Ms Parsons who gave a witness statement in relation to Grange Solutions and consider that Atec was correct to make this concession.

*(gg) Phone City Ltd*

15 847. Phone City Ltd ("Phone City") was a defaulting trader in relation to in the alleged direct deal chains leading to Atec. We have already found that Phone City created a fraudulent tax loss and we shall not, therefore, repeat the details.

848. In addition, however, HMRC alleged that Phone City was also a fraudulent  
20 defaulting trader in deal chains leading to the alleged contra-trader, Jag Tec. In the period 06/06, six of Jag Tec's deals traced back to the defaulting trader Phone City. The tax losses for these deals were included in the notices of assessment issued to Phone City. The total value of tax losses traced from Jag Tec to Phone City in 06/06 was £926,346. None of the assessments have been paid or appealed.

*(hh) UK Communications Ltd*

25 849. We have already found that UK Communications was a fraudulent defaulting trader who created a fraudulent tax loss.

850. In the 06/06 period, 23 of Jag Tec's deals traced back to the defaulting trader  
30 UK Communications. The tax losses for these deals were included in the notice of assessment issued to UK Communications on 11 December 2006. The total value of the tax losses traced from Jag Tec to UK Communications in this period was £5.9 million, none of which has been either paid or appealed.



*The defaulting trader in the Wetherby Fashions Ltd (alleged contra-trader) tax loss chains.*

*(ii) USM IT Suppliers Ltd t/a First Point*

5 851. We have already found that USM was a fraudulent defaulting trader in relation to the direct tax loss chains leading to Atec; USM was also alleged to be a fraudulent defaulting trader in Wetherby's tax loss chains. For the same reasons, we find that USM was a fraudulent defaulting trader in chains which led to Wetherby.

852. Five of Wetherby's deals traced back to the fraudulent defaulting trader USM. The tax losses for these deals were included in notices of assessment issued to USM.  
10 The total value of the tax losses traced from Wetherby to USM in this period was £3.9 million. None of these assessments has either been paid or appealed.

*The alleged contra-traders: Wetherby, Jag Tec and A-Z*

853. HMRC submitted that each of the alleged contra-traders (Wetherby, Jag Tec and A-Z) were essentially fraudulent enterprises and that each contra-trader was  
15 engaged in the artificial and dishonest offsetting of input VAT in "broker" chains against output VAT as part of an overall scheme to defraud HMRC. We shall deal with each alleged contra-trader in turn.

*Wetherby (deals 13, 14 and 15) – 05/06*

854. Mr Kirby, an HMRC officer, gave evidence in respect of Wetherby. Essentially,  
20 HMRC alleged that, in Atec's VAT period 05/06, 3 transactions were traced back to Wetherby as the acquirer of goods into the UK from the EU. Wetherby also featured as a "buffer" trader in five further deal chains (deals 17-21 inclusive) that featured Atec as the "broker".

855. Wetherby was an established business having traded for over 30 years, having  
25 been incorporated on 5 October 1970. The company was registered for VAT from 1973 and was deregistered with effect from 6 September 2006.

856. The directors of Wetherby, at the times material to these appeals, were: Ajmair Singh Bhullar – a.k.a. John Bhullar – (director and company secretary appointed 10  
30 May 1970), Amardip Bhullar – son of John Bhullar – (director appointed 30 April 2009) and Ujjal Simon Bhullar – a.k.a. Simon Bhullar – (director appointed 13 December 1988).

857. John and Simon Bhullar owned 45,000 shares each in Wetherby and Amardip Bhullar owned 10,000 shares.

858. Simon Bhullar was the managing director of Wetherby.

35 859. Other personnel working in the business included Mr Adrian Meadows who was a self-employed dealer. Mr Meadows was paid a finding fee in respect of transactions.

860. In the course of subsequent enquiries into Wetherby by HMRC it emerged that a further individual, Choudhry Ahmed Miraj had complete management control over the section of business in relation to decisions concerning suppliers and customers, pricing and making payments. In fact, Mr Miraj appeared to control much of Wetherby's trade. Mr Miraj's involvement in the business of Wetherby emerged in the course of an enquiry by the Department of Trade and Industry ("DTI") into Wetherby's trading in 2004 – 2005.

861. The DTI's investigation found "an extremely complicated web of transactions between connected and apparently unconnected companies together with significant instances of concealed movements of funds between those companies." Mr Simon Bhullar attributed some of these transactions to Mr Miraj e.g. where Wetherby secretly paid a company called House Need Ltd the value of its purchase orders rather than paying its four actual suppliers.

862. As a result of their enquiries, on 17 August 2006 the DTI petitioned for the winding up of Wetherby on the following grounds:

30. The Company has maintained false and misleading books and records in that payments totalling at least £1.4 million recorded by the Company as being made to a number of different companies were in fact paid to House Need Limited and receipts totalling £1.9 million recorded as coming from a Pakistani company Shan Traders were in fact received from the UK-based company ICM.

31. The Directors of the Company have (at the very least) allowed the Company to be used for fraudulent purposes and/or as part of fraudulent schemes and therefore to this extent the trading of the Company was reckless and it is in the public interest that the same as stopped and/or prevented from being resumed in the future.

32. The Company is connected to and/or has traded with a number of companies who are also the subject of Public Interest Winding Up Petitions on the grounds that there is a real concern they were operated for fraudulent purposes including money laundering and/or fraud on Her Majesty's Revenue and Customs. It is in the public interest that the Company is wound up so that these concerns can be investigated in the context of the liquidation."

863. The Court granted the petition to wind up Wetherby on 2 November 2006.

864. All three of the directors of Wetherby referred to above have been disqualified under the Company Disqualification Act 1986. John Bhullar was disqualified from 27 August 2009 for eight years, Amardip Bhullar was disqualified from the same date for two years and Simon Bhullar was disqualified from the same date for five years.

865. We shall first consider Wetherby's trading in the VAT period ending 04/06.

866. We received evidence in relation to Wetherby's trading in February 2006. Wetherby undertook seven transactions in February 2006 of which four transactions were broker deals. In the remaining three deals Wetherby acted as a buffer trader. In

the first two deals, Wetherby's supplier was Martem Ltd and in the remaining five deals the supplier was Carlsson Ltd. In each of the four broker deals, Wetherby's EC customer was Eurovision Export SARL and the UK customers in the buffer deals were Amber Aspects Ltd and Indian Raj Ltd. The products involved were Nokia mobile telephones and, what was described as, Express Intro Phones.

867. In the four broker deals the chain of transactions featured the same traders appearing in the same order. These broker deal chains traced back to a contra-trader called Rioni. The four deals were carried out by Wetherby on two days i.e. 15 and 20 February 2006. In each deal the goods began with a company called SNN Sarl in France, were on sold through four UK companies and were then dispatched by Wetherby to Eurovision Exports SARL. Each of the transaction chains was completed on a back-to-back basis, with customer and supplier requirements matching exactly. All the businesses in the supply chain had accounts with FCIB.

868. As HMRC submitted, it is hard to understand the commercial logic of goods being imported from France, passing through a chain of UK companies and then being re-exported back to France. Wetherby made a mark-up of exactly 8% on each of the four deals, regardless of the quantity or model of mobile telephones involved.

869. Rioni did not declare its acquisitions from SNN on its Intrastat supplementary declarations and provided no evidence to show that the goods were imported.

870. In all cases the goods arrived in the UK at Point of Logistics Ltd – a freight forwarder. The goods remained with Point of Logistics until they were dispatched to World Wide Logistics BV (“World Wide”) – a freight forwarder based in Holland. The director of World Wide, Mr Martin Monster, was interviewed by the Dutch authorities. He admitted “taking care of fictitious consignments” (i.e. consignments where the goods did not exist) from the beginning of February-May 2006. Another employee of World Wide admitted that he signed CMRs “and stamped them for the theoretical receipt of goods, whilst no goods whatsoever were actually received.” Point of Logistics was deregistered for VAT purposes on 2 November 2006.

871. In the sixth of the seven February 2006 deals, SNN sent Wetherby a document on 20 February 2006 which thanked it for its “good service” and stated: “Please notice that we started payments.” This was strange because SNN was the EC supplier in the transaction chains, four links in the chain above Wetherby. Therefore, there was no reason why SNN would be communicating with Wetherby.

872. Furthermore, the vehicles which purportedly carried the mobile telephones in the four broker deals belong to a company called Palahi Transport Ltd. This company's director told HMRC that it did not and never had carried mobile telephones.

873. HMRC denied Wetherby the right to deduct input tax of approximately £356,000 incurred on the four broker deals by a letter dated 26 February 2008.

874. Wetherby did not undertake any trade in MTIC-related goods in March 2006.

875. In April 2006, Wetherby was, however, more active. In nine days from 18-26 April 2006 Wetherby undertook 62 buffer deals. 61 of the 62 deals were traced back to fraudulent VAT losses. In 52 transactions, Wetherby received an instruction from its supplier to make third-party payments. In 43 of the deals the third-party payment  
5 was made to a company called Universal Systems SCS, based in Belgium. Universal Systems SCS was the beneficiary named on third-party payment instructions in Atec's deals 9-12, 17-18, 20-23, 27 and 29. Wetherby made these payments even though the evidence demonstrated that it confirmed that Notice 726, which warned about third party payments, had been received and read.

10 876. All but one of the 62 chains of transactions were completed on the same day through either five (eight deals), six (24 deals), seven (29 deals) or eight (one deal) UK traders in the chain. Each trader appeared at the same point in the supply chain. The 62 deals represented a total output in the space of nine days of some £31,151,247, greater than the combined outputs for Wetherby in the six previous VAT periods. In  
15 all but one of the transactions, Wetherby made a mark-up of 50p. No IMEI numbers were recorded for any of the mobile telephones traded by Wetherby in the 62 transactions.

877. As regards Wetherby's VAT period 07/06, its VAT return showed a turnover for the period of £46,231,129. Input tax amounted to £8,004,635.41 and  
20 output/acquisition tax amounted to £7,208,788.36. The return made a net reclaim in the amount of £795,847.05.

878. Wetherby undertook 37 deals in May 2006. Of these deals, 24 were acquisitions from a trader in another EU member state, five were broker deals where Wetherby dispatched goods to traders in other EU member states and eight were buffer deals  
25 (where Wetherby had both purchased from and sold to UK-based traders). Although Wetherby's accountants, Deloitte, indicated that five of the buffer and acquisition deals had been cancelled, other evidence suggested to Mr Kirkby that the deals had not in fact been cancelled – an assessment with which we agree.

879. The input tax on the five broker deals amounted to £3,922,362.50. The 24  
30 acquisition deals for May 2006, had it not been claimed that some had been cancelled, caused Wetherby to have a net VAT liability of £3,861,060. Effectively, therefore, Wetherby offset most of its input tax on the broker deals against its output tax liability on the acquisition deals, such that the reclaim, taking into account only those transactions, would have been only for £118,916. However, after adjustment for the  
35 deals claimed not to have taken place (i.e. cancelled with credit notes issued) the reclaim amount increased to £800,473.90 and the actual repayment figure submitted on the return was £795,847.05.

880. All of Wetherby's five May 2006 broker deals traced back, in short supply chains, to the defaulting trader USM, to which we have already referred. All the  
40 goods in the broker deals in this period comprised Nokia mobile telephones. In its other transactions (i.e. non-broker deals) Wetherby traded in other electronic goods such as satellite navigation systems, iPods and laptops. Wetherby's mark-up was £3 per unit in four of the broker deals. In the remaining broker deals a mark-up was £2.

881. We have examined the documentation evidencing the five broker deals referred to above. The documentation included, for example, purchase orders, invoices, release and allocation notes, payment instructions, CMRs and supplier declarations. We are satisfied that the deal chains for the broker and acquisition deals were as HMRC described and that the deal chains traced back to fraudulent defaulters.

882. In May 2006 Wetherby carried out 24 acquisition deals i.e. deals where Wetherby acquired (imported) the goods from an overseas supplier within the EU. The supplier, in each case, was Protophonia. The net purchase price for all the goods in the acquisition deals was £21,997,180. Wetherby was able to sell the total consignment for each deal on the day of purchase to one of five UK VAT-registered businesses. In all but one of the acquisition deals, regardless of the quantity, product, customer or date, Wetherby's margin was £1 per unit. It in the one deal where the margin was different, the margin was £1.50 per unit. The goods were sold on back-to-back until they were dispatched (exported) by eight brokers.

883. Wetherby's eight buffer deals in May 2006 also traced back to fraudulent defaulting traders.

884. The deals appeared to have been arranged in "blocks" of broker, acquisition and buffer deals. There was a consistency to the deal chains in terms of their participants and the order in which those participants appeared, suggesting that the chains were contrived. In none of the deal chains was there a manufacturer, and authorised distributor or an end-user. The length of the chains appeared uncommercial, as each participant was apparently a wholesaler. All the broker and buffer deals in the supply chain could be traced back to a defaulting trader resulting in a tax loss.

885. Wetherby produced inspection reports for only four of the five broker deals but produced no reports for the acquisition or buffer deals. No IMEI numbers were recorded.

886. There were inaccuracies in the deal documentation. For example in one deal Wetherby's customer submitted a purchase order for Nokia 8801 mobile telephones yet Wetherby's invoice recorded the goods sold as Nokia 8100's.

887. No insurance documentation or evidence of insurance was provided by Wetherby.

888. In our view, the evidence indicating that Wetherby was a fraudulent contra-trader was overwhelming – it was a knowing participant as a contra-trader in MTIC fraud. Wetherby's broker and acquisition deals appear to have been carefully and artificially arranged in order to offset each other for VAT purposes. Wetherby had fixed mark-ups and it had long and commercially improbable deal chains. It failed to inspect the goods in its acquisition and buffer deals notwithstanding the high value of the transactions involved. It also failed to ensure its buffer and acquisition deals. Wetherby's broker and buffer transactions repeatedly traced back to fraudulent tax losses. Wetherby's directors were disqualified *inter alia* for allowing the company to be used for fraudulent purposes.

*Jag Tec (deal 39) – 06/06*

889. Jag Tec was the alleged contra-trader in relation to Atec's deal 39. Mr Elms, an HMRC officer, gave evidence in relation to Jag Tec.

5 890. Jag Tec was incorporated on 22 January 2001. The director on incorporation was a Mr Robert Stanford Ellis. He applied for Jag Tec to be registered for VAT on Form VAT 1 on 19 February 2001. Jag Tec stated that its main business activity was to be "importing electrical and electronic equipment, components and accessories." The estimated annual turnover was stated to be £350,000 and the estimated value of purchases from sales to other EC member states in the next 12 months was stated to be £5,000 each. Jag Tec was registered for VAT with effect from 20 February 2001 and rendered VAT returns on a quarterly basis for periods ending March, June, September and December.

15 891. Between periods 06/02 and 06/04 Jag Tec made maximum net sales of £48,226 (in the period ending 12/02) and a minimum of £928 (in the period ending 06/03). All VAT returns from periods 09/04 to 03/06 showed that the company was dormant.

892. Mr Stanford Ellis resigned as a director on 8 April 2004.

20 893. Mr Noel Dingwall became a director of Jag Tec on 16 January 2004. His first full quarterly VAT return to Jag Tec was the period ending 06/06. In this period (1 April 2006 to 30 June 2006) the net sales of Jag Tec totalled £110.2 million. As we have seen, prior this VAT period, Jag Tec was a dormant company with no net sales.

894. In the period 06/06 Jag Tec entered into 58 sales of which 37 were "broker" deals where Jag Tec exported goods to an EU customer and 21 were "acquisition" deals where Jag Tec purchased from an EU seller and on-sold to UK companies.

25 895. HMRC visited Jag Tec's offices on 7 September 2006. The offices consisted of a very small room containing one desk, one computer, one telephone and two cupboards. Apart from Mr Dingwall, Jag Tec's only other members of staff were Ms Patricia Slater (Company Secretary) and Liz Godfrey (employee). During the visit, Mr Dingwall confirmed that Jag Tec did not have any insurance for the goods being sold and did not have any evidence about how the business was initially funded. He then stated that his customers funded deals by paying for the goods upfront. He confirmed that all the deals in the period 06/06 went through Jag Tec's FCIB bank account.

35 896. As noted, Jag Tec's first VAT return for the period ending 06/06 (which was signed by a Colin Melvyn Wilcox who was not an officer of the company) showed a massive increase in turnover from nil for the previous quarter to £110.2 million. The return disclosed output tax of £9,633,088.15 and EU acquisitions tax was £9,599,576.66. The input tax was £19,228,644.89, resulting in a small payment to HMRC for £4,119.92. Thus, it appears that Jag Tec's deals in period 06/06 were completed in order to offset each other. An analysis of Jag Tec's sales and purchases  
40 in the 06/06 period showed that Jag Tec in "blocks". In other words, Jag Tec made a number of acquisitions (i.e. import) deals in which it then sold the goods to a UK

purchaser followed by a number of deals in which it bought the goods from a UK supplier and then acted as broker (i.e. exported) selling the goods to an EU customer.

897. Moreover, in May 2006 Jag Tec's trading was confined to the period 24 – 31 May and its trading for June 2006 took place between 26 – 30 June. In other words, trading was confined to short but frenetic bursts of activity at the end of each month.

898. Jag Tec organised its affairs in such a way that the outputs for the 06/06 period were split at 49.94% standard rated for VAT (at the then standard rate of 17.5%) and 50.06% zero rated. The value of the goods acquired by Jag Tec and subsequently sold were offset by the value of goods sold to the EU by Jag Tec in its broker deals.

899. There were 60 deals in the period 06/06, of which two were cancelled, leaving 58 deals. All the deals were back-to-back i.e. they took place on the same day and were conducted in the months of May and June 2006. 37 of the 58 deals involved Jag Tec acting as the broker i.e. exporting goods to other EU countries. In the remaining 21 deals Jag Tec acted as the importer that acquired goods from other EU countries. All 37 export deals entered into during the 06/06 period were traced back either to a defaulting trader or to a hijacked VAT registration number. All 37 broker deals involved the goods being purchased from a UK supplier call Worldwide Wholesalers Ltd. All 21 of Jag Tec's acquisition deals in the period 06/06 involved the import of mobile telephones and CPUs. All 37 of Jag Tec's export deals in the same period involved other goods such as satellite navigation units and projectors.

900. Thirty-two of Jag Tec's broker deals in 06/06 were traced back to fraudulent UK tax losses of £9,338,716.19 occasioned by just three defaulting or hijacked traders. 23 of Jag Tec's broker deals traced to UK Communications, six traced to Grange Solutions (a hijacked VAT registration number) and three traced to D9. As we have seen, these three traders were fraudulent defaulters. Five of the 37 deals could be traced back only as far as the missing trader Phone City (which we have already found to be a fraudulent defaulter). Because Phone City was a missing trader, HMRC were unable to obtain the relevant records. However, in 23 broker deals which were traced to UK Communications the same supply chain occurred as follows: UK Communications supplied Phone City, Phone City supplied Worldwide Wholesalers, Worldwide Wholesalers supplied Jag Tec and Jag Tec supplied Cyprus-based company called RCCI Hi Tec ("RCCI"). Therefore, we have concluded that the remaining five transactions were more likely than not to have in fact traced back to a fraudulent default occasioned by UK Communications.

901. In the 23 transaction chains mentioned above, although Phone City purchased from UK Communications, Phone City made third-party payments to the FCIB bank account of a Cyprus company called SNV Worldwide Ltd ("SNV"). We accept HMRC's submission that in making these third-party payments Phone City must have known that it was paying away VAT due to a UK company, leaving UK Communications unable to discharge its VAT liabilities.

902. We have examined samples of the documentation evidencing the numerous transactions referred to above (broker deals). The documentation included, for

example, purchase orders, invoices, release and allocation notes, Eurostar tickets, CMRs and supplier declarations. We are satisfied that the deal chains for the broker deals were as HMRC described and that the deal chains traced back to fraudulent defaulters.

5 903. In addition, in nine of Jag Tec's broker deals carried out in May 2006, Jag Tec released the goods to its customer before being paid for the goods. This was notwithstanding Jag Tec's sales invoices stating, as a condition of trade: "Title or release will not be passed until payment has been received in full."

10 904. Jag Tec undertook 21 acquisition deals in 06/06. It purchased exclusively from an EC based company called Kom Team Sarl (a French company) and sold to one of three UK customers: Stardex UK Ltd, Tradex Corporation Limited and Vortech Limited. In all the acquisition deals, the goods were ultimately dispatched (exported) by one of 12 broker traders to just two EC customers: CEMSA (based in Spain) and Evolution (based in France). Therefore, all the goods were purchased by Jag Tec from  
15 one EC supplier and eventually exported from the UK to two EC customers.

905. In the case of goods purchased from Kom Team Sarl and eventually exported to Evolution, the goods started off in France and ended up in France but, in the meanwhile, passed through various UK traders incurring a charge to VAT. These transaction chains, so HMRC submitted, lacked commercial logic. We agree.

20 906. In 17 of Jag Tec's 21 acquisition deals in 06/06, Jag Tec purchased and sold mobile telephones. In all but one of these mobile telephone deals, Jag Tec's mark-up was fixed at £1 regardless of the type or quantity of the goods. The other four acquisition deals involved CPUs. In three of these for deals Jag Tec's mark-up was again fixed at 25p regardless of the quantity of CPUs being sold. HMRC submitted  
25 that these fixed mark-ups indicated contrived trading. We agree.

907. Jag Tec did not insure the goods in which it dealt notwithstanding the fact that they were worth millions of pounds. This did not seem to us to be consistent with a legitimate business operation.

30 908. Furthermore, on 5 February 2007, Mr Dingwall wrote to HMRC stating: "Jag Tec has not dealt with any EU spec mobile telephones in any of our deals." This was untrue. Jag Tec did deal in EU spec mobile telephones.

35 909. 4 January 2008 HMRC wrote to Jag Tec informing it of HMRC's decision to deny the company input tax of £8,702,280.14, claimed for its own 6/06 VAT period, on the basis that the transactions giving rise to the input tax were connected with the fraudulent evasion of VAT and that Jag Tec knew or should have known of that connection. Jag Tec did not appeal that decision.

40 910. On 18 October 2010, the Court made a disqualification order against Noel Dingwall on the basis that his conduct as a director of Jag Tec made him unfit to be concerned in the management of limited company. In particular during the period of 4 May 2006 to 30 September 2006 he caused Jag Tec to undertake a method of trading which involved it in, and put HMRC at risk of being subject to, MTIC VAT fraud. If



he did not so know, then he was reckless or grossly negligent as to whether Jag Tec was concerned in such a fraud. The disqualification commenced on 7 January 2011 and was for a period of 13 years.

5 911. In our view, the evidence that Jag Tec was a fraudulent contra-trader is overwhelming. The essence of contra-trading is to conceal the connection of the broker transaction with the fraudulent evasion of VAT by offsetting (in the contra-trader) input VAT due on purchases within a number of “dirty” chains against output VAT on supplies into a number of “clean” chains. This was plainly Jag Tec’s purpose. In particular, Jag Tec traded on only a few days at the end of the months of  
10 May and June 2006 but managed to achieve a turnover in excess of £110 million even though it was dormant in its previous VAT period. We have concluded that all 37 UK purchases by Jag Tec in the period 06/06 were, on the balance of probabilities, connected with fraudulent tax losses. This is simply too much of a coincidence. Crucially, the evidence clearly indicated an artificial balancing of Jag Tec’s  
15 acquisition and broker deals. In our view, this offsetting was central to Jag Tec’s purpose. Jag Tec’s fixed mark-ups on its 06/06 smacked of artificiality. The fact that Jag Tec allowed its goods to be released before it was paid in nine transactions indicated that the transactions were contrived. Furthermore, we have noted that goods from one French purchaser ultimately ended up with two EU customers (one Spanish  
20 and one French). Again, we considered this to be indicative of contrivance. Jag Tec failed to insure goods worth millions of pounds. It is hard to envisage any legitimate business behaving in this way. Mr Dingwall falsely claimed that Jag Tec did not deal in European spec mobile telephones – a claim which was plainly false. In addition, Mr Dingwall was disqualified for a lengthy period for allowing Jag Tec to be involved in  
25 MTIC fraud.

912. In our view, all these factors indicate beyond a shadow of a doubt that Jag Tec was a knowing participant in MTIC fraud, using offsetting the input and output tax in relation to its broker and acquisition deals for the purposes of concealment of its VAT fraud.

30 *A-Z Mobile Accessories Ltd (deals 2-3 and 38)*

913. A-Z was the alleged contra-trader in relation to deals 2, 3 and 38. Ms Wheatcroft, an HMRC officer, gave evidence in relation to A-Z.

914. A-Z was incorporated on 5 September 2002.

35 915. A-Z had various directors. At times material to these appeals, the director was a Mr Ishaq Ahmad <sup>3</sup> (appointed 25 September 2001) and Mr Mohammed Abdul Samad (appointed 16 January 2006).

916. A-Z applied for registration on Form VAT 1, signed by Mr Ahmad, which was received by HMRC on 18 June 2002. The intended business activities were declared

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<sup>3</sup> Mr Ahmad was also referred to as “Mr Ahmed”, but we refer to him in this decision as Mr Ahmad.

as: “purchasing mobile phone accessories i.e. battery housings, screens everything regarding a mobile phone, parts. From China and retailing and wholesaling in the UK.” A-Z declared that the business did not expect to receive regular repayments of VAT and that the expected taxable supplies in the next 12 months would be “£65,000 approx”. The expected EC acquisitions were stated to be £40,000 and EC sales of £20,000. A-Z was registered for VAT with an effective date of 1 November 2001.

917. A-Z was deregistered for VAT purposes on 2 July 2008 with a debt to HMRC for VAT in the amount of £582,000.

918. In the course of 2004, the outputs recorded on A-Z’s VAT returns were in period 02/04 £8,189, 05/04 £10,359, 08/04 £17,870 and 11/04 £21,439.

919. On 21 December 2004 HMRC visited A-Z’s premises. Mr Ahmad declared that at the time his business was only making enquiries into wholesale mobile phone deals but that the main business activity continued to be retail sales of mobile telephones and accessories. Mr Ahmad indicated that he may begin wholesale mobile phone deals in March/April 2005. The visiting HMRC officers discussed with Mr Ahmad the risks involved in wholesale trading of mobile telephones and recommended that A-Z’s VAT registration be blocked until wholesale trading commenced. In other words, when another company attempted to clear A-Z’s VAT number through HMRC’s office in Redhill it would be declined. This would inform that company that A-Z was not registered with VAT as a wholesaler of mobile telephones. Mr Ahmad agreed for this action to be taken.

920. On 14 June 2005, HMRC’s Contact Centre’s records indicated that “Mr Ishaq Ahmed” requested A-Z to be moved to monthly returns because he was in a repayment position. Written confirmation of this was received by HMRC on 20 June 2005. On 28 June 2005 HMRC’s Contact Centre received a telephone enquiry from a Mr Pathan, an accountant, enquiring about the request for monthly VAT returns. He stated that A-Z’s business had changed and would be doing a significant amount of zero-rated exports.

921. For the period 02/05, A-Z’s outputs were £13,293, for 05/05 £12,040.

922. HMRC refused A-Z’s application for monthly returns by a letter dated 4 July 2005 on the basis that VAT returns the periods 08/02 to 11/03 had not been submitted. These returns were eventually received on 2 August 2005. The outputs recorded on these returns ranged from £5265 (period 11/02) to £14,247 (period 08/02).

923. On 16 August 2006, Mr Ahmad telephoned HMRC’s Contact Centre enquiring about the current position in relation to his request for monthly VAT returns.

924. HMRC received A-Z’s VAT return for the period 08/05 showing outputs of £19,022 with an amount of tax due to HMRC in the amount of £1,376.73.

925. Further requests from Mr Ahmad and Mr Pathan requesting that A-Z be placed on monthly returns were refused by HMRC on the basis that A-Z did not have a regular pattern of repayment returns. One of these requests (a letter dated 10 October

2005) stated that A-Z had commenced wholesale deals and exports. HMRC also refused to discuss A-Z's affairs with Mr Pathan because HMRC did not hold an authority from A-Z in relation to him.

5 926. On 9 December 2005 HMRC received a letter from Mr Ahmad stating that A-Z had started to wholesale and export mobile telephones and, therefore, the quarterly VAT return for 11/05 was a repayment claim. The letter again requested a change to monthly VAT returns.

927. The figures declared on the VAT return for period 11/05 showed a marked increase in A-Z's activity:

10                      Outputs: £2,295,081  
                            Output tax: £355,526.74  
                            Inputs: £2,284,774  
                            Input tax £399,234.79  
                            Net Tax: £43,708.05 due to A-Z

15 928. HMRC wrote to A-Z on 21 December 2005 requesting all documentation to support the 11/05 repayment claim. This was followed by an arranged visit by HMRC to A-Z's premises on 9 January 2006. In the course of this visit Mr Ahmad stated that A-Z commenced wholesale of mobile telephones in September 2005. All customers and suppliers, he said, had been researched on the IPT website. He said that one  
20 export deal to Q Tech in Dubai had already taken place. HMRC uplifted records from A-Z which revealed that, in fact, in total six wholesale deals had taken place.

929. On 31 January 2006, the HMRC officer dealing with A-Z received information from within HMRC that A-Z had commenced acquiring goods from Denmark. In response, HMRC visited A-Z and served a Regulation 25 letter shortening A-Z's  
25 VAT period. In the course of this visit Mr Ahmad stated that he had undertaken 5-6 deals and that he was no longer retailing mobile telephones and was selling the shop.

930. The foreshortened Regulation 25 return was collected by HMRC on 2 February 2006. The figures for the shortened VAT period from 1 December 2005 to 31 January 2006 were:

30                      Outputs: £7,012,638  
                            Output tax: £650,943  
                            Inputs: £6,970,838  
                            Input tax: £650,700  
                            Net Tax: £242 due to HMRC

35 931. HMRC completed its verification of A-Z's return for the period 11/05 and concluded that the export deal undertaken in that period had traced back to a defaulting trader with a tax loss of £44,966.25. A-Z was informed of this by letter from HMRC.

932. A-Z's VAT return for the period 02/06 was received by HMRC on 13 March 2006. The figures on that return were as follows:

Outputs: £9,421,603

Output tax £1,045,435.13

5 Inputs: £9,368,057

Input tax: £1,070,214.25

Net Tax: £24,779.12 due to A-Z

933. On 28 June 2006 HMRC visited A-Z and uplifted copies of deal paperwork for April and May 2006. There were gaps in the paperwork which HMRC requested should be supplied. This was collected on 7 July 2006. HMRC conducted further visits and additional paperwork was uplifted between 29 June 2006 and 31 October 2007.

934. The papers showed that A-Z in the period 05/06 declared 148 acquisition deals, 116 broker deals and 73 buffer deals. In the period 08/06 A-Z declared 56 acquisition deals, 52 broker deals and 14 buffer deals.

935. The net value of the acquisition deals was £49.6 million and the net value of the broker deals was £49.9 million.

936. In the period 05/06 (A-Z's VAT period corresponding to Atec's deals 2-3) A-Z undertook 116 broker deals. All of these broker deals were traced back to fraudulent tax losses arising in the following companies:

- (1) Phone City
- (2) Taxable Person Purporting to be (TPPTB) Grange Solutions
- (3) TPPTB Eutex
- (4) UK Communications
- 25 (5) Samson Traders
- (6) Advertising South
- (7) P & M Transport and Communications
- (8) TPPTB Okeda
- (9) Prestige 29 UK Ltd; and
- 30 (10) Vision Soft.

937. In the period 08/06 (A-Z's VAT period corresponding to Atec's deal 38) A-Z undertook 56 broker deals. All of these traced back to fraudulent tax losses with the following traders:

- (1) TPPTB Grange Solutions
- 35 (2) Worldwide Wholesalers

- (3) Phone City
- (4) GA Couriers

938. We have already discussed the fraudulent nature of the default of these defaulting traders.

5 939. We have examined samples of the documentation evidencing the numerous transactions referred to above (broker and acquisition deals). The documentation included, for example, purchase orders, invoices, release and allocation notes, (occasional) credit notes, CMRs and supplier declarations. We are satisfied that the deal chains for the broker and acquisition deals were as HMRC described and that the  
10 deal chains traced back to fraudulent defaulters.

940. In June 2006, A-Z undertook 14 buffer deals. All those deals were traced back to tax losses.

941. The evidence of Ms Wheatcroft, which we accept, was that A-Z organised its affairs in such a way that the value of the goods it acquired from the EU for sale in the  
15 UK was balanced by the value of the goods it bought in the UK for sale to the EU. A-Z was, therefore, deliberately offsetting i.e. contra-trading. The position can be illustrated by the following table taken from Ms Wheatcroft's evidence:

<b>Period</b>	<b>Output tax</b>	<b>Input tax</b>	<b>Net tax</b>
05/06	£32,065,332.13	£32,006,562.55	£58,669.58 due to HMRC
08/06	£11,119,595.16	£11,095,436.10	£24,159.06 due to HMRC

942. If the EU acquisitions and related UK taxable onwards supplies were not made by A-Z, A-Z would have been in a VAT repayment position in the region of over £32  
20 million in the period 05/06 and £11 million in period 08/06. As Ms Wheatcroft observed, these repayments would doubtless have been subject to extended verification by HMRC.

943. Ms Wheatcroft's evidence drew attention to various specific areas of evidence which indicated that A-Z was knowingly contra-trading. We accept Ms Wheatcroft's  
25 evidence.

944. First, A-Z's turnover did not resemble that of an ordinary small business. The £315 million of sales in 05/06 and £110 million sales in 08/06 represented a commercially incredible increase in A-Z's turnover. There was no evidence of any advertising or marketing campaign to explain this sudden and dramatic increase in  
30 turnover.

945. Secondly, A-Z achieved a lower mark-up in the buffer deals than in the acquisition and broker deals. The mark-ups in the buffer deals (0.12 – 0.27% of the

value of the goods) were very small and, in our view, gave rise to questions as their commercial viability.

5 946. Thirdly, a larger mark-up was, therefore, applied by A-Z when it acted as the broker or acquirer of the goods. There was no obvious reason why A-Z's mark-up should be so much higher in the acquirer deals than that of the buffer deals, albeit that in the broker deals A-Z would have to pay the cost of transport.

10 947. Fourthly, in relation to insurance, A-Z provided no evidence that any of the goods were insured whilst it had title to them. At one stage, Mr Ahmad indicated that freight forwarders insured the goods, but provided no evidence to support this assertion.

948. Fifthly, A-Z's deals were all back-to back. A-Z made all of its purchases and sales on the same day and was always able to match the exact quantities which its purchasers required and the supplier could supply on that same day.

15 949. Sixthly, it appears that A-Z's only stock control mechanism was the use of allocation notes, notwithstanding the fact that the total value of goods bought and sold by A-Z between March and August 2006 was over £430 million.

950. Seventhly, notwithstanding the scale of its trading, A-Z never made any losses on its deals.

20 951. Eighthly, an analysis of A-Z's of A-Z's transaction chains showed that in periods 05/06 and 08/06 certain EC companies featured as both a supplier to an a customer of A-Z for the same types of goods. In some cases, A-Z sold particular goods to an EC customer only to be supplied with the same type of goods by that EC customer.

952. Ninthly, all the participants in the deal chains had accounts at FCIB.

25 953. Tenthly, no inspection reports were provided for goods sold to A-Z's EC customers in the period 08/06.

30 954. Finally, on 2 October 2009, the Secretary of State for Business, Enterprise and Regulatory Reform accepted an undertaking from Mr Ahmad that he would not act as a company director for 12 years after 23 October 2009. The schedule of unfitness to the disqualification undertaking stated that Mr Ahmad caused A-Z to engage in a method of trade that put HMRC at risk of being subject to MTIC fraud and that, if he did not know, he was reckless or grossly negligent as to whether A-Z was concerned in such fraud.

35 955. In our view, A-Z was plainly a fraudulent contra-trader. The volume of A-Z's trading in a short period of time was commercially implausible. All of A-Z's broker transactions (with one possible exception) were traced back to fraudulent tax losses. The evidence showed plainly that A-Z was arranging its transactions in the 05/06 and 08/06 periods with a view to offsetting input tax on its broker deals against output tax on its acquisition deals. There was no evidence of A-Z insuring its goods

notwithstanding their high value. In periods 05/06 and 08/06 certain EC companies featured as both a supplier to and a customer of A-Z for the same types of goods. Mr Ahmad was disqualified as a company director. Indeed, there seemed to us to be no sensible explanation for the facts presented in the evidence before us other than that A-Z was a fraudulent contra-trader.

#### *Conclusion on fraudulent tax loss*

956. For the reasons given above, we have concluded we have concluded that there was a fraudulent tax loss in each of the non-contra-trading transactions under appeal. In addition, we have concluded that the three alleged contra-traders, Jag Tec, Wetherby and A-Z were, indeed, fraudulent contra-traders.

#### **Part 2: Connection to fraud**

957. We set out in Part 2 of this Appendix our findings and our conclusions on whether Atec's 52 purchases were connected to the fraudulent evasion of VAT.

958. In its closing submissions, HMRC examined Atec Appendix 1, made various corrections to it, and submitted that, once it was accepted that HMRC did not need to prove connection three times, in relation to a number of deals, Atec Appendix 1 amounted to a concession that a majority of the deal chains were as alleged in HMRC Appendix 1. In substance, we consider that that submission is well-founded. In relation to deals 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 27, 30, 31, 38, 39 and 40, Atec Appendix 1 accepted that there was an invoice chain leading from an entity which we have found to be either a fraudulent defaulting trader or a fraudulent contra-trader. On this basis, we consider that HMRC have, in relation to these deals, discharged the burden of proof by demonstrating through a chain of invoices that Atec's transactions were connected to the fraudulent evasion of VAT. Nonetheless, we shall analyse each deal in order to confirm that conclusion.

959. In relation to many of these 22 deals there was additional evidence (e.g. paperwork evidencing the movement of stock or payments) which supported the invoice chain. We shall examine each of the 52 appealed deals in turn, setting out in the following paragraphs the alleged deal chains in HMRC Appendix 1 together with our conclusion on the evidence whether, on the balance of probabilities, Atec's deals were connected with the fraudulent evasion of VAT. In our analysis, the deal chain stretching from the defaulting trader (or contra-trader) is set out in **bold** headings because this is the crucial chain required to establish "connection". However, it was evident that the chains stretched beyond the defaulting trader/contra-trader, at one end, and beyond Atec's customer, at the other. We have examined the evidence in relation to these additional links in the chain, which were set out in HMRC Appendix 1, and have set these additional links out in *italicised* headings. Moreover, we have not gone into the same level of detail in this already very long decision as regards these additional links as we have with the links in the deal chain required to prove "connection" but have, instead, sought to deal with these links more compendiously.

960. At the beginning of each description we outline the quantity and type of the goods which were the subject matter of the alleged deal chain. References in each description to the same type and quantity of goods are, therefore, a reference to that description. Occasionally, the spelling of the description may be slightly different or the description may be abbreviated. We have taken these slight variations into account when we conclude that the same type and quantity of goods are involved in that link in the transaction chain. Also, references to “corresponding” documents (e.g. purchase orders, pro forma invoices, supplier declarations etc.) are references to the terms of those documents identifying the same type and quantity of goods. References to “Atec’s invoice” are references to the invoice by which Atec exported the goods to its customer.

961. In relation to each deal we record our conclusion that the relevant deal was connected to the fraudulent evasion of VAT either by the relevant defaulting trader or by the fraudulent contra-trader. References in this context to a “deal” refer to Atec’s purchase in that deal chain.

#### *Deal 1 (1411)*

962. Deal 1 involved the supply of 3,995 units of Nokia 9300i mobile telephones with Central European Software. Atec’s invoice was dated 21 April 2006.

963. The alleged deal chain was as follows:

(1) *International Mobile SRL (Italy) to Sweet Storm (Portugal)* – release note dated 20 April 2006 from International Mobile to Hawk Precision Logistics (“Hawk”) authorising the release of 10,400 units of Nokia 9300i mobile telephones to Sweet Storm and CMRs in relation to electrical goods sent from International Mobile to Hawk.

(2) *Sweet Storm (Portugal) to Apollo (UK) (defaulting trader)* – release note dated 20 April 2006 from Sweet Storm to Hawk releasing the same type and quantity of goods to Apollo.

(3) **Apollo (defaulting trader) to Gara Technologies Ltd (UK)** – there was a purchase order from Gara Technologies for the same type and quantity of goods dated 20 April 2006, supplier declaration form from Apollo dated 20 April 2006 and sales invoice from Apollo (55410) to Gara Technologies dated 20 April 2006 for the same type and quantity of goods.

(4) **Gara Technologies Ltd to Reems Enterprises Ltd (UK)** – purchase order from Reems to Gara in respect of the same type and quantity of goods dated 20 April 2006, release note from Gara to Hawk authorising release of the same type and quantity of goods to Reems dated 20 April 2006, sales invoice from Gara to Reems in respect of the same type and quantity of goods dated 20 April 2006. In addition, there was a payment instruction from Gara to FCIB to pay £1,625,365.75 to Sweet Storm (the supplier to Apollo). The invoice amount due from Gara to Apollo (net of VAT) was £1,628,362.



5 (5) **Reems Enterprises Ltd to Crescent UK Ltd (UK)** – invoice from Reems to Crescent dated 20 April 2006 in respect of the same type and quantity of goods, similar pro forma invoice of the same date, FCIB records of payment by Crescent to Reims in respect of the above-mentioned invoice dated 21 April 2006, purchase order from Crescent to Reems respect of the same quantity and type of goods, supplier declaration from Reems to Crescent dated 20 April 2006 again in respect of the same quantity and type of goods and a fax from Crescent to Hawk requesting confirmation of the receipt of same quantity and type of goods from Reems.

10 (6) **Crescent UK Ltd to London Mobile Communication Ltd (UK)** – purchase order from LMC to Crescent dated 20 April 2006 in respect of the same type and quantity of goods, invoice from Crescent to LMC dated 20 April 2006 in respect of the same type and quantity of mobile telephones, pro forma invoice from Crescent to LMC in the same terms, FCIB record of payment by LMC to Crescent dated 21 April 2006 in respect of Crescent’s invoice to LMC and release instructions from Crescent to Hawk requesting that Hawk ship the above-mentioned goods to LMC.

20 (7) **London Mobile Communication Ltd to Atec** – invoice from LMC to Atec dated 20 April 2006 in respect of the same type and quantity of goods, Atec’s purchase order at the same date addressed to LMC in respect of the same goods and release note dated 20 April 2006 from LMC to Hawk requesting release of the same goods to Atec.

25 (8) *Atec to H&H Import Export (France)* – Atec’s invoice to H & H Import Export was dated 24 April 2006 in respect of the same type and quantity of goods.

30 964. In addition, HMRC produced a document entitled “Warehouse File” produced by Hawk dated 20 April 2006 which showed the entire supply chain in relation to Deal 1 as follows: “3995 x 9300i Sweetstorm [sic]/Apollo/ Gara/ Reems/Crescent/London/Atec – PAR.” We concluded that the reference to “PAR” was a reference to Paris.

965. Our conclusion is that the above evidence clearly establishes that Atec’s deal 1 was connected to the fraudulent evasion of VAT by Apollo.

#### *Deal 2 (1412)*

35 966. Deal 2 involved the supply of 3,250 units of Sony W900i mobile telephones. Atec’s invoice was dated 24 April 2006.

967. The alleged chain was as follows:

40 (1) *FAF International (Italy) to A-Z (UK) (contra-trader)* – purchase order from A-Z to FAF dated 18 April 2006 and invoice from FAF to A-Z dated 19 April 2006, both of which related to the quantity and type of goods referred to above. In addition there was a record of an FCIB intra-account transfer the £968,500 from A-Z to FAF, which was the amount due on FAF’s invoice. There

was also a stock allocation request from A-Z dated 20 April 2006 stating that it had “had allocated and released to us from FAF” the goods referred to in the FAF invoice.

5 (2) **A-Z (contra-trader) to Stardex** – there was an invoice for the same quantity and type of goods from A-Z to Stardex dated 20 April 2006, a fax requesting a supplier declaration in relation to the same type and quantity goods from Stardex to A-Z dated 21 April 2006 and an allocation and release request from A-Z to a freight forwarder requesting allocation and release of the same goods to Stardex.

10 (3) **Stardex to Atec** – the existence of this supply was not in dispute. In any event, there was an invoice from Stardex to Atec in respect of the same type and quantity of goods dated 20 April 2006 and a corresponding purchase order from Atec to Stardex dated 20 April 2006. Finally, there was a release instruction from Stardex to its freight forwarder in respect of the same type and quantity of  
15 goods to Atec dated 20 April 2006.

(4) *Atec to Phone Connected (France)* – Atec exported the goods to Phone Connected on an invoice dated 24 April 2006 in respect of the same type and quantity of goods.

968. Our conclusion on the above evidence was that Atec’s deal 2 was connected to  
20 the fraudulent contra-trading of A-Z.

#### *Deal 3 (1413)*

969. This deal involved the supply of 2,650 units Nokia N 8800 mobile telephones. Atec’s invoice was dated 24 April 2006.

970. The alleged deal chain was as follows:

25 (1) *FAF International (Italy) to A-Z (UK) (contra-trader)* – FAF sold the same type and quantity of goods to A-Z on an invoice dated 19 April 2006.

(2) **A-Z (contra-trader) to Stardex** – there was an invoice dated 20 April 2006 from A-Z to Stardex in respect of the above type and quantity of goods, a record of an FCIB intra-account transfer from Stardex to A-Z of £1,176,997.50,  
30 which was the invoice amount on A-Z’s invoice, a fax dated 21 April 2006 from Stardex to A-Z requesting a supplier declaration relating to the same type and quantity of goods and an allocation request dated 20 April 2006 from A-Z to its freight forwarder requesting release of the same quantity and type of goods to Stardex.

35 (3) **Stardex to Atec** – the existence of the supply was not in dispute. In any event, there was an invoice dated 20 April 2006 from Stardex to Atec in respect of the same type and quantity of goods and a corresponding purchase order of the same date from Atec to Stardex.

40 (4) *Atec to Phone Connected* – Atec exported the same type and quantity of goods to Phone Connected on an invoice dated 24 April 2006.

971. We have concluded, on the basis of the above evidence, that Atec's deal 3 was connected to the fraudulent evasion of VAT by the fraudulent contra-trader A-Z.

*Deal 4 (1414)*

5 972. This deal involved the supply of 1,500 units of Nokia N 70 (Central European software) mobile telephones. Atec's invoice was dated 25 April 2006.

973. The alleged deal chain was as follows:

(1) *Mayfair Executive (UK) to Sunico A/S (Denmark)* – Mayfair Executive sold the same type and quantity of goods to Sunico on an invoice dated 19 April 2006.

10 (2) *Sunico A/S (Denmark) to Orange & Green Traders (Spain)* – Sunico sold the same type and quantity of goods to Orange & Green on an invoice dated 27 April 2006.

15 (3) *Orange & Green Traders (Spain) to Woven Art (defaulting trader)* – Orange & Green sold the same type and quantity of goods as evidenced by a warehouse file and an allocation and release note dated 21 April 2006.

(4) **Woven Art (defaulting trader) to Wild Tower** – there was a stock release authorisation dated 21 April 2006 from Woven Art to Hawk requesting release of, *inter alia*, the same type and quantity of goods to Wild Tower and a copy of a freight forwarder's warehouse file dated 21 April 2005 showing the entire deal chain (even though Atec did not invoice its transaction until 25 April 2006). The warehouse file dated 21 April 2005 stated as follows: "1500x N70 Orange & Green/Woven Art/Wild Tower/Jos/New Order/Stardex/Atec CPH". We understood "CPH" to be a reference to Copenhagen – Atec exported these goods to Sunico in Denmark. It will be seen that the freight forwarder knew about some links in this chain before invoices were issued.

25 (5) **Wild Tower to Jos UK** – there was an invoice from Wild Tower to Jos dated 21 April 2006 for the same type and quantity of goods, a corresponding pro forma invoice, a release instruction from Wild Tower to Hawks in favour of Jos and a supplier declaration sent from Jos to Wild Tower in respect of the same type and quantity of goods dated 21 April 2006.

30 (6) **Jos to New Order Trading** – we were provided with an invoice (and a corresponding pro forma invoice) dated 21 April 2006 from Jos to New Order for the same type and quantity of goods, a release note dated 26 April 2006 from New Order to Stardex which referred to the same type and quantity of goods having been released to New Order by Jos, a "ship on hold" notice dated 35 21 April 2006 indicating that the same type and quantity of stock had been allocated to New Order by its supplier Jos, a further allocation notice dated 21 April 2006 from New Order to Hawk informing it that Jos had allocated the same type and quantity of goods to New Order and a release instruction dated 40 25 April 2006 from Jos to Hawk instructing it to release the same type and quantity of goods to New Order (and similar "ship & hold" and allocation documents dated respectively 24 April 2006 and 21 April 2006).

5 (7) **New Order to Stardex** – we were provided with an invoice dated 24 April 2006 from New Order to Stardex in respect of the same type and quantity of goods, a release note dated 26 April 2006 from New Order to Hawk authorising the release of the same type and quantity of goods to Stardex, a similar “ship on hold” instruction from New Order to Hawk instructing Hawk to ship on hold the same type and quantity of goods to Stardex, a similar allocation note dated 21 April 2006 from New Order to Hawk noting that the same type and quantity of goods had been allocated to Stardex by New Order.

10 (8) **Stardex to Atec** – we did not understand this transaction to be in dispute, but we were provided with an invoice dated 20 April 2006 for the same type and quantity of goods from Stardex to Atec.

(9) *Atec to Sunico (Denmark)* – Atec exported the same type and quantity goods to Sunico on an invoice dated 25 April 2006.

15 974. We noted that HMRC treated deal 4 as one in which Atec had accepted an invoice chain from the defaulter (Woven Art) to Atec. Even though Atec Appendix 1 referred to an invoice from Woven Art it seemed to us that this must be a mistake, because the reference was to an invoice from Apollo to Gara. Nonetheless, we consider that, on the balance of probabilities, Atec’s deal 4 was connected to the fraudulent evasion of VAT by the defaulting trader Woven Art on the basis of the  
20 above evidence.

#### *Deal 5 (1415)*

975. Deal 5 involved the sale of 5,780 units of Nokia 9300i’s. Atec’s invoice was dated 21 April 2006.

976. The alleged deal chain was as follows:

25 (1) *3G Trade (Lithuania) to International Mobile (Italy)* – this transaction was evidenced by a CMR dated 23 April 2006. It was also evidenced by an allocation and release file from the freight forwarder Hawk showing 3G Trade as the shipper for International Mobile. The file showed the chain from Sweet Storm through to Atec and indicated that Atec would sell the goods to “Paris”.

30 (2) *International Mobile (Italy) to Sweet Storm (Portugal)* – as above.

(3) *Sweet Storm (Portugal) to Apollo (defaulting trader)* – this transaction was evidenced by a release note from Sweet Storm in favour of Apollo in respect of the same type and quantity of goods dated 24 April 2006.

35 (4) **Apollo (defaulting trader) to Gara** – there was an invoice (55508) dated 24 April 2006 from Apollo to Gara in respect of the same type and quantity of goods together with a corresponding purchase order dated 24 April 2006 from Gara to Apollo, again in respect of the same type and quantity of goods and a stock release instruction dated 24 April 2006 from Apollo to Hawk in respect of the same type and quantity of goods authorising release of the stock to Gara.

40 (5) **Gara to Easy MSI** – we were provided with an invoice dated 24 April 2006 from Gara to Easy MSI in respect of the same type and quantity of goods,

5 a corresponding purchase order dated 21 April 2006 from Easy MSI to Gara and a release instruction dated 24 April 2006 from Gara to Easy MSI in respect of the same type and quantity of goods. Gara also instructed Easy MSI to pay a company called Sweet Storm £2,357,373 through Sweet Storm's FCIB bank account and only £4,254.75 to Gara itself. The payment instruction was in respect of Gara's invoice.

10 (6) **Easy MSI to Fair General Traders** – we were provided with an invoice dated 24 April 2006 from Easy MSI to Fair General Traders for the same type and quantity of goods, release and allocation instructions dated 24 April 2006 from Easy MSI to Hawk requesting release of the same type and quantity of goods to Fair General Traders and a purchase order from Fair Gen Traders dated 24 April 2006 in respect of the same type and quantity of goods addressed to Easy MSI.

15 (7) **Fair General Traders to London Mobile Communications** – we were provided with an invoice dated 24 April 2006 from Fair General Traders to LMC in respect of the same type and quantity of goods, a corresponding purchase order dated 24 April 2006 from LMC, a release and allocation instruction dated 24 April 2006 from Fair General Traders in respect of the same type and quantity of goods requesting release of the goods to LMC.

20 (8) **London Mobile Communications to Atec** – we understood that this transaction was not in dispute. In any event, we were provided with an invoice 24 April 2006 from LMC to Atec in respect of same type and quantity of goods.

(9) *Atec to H & H Import Export (France)* – Atec exported the goods to H & H Import Export on an invoice dated 21 April 2006.

25 977. Based on the above evidence, we have come to the conclusion that Atec's deal 5 was connected to the fraudulent evasion of VAT by the defaulting trader Apollo.

#### *Deal 6 (1416)*

978. Deal 6 involved the supply of 5,300 units of Motorola V3X (Central European Specification) mobile telephones. Atec's invoice was dated 25 April 2006.

30 979. The alleged deal chain was as follows:

35 (1) *3G Trade (Lithuania) to International Mobile (Italy)* – this transaction was evidenced by an allocation and release file compiled by Hawk, the freight forwarder, showing the supply chain with 3G Trade as the shipper for International Mobile in respect of 7,000 units of the same type of goods. The file showed the deal chain in respect of the same type and quantity (5,300 units) of goods from Sweet Storm through to Atec and indicated that Atec would export the goods to "Paris".

40 (2) *International Mobile (Italy) to Sweet Storm (Portugal)* – see above as regards the Hawk release file. In addition, there was a CMR dated 24 April 2006 indicating the transfer of 30 pallets of "electrical equipments" from 3G

Trade to International Mobile, with delivery to Hawk (the freight forwarder) in the UK.

5 (3) *Sweet Storm (Portugal) to Apollo (defaulting trader)* – see above as regards the Hawk release file. There was also a release note from Sweet Storm dated 24 April 2006 authorising the release of the same type and quantity of goods to Apollo – the release note was addressed by Sweet Storm to Hawk.

10 (4) **Apollo (defaulting trader) to Gara** – there was an invoice (55509) from Apollo to Gara dated 24 April 2006 in respect of the same type and quantity of goods, a corresponding purchase order dated 24 April 2006 from Gara to Apollo, a supplier declaration form completed by Apollo for the benefit of Gara dated 24 April 2006 and a form completed by Hawk setting out the full deal chain: “5300 V3X Sweet Storm/Apollo/Gara/Easy MSI/Fair General/London Mob/Atec Paris”.

15 (5) **Gara to Easy MSI** – there was an invoice dated 24 April 2006 from Gara to Easy MSI in respect of the same type and quantity of goods for an amount of £1,372,700 plus VAT of £240,222.50 (i.e. a total amount of £1,612,922.50), a corresponding purchase order from Easy MSI dated 24 April 2006 and allocation/release instructions dated 24 April 2006 from Gara to Hawk requesting release of the same type and quantity of stock to Easy MSI. In addition, we were provided with payment instructions from Gara to FCIB instructing FCIB to pay £1,366,605 to Sweet Storm. The (net of VAT) value of Gara’s invoice to Easy MSI was £1,372,700. The invoice reference on this payment instruction was “600269” which was the same invoice reference as the invoice from Gara to Easy MSI. Evidently, therefore, Gara was instructing Easy MSI to make a third party payment to its supplier’s supplier i.e. Sweet Storm, a most unusual and, in our view, suspicious commercial arrangement.

25 (6) **Easy MSI to Fair General Traders** – we were provided with an invoice dated 24 April 2006 from Easy MSI to Fair General Traders in respect of the same type and quantity of goods and a corresponding purchase order from Fair General Traders dated 24 April 2006.

30 (7) **Fair General Traders to London Mobile Communications** – we were provided with an invoice dated 24 April 2006 from Fair General Traders to LMC in respect of the same type and quantity of goods, a corresponding purchase order from LMC dated 24 April 2006 and a release and allocation instruction dated 24 April 2006 from Fair General Traders instructing Hawk to release goods of the same type and quantity to LMC. In addition, we were provided with a document from Hawk which set out the entire deal chain as follows “5300 x V3 X Sweet storm/Apollo/Gara/EasyMSI/Fair General/London Mob/Atec Paris”.

35 (8) **London Mobile Communications to Atec** – we understood that this transaction was not in dispute. In any event, we were supplied with an invoice from LMC to Atec dated 24 April 2006 in respect of the same type and quantity of goods.

(9) *Atec to H & H Import Export (France)* – Atec sold the same type and quantity of goods to H & H Import Export on an invoice dated 25 April 2006.

980. Based on the above evidence, we concluded that Atec's deal 6 was connected with the fraudulent evasion of VAT by Apollo.

5 *Deal 7 (1417)*

981. Deal 7 involved 1000 units of Nokia N 70 mobile telephones (Central European Specification). Atec's invoice was dated 26 April 2006.

982. The alleged deal chain was as follows:

10 (1) *Blue Star Telecom APS (Denmark) to Integralphone (Switzerland)* – this transaction was evidenced by a release note from Paul's Freight from Blue Star to Integralphone in respect of the same type and quantity of goods; there was also an allocation instruction from Blue Star in favour of Integralphone dated 25 April 2006 in respect of the same type and quantity of goods plus various other shipping documents.

15 (2) *Integralphone (Switzerland) to C & B Trading Ltd (defaulting trader)* – this transaction was also evidenced by a release note from Paul's Freight dated 22 April 2006 in respect of the same type and quantity of goods. There was also an undated release note from Integralphone to C & B Trading in respect of the same type and quantity of goods.

20 (3) **C & B Trading (defaulting trader) to High Beam** – there was an invoice (240406/23) from C & B Trading to High Beam dated 24 April 2006 in respect of the same type and quantity of goods, a freight release form dated 22 April 2006 from Paul's Freight Services Ltd noting its client's name as C & B trading and releasing goods of the same type and quantity to High Beam and stock release instructions dated 24 April 2006 from C & B Trading to Paul's Freight requesting that the same type and quantity of stock be released to High Beam.

30 (4) **High Beam to Danum Trading** – we were provided with an invoice dated 24 April 2006 from High Beam to Danum Trading in respect of the same type and quantity of goods together with a corresponding purchase order dated 24 April 2006 from Danum Trading. There was also a stock release instruction dated 24 April 2006 from High Beam to Paul's Freight authorising the release of the same type and quantity of stock to Danum Trading and a corresponding record of that release in the records of Paul's Freight dated 22 April 2006 (i.e. two days before the actual authorisation was sent by High Beam).

35 (5) **Danum Trading to H Communications** – we were provided with an invoice dated 24 April 2006 from Danum Trading to H Communications in respect of the same type and quantity of goods and a corresponding purchase order from H Communications of the same date. In addition, there was an undated instruction from Danum Trading to Paul's Freight requesting that the same type and quantity of goods be released to H Communications and we were also provided with a release note from Paul's Freight dated 22 April 2006 in

respect of the same type and quantity of goods recording the release of Danum Trading's goods to H Communications.

5 (6) **H Communications to The Fones Centre** – we were provided with an invoice from H Communications to The Fones Centre dated 24 April 2006 in respect of the same type and quantity of goods, a corresponding pro forma invoice of the same date and a corresponding purchase order of the same date. We were also provided with an undated allocation note addressed to Paul's Freight allocating the same type and quantity of stock to The Fones Centre. We were also provided with a copy of Paul's Freight's records dated 22 April 2006  
10 which recorded the release of H Communications' goods of the same type and quantity to The Fones Centre.

(7) **The Fones Centre to New OOrder Trading** – we were provided with an invoice from The Fones Centre to New Order dated 24 April 2006 in respect of goods of the same type and quantity together with a corresponding purchase order dated (oddly) 26 April 2006 from New Order. There was also a release document from Paul's Freight in respect of the same type and quantity of goods recording the release of The Fones Centre's goods to New Order. We were also furnished with a release confirmation from The Fones Centre, in relation to the same type and quantity of goods, to Paul's Freight authorising the release of the  
15 goods to New Order.  
20

(8) **New Order Trading to Atec** – we understood that this transaction was not in dispute. We were provided with an invoice from New Order to Atec dated 26 April 2006 in respect of the same type and quantity of goods.

25 (9) *Atec to Silus BV* – Atec sold the same type and quantity of goods to Silus BV on an invoice dated 26 April 2006.

983. On the basis of the above evidence, we concluded that Atec's deal 7 was connected to the fraudulent evasion of VAT by C & B Trading.

#### *Deal 8 (1418)*

30 984. Deal 8 involved the supply of 1,000 units of Nokia 8800 (Central European Specification) mobile telephones. Atec's invoice was dated 26 April 2006.

985. The alleged deal chain was as follows:

(1) *Blue Star APS (Denmark) to Megatek (France)* – this transaction was evidenced by a Paul's Freight release note from Blue Star to Megatek in respect of the same type and quantity of goods dated 22 April 2006.

35 (2) *Megatek to Midwest Communications (defaulting trader)* – there was a purchase order from Midwest Communications to Megatek dated 21 April 2006 in respect of the same type and quantity of goods. There were also FCIB transfers on 26 April 2006 from "Midwest Telecom Ltd" to Megatek which referred to the same type and quantity of goods.

40 (3) **Midwest Communications (defaulting trader) to Data Solutions** – there was an invoice (PB10399) dated 21 April 2006 from Midwest



Communications (“Midwest”) to Data Solutions in respect of, inter alia, the same type and quantity of goods. The invoice related to 5 separate consignments of which the third (1000 Nokia 8800 mobile telephones) was relevant to this appeal. Amongst Mr Bycroft’s exhibits, was a supplier declaration from  
5 Midwest dated 21 April 2006 in respect of the same type and quantity of goods. There were also two FCIB transfer payments from Data Solutions to Midwest on both 26 April 2006 in respect of “1k 8800”.

(4) **Data Solutions to Star Express** – there was an invoice dated 21 April 2006 from Data Solutions to Star Express in respect of the same type and  
10 quantity of goods, there was a corresponding purchase order dated 21 April 2006 from Star Express to Data Solutions, a supplier declaration by Data Solutions stated 21 April 2006 in respect of the same type and quantity of goods.

(5) **Star Express to A B International Trading** – there was an invoice from  
15 Star Express to AB International Trading dated 24 April 2006 in respect of the same type and quantity of goods and a corresponding purchase order of the same date from AB International trading to Star Express. There were release documents dated 22 April 2006 and 2 [sic] April 2006 from Paul’s Freight and Star Express respectively recording the release of the same type and quantity of  
20 goods to AB International Trading.

(6) **AB International Trading to Letting Solutions** – there was an invoice dated 24 April 2006 from AB International Trading to Letting Solutions in respect of the same type and quantity of goods, together with a corresponding pro forma invoice and a corresponding purchase order from Letting Solutions both of the same date.  
25

(7) **Letting Solutions to Stardex** – there was an invoice from Letting Solutions to Stardex dated 24 April 2006 in respect of the same type and quantity of goods. We were also provided with a release document from Paul’s Freight dated 22 April 2006 recording the release of Letting Solutions’ goods of  
30 the same type and description to Stardex. There was an “allocation and ship on hold note” from Letting Solutions to Paul’s Freight in relation to the same type and quantity of goods authorising shipment on hold to Stardex.

(8) **Stardex to Atec** – we understood this transaction was not in dispute. In any event, there was an invoice dated 24 April 2006 from Stardex to Atec in  
35 respect of the same type and quantity of goods. The invoice records that it was paid on 27 April 2006. The goods, however, were released to Atec by Stardex on 22 April 2006.

(9) *Atec to Silus BV* – Atec exported the same type and quantity of goods to Silus BV by an invoice dated 26 April 2006.

40 986. Based on the above evidence, we have concluded that Atec’s deal 8 was connected to the fraudulent evasion of VAT by Midwest Communications.

*Deal 9 (1419)*

987. Deal 9 involved 3,000 units of I-Mate Jasjar PDA Phones. Atec's invoice was dated 28 April 2006.

988. The alleged deal chain was as follows:

5 (1) *Universal Systems (Belgium) to USM IT Suppliers (defaulting trader)* – there was a purchase order from USM IT Suppliers to Universal Systems dated 28 April 2006 in respect of 6,000 units of the same type of goods. We have concluded that this quantity of units was split between deals 9 and 10.

10 (2) **USM IT Suppliers (defaulting trader) to Powerglen** – we were supplied with an invoice (PG 45) from USM IT to Powerglen dated 28 April 2006 in respect of 6,000 units of the same type of goods and a corresponding purchase order from Powerglen dated also dated 28 April 2006. USM IT gave a direction to Powerglen to pay USM IT's supplier, Universal Systems, £3,602,550 on a gross invoice amount of £3,604,799.29 and to pay only £2,115  
15 to Powerglen.

(3) **Powerglen to Reems** – we were supplied with an invoice dated 28 April 2006 from Powerglen to Reems in respect of 6,000 units of the same type of goods.

20 (4) **Reems to Crescent** – we were supplied with an invoice from Reems to Crescent dated 28 April 2006 in respect of 3,000 units of the same type of goods, a corresponding pro forma invoice of the same date from Reems, an FCIB intra-account transfer from Crescent to Reems on 4 May 2006 in respect of Reems' invoice number 130377 (the reference on Reems' invoice referred to above), a supplier declaration completed by Reems on 28 April 2006 and a  
25 purchase order from Crescent to Reems dated 28 April 2006 in respect of the same type and quantity of goods (i.e. 3,000 units).

30 (5) **Crescent to Electron Global** – we were provided with an invoice from Crescent to Electron Global dated 28 April 2006 in respect of 3,000 units of the same goods. The invoice indicated that it was paid on 8 June 2006 and, indeed, an FCIB intra-account transfer of that date was made partly in respect of that invoice (710). There was a corresponding pro forma invoice from Crescent dated 28 April 2006 and a supplier declaration completed by Crescent on 28 April 2006. There was also a corresponding purchase order from Electron Global to Crescent for the same type and quantity (3,000 units) of goods.

35 (6) **Electron Global to Zain** – we were provided with an invoice from Electron Global to Zain dated 28 April 2006 in respect of the same quantity (3,000 units) and type of goods.

40 (7) **Zain to Wireless 5** – we were provided with an invoice from Zain to Wireless 5 dated 28 April 2006 in respect of the same quantity (3,000 units) and type of goods. We were also given a corresponding pro forma invoice from Zain of the same date.

(8) **Wireless 5 to Atec** – we understood that this transaction was not in dispute and, in any event, we were shown an invoice dated 28 April 2006 from Wireless 5 to Atec in respect of the same quantity and type of goods.

5 (9) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 28 April 2006.

(10) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

989. Based on the above evidence, we have concluded that Atec's deal 9 was connected to the fraudulent evasion of VAT by USM IT Suppliers.

10 *Deal 10 (1420)*

990. Deal 10 involved the supply of 3,000 units of I-Mate Jasjar PDA Phones. Atec's invoice was dated 28 April 2006. Essentially, this was exactly the same alleged supply chain as Deal 9 with 6,000 units being supplied by USM to Powerglen and by Powerglen to Reems. Reems then split the consignment and supplied 3,000 units under deal 9 and 3,000 under deal 10.

991. The alleged deal chain was as follows:

(1) *Universal Systems (Belgium) to USM IT (defaulting trader)* – as per deal 9

20 (2) **USM IT Suppliers (defaulting trader) to Powerglen** – as per deal 9. There was a similar third-party payment instruction from USM IT for Powerglen to pay Universal Systems.

(3) **Powerglen to Reems** – as per deal 9

25 (4) **Reems to Crescent** – we were provided with an invoice from Reems to Crescent dated 28 April 2006 in respect of the same quantity (3,000 units) and type of goods, an FCIB transfer from Crescent to Reems dated 2 May 2006 in respect of that invoice and a supplier declaration dated 28 April 2006 completed by Reems in respect of the same type and quantity of goods.

30 (5) **Crescent to Electron Global** – we were provided with an invoice from Crescent to Electron Global dated 28 April 2006 in respect of the same quantity (3,000 units), a corresponding pro forma invoice and FCIB transfers from Electron Global to Crescent in respect of that invoice on 2 and 3 May 2006.

(6) **Electron Global to Zain** – we were shown an invoice from Electron Global to Zain dated 28 April 2006 in respect of the same type and quantity of goods.

35 (7) **Zain to Wireless 5** – we were shown an invoice from Zain to Wireless 5 dated 28 April 2006 in respect of the same quantity and type of goods and a corresponding pro forma invoice and a purchase order from Wireless 5, all of even date.

(8) **Wireless 5 to Atec** – this transaction was not in dispute and, in any event, we were shown an invoice from Wireless 5 to Atec dated 28 April 2006 in respect of the same entity and type of goods.

5 (9) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 28 April 2006.

(10) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

992. Based on the above evidence, we conclude that Atec's deal 10 was connected to the fraudulent evasion of VAT by USM IT.

10 *Deal 11 (1421)*

993. Deal 11 involved the supply of 3500 units of I-Mate Jamin PDA telephones. Atec's invoice was dated 28 April 2006.

994. The alleged deal chain was as follows:

15 (1) *Universal Systems (Belgium) to USM IT (defaulting trader)* – this transaction was evidenced by a purchase order from USM IT to Universal Systems dated 28 April 2006 in respect of 7,500 units of the same type of goods. We concluded that the 7,000 units were split between deal 11 and deal 12.

20 (2) **USM IT (defaulting trader) to Powerglen** – we were supplied with an invoice (PG 46) from USM IT to Powerglen dated 28 April 2006 in respect of 7,500 units of the same type of goods and a corresponding pro forma invoice of the same date. We were also supplied with a letter from USM IT to Powerglen instructing Powerglen to pay USM IT's supplier (Universal Systems) £3,056,175 and to pay USM IT only £1,762.50. This would have left USM IT  
25 unable to pay its VAT which, on the invoice to Powerglen, amounted to £455,435.50.

(3) **Powerglen to Reems** – we were provided with an invoice from Powerglen to Reems stated 28 April 2006 for the supply of 7,500 units of the same goods

30 (4) **Reems to Crescent** – we were supplied with an invoice from Reems to Crescent dated 28 April 2006. The quantity on this invoice was 3,500 units of the same type.

(5) **Crescent to Electron Global** – we were provided with an invoice from Crescent to Electron Global dated 28 April 2006 in respect of 3,500 units of the  
35 same type of goods.

(6) **Electron Global to Zain** – we were supplied with an invoice from Electron Global to Zain dated 28 April 2006 in respect of 3,500 units of the same type of goods.

40 (7) **Zain to Wireless 5** – we were provided with an invoice dated 28 April 2006 from Saying to Wireless 5 in respect of 3,500 units of the same type of

goods. In addition, there was a corresponding purchase order from Wireless 5 dated 28 April 2006.

(8) **Wireless 5 to Atec** – this transaction was not in dispute. In any event, we were provided with an invoice dated 28 April 2006 from Wireless 5 to Atec in respect of 3,500 units of the same type of goods.

(9) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 28 April 2006.

(10) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

995. Based on the above evidence, we have concluded that Atec's deal 11 was connected to the fraudulent evasion of VAT by USM IT Suppliers.

#### *Deal 12 (1422)*

996. Deal 12, like deal 11, involved the supply of I-Mate Jamin PDA telephones. Atec's invoice was dated 28 February 2006, although this appeared to be a typographical error for 28 April 2006. In this case, the alleged deal chain involved 4,000 units of the same type of goods. Essentially, this was exactly the same alleged supply chain as deal 11, featuring the same participants. USM IT supplied Powerglen with 7,500 units of the same type of goods, Powerglen then supplied Reems with 7,500 units of the same type of goods and then Reems split the goods and supplied 3,500 under deal 11 and 4,000 under deal 12. Atec's invoice was dated 28 April 2006.

997. The alleged deal chain was as follows:

(1) Universal Systems (Belgium) to USM IT Suppliers (defaulting trader) – see above deal 11.

(2) **USM IT (defaulting trader) to Powerglen** – see above deal 11. There was a similar third-party payment instruction whereby USM IT instructed Powerglen to pay Universal Systems.

(3) **Powerglen to Reems** – see above deal 11

(4) **Reems to Crescent** – we were provided with an invoice dated 28 April 2006 from Reems to Crescent in respect of 4,000 units of the same type of goods. In addition, there were corresponding pro forma invoices, purchase orders from and an FCIB transfer from Crescent to Reems dated 4 May 2006 in respect of the invoice.

(5) **Crescent to Electron Global** – we were provided with an invoice from Crescent to Electron Global dated 28 April 2006 in respect of 4,000 units of the same type of goods. The invoice was marked as being "Paid" on 13 May 2006. There was a corresponding pro forma invoice and an FCIB transfer in respect of that invoice on 3 May 2006.

(6) **Electron Global to Zain** – we were provided with an invoice dated 28 April 2006 from Electron Global to Zain for 4,000 units of the same type of goods. In addition, there was a supplier declaration by Electron Global dated 28

April 2006 in respect of the same type and quantity of goods. There is a corresponding purchase order from Zain to Electron Global dated 28 April 2006 and an FCIB transfer payment from Zain to Electron Global in respect of the invoice on 3 May 2006 (part payment) and 22 May 2006.

5 (7) **Zain to Wireless 5** – we were shown an invoice from Zain to Wireless 5 dated 28 April 2006 in respect of the same type and quantity (i.e. 4000 units) of goods. There is a corresponding purchase order from Wireless 5 to Zain.

(8) **Wireless 5 to Atec** – this transaction was not in dispute. We were, however, provided with an invoice dated 28 April 2006 from Wireless 5 to Atec in respect  
10 of the same type and quantity (4000 units) of goods.

(9) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 28 April 2006.

(10) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

15 998. Based on the above evidence, we conclude that Atec's deal 12 was connected with the fraudulent evasion of VAT by USM IT.

#### *Deal 13 (1424)*

999. The goods involved in deal 13 were 4,000 units of Tom Tom 910 satnavs. Atec's invoice was dated 16 May 2006.

20 1000. The alleged deal chain was as follows:

(1) *Protophonia (Portugal) to Wetherby (contra-trader)* – the evidence for this transaction was an invoice from Protophonia to Wetherby dated 16 May in respect of 6,000 units of goods. The goods were described on Protophonia's invoice as Tom Tom Go 900 rather than Tom Tom 910. However, Wetherby's  
25 purchase order dated 16 May 2006 in respect of the same quantity did refer to the Tom Tom 910 model. We conclude that the description on Protophonia's invoice was an error.

(2) **Wetherby (contra-trader) to Team Mobile** – we were provided with an invoice from Wetherby to Team Mobile in respect of 6,000 units of the same  
30 type of goods. There was a release and allocation instruction from Wetherby in favour of Team Mobile in respect of the 6,000 units of the same type of goods dated 16 May 2006 and a corresponding delivery note dated 16 May 2006. We were also supplied with allocation and release notes dated 16 May 2006 which indicated that the consignment of 6,000 units was split into two separate  
35 consignments of 2,000 and 4,000 units.

(3) **Team Mobile to Wireless 5** – we were provided with an invoice dated 16 May 2006 from Team Mobile to Wireless 5 in respect of 4,000 units of the same type of goods. There was a corresponding purchase order from Wireless 5 to Team Mobile of the same date.

(4) **Wireless 5 to Atec** – this transaction was not in dispute, but we were provided with an invoice from Wireless 5 to Atec dated 16 May 2006 in respect of 4,000 units of the same type of goods.

5 (5) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 16 May 2006.

(6) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1001. On the basis of the above evidence, we conclude that Atec's deal 13 was connected with the fraudulent contra-trading of Wetherby. It is apparent that the  
10 initial consignment of 6000 units was split by Team Mobile into two consignments of 2000 and 4000 units, with 4000 units being supplied to Wireless 5 and thence to Atec.

*Deal 14 (1425)*

1002. Deal 14 concerned 4,000 units of goods described as Blackspot Road Angel Navigators. Atec's invoice was dated 17 May 2006.

15 1003. The alleged deal chain was as follows:

(1) *Protophonia (Portugal) to Wetherby (contra-trader)* – this transaction was evidenced by a purchase order from Wetherby to Protophonia in respect of the same type and quantity of goods and a supplier declaration, both dated 16  
20 May 2006.

(2) **Wetherby (contra-trader) to Team Mobile** – we were supplied with an invoice from Wetherby to Team Mobile dated 16 May 2006 in respect of the same type and quantity of goods. In addition Wetherby completed a supplier declaration on 16 May 2006 in respect of the same type and quantity of goods.

(3) **Team Mobile to Wireless 5** – we were provided with an invoice dated 16  
25 May 2006 from Team Mobile to Wireless 5 in respect of the same type and quantity of goods which is marked as having been paid on 22 May 2006. There were also release and allocation notes dated 16 May 2006 from Team Mobile in favour of Wireless 5 in respect of the same type and quantity of goods.

(4) **Wireless 5 to Atec** – this transaction was not in dispute but we were  
30 provided with an invoice from Wireless 5 to Atec dated 16 May 2006 in respect of the same type and quantity of goods.

(5) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 17 May 2006.

(6) *Freitex (Germany) to International Mobile (Italy)* – this transaction was  
35 evidenced by the deal log supplied by the German tax authorities.

1004. Based on the above evidence, we have concluded that Atec's deal 14 was connected with the fraudulent contra-trading of Wetherby.

*Deal 15 (1426)*

1005. Deal 15 involved 2,000 units of a product called Snooper Indago, which we understood to be a satellite navigation system. Atec's invoice was dated 17 May 2006.

1006. The alleged deal chain was as follows:

5 (1) *Protophonia (Portugal) to Wetherby (contra-trader)* – this transaction was evidenced by a purchase order from Wetherby to Protophonia and an invoice from Protophonia to Wetherby, both dated 16 May 2006 in respect of the same type of goods. The purchase order and invoice related to 3,000 units of the goods.

10 (2) **Wetherby (contra-trader) to Team Mobile** – we were provided with an invoice dated 16 May 2006 from Wetherby to Team Mobile in respect of 3,000 units of the same type of goods. In addition there was a corresponding pro forma invoice of the same date. There was also a supplier declaration completed by Wetherby on 16 May 2006 in respect of 3,000 units of the same type of  
15 goods. We also supplied with allocation and release notes relating to Wetherby and Team Mobile in respect of 3,000 units of the same type of goods dated 16 May 2005.

(3) **Team Mobile to Wireless 5** – we were shown an invoice from Team Mobile to Wireless 5 dated 16 May 2005 in respect of 2000 units of the same  
20 type of goods, together with a corresponding pro forma invoice and purchase order from Wireless 5 of the same date.

(4) **Wireless 5 to Atec** – this transaction was not in dispute. We were, however, provided with an invoice from Wireless 5 to Atec dated 16 May 2006 in respect of the same quantity (2,000 units) and type of goods.

25 (5) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 17 May 2006.

(6) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1007. On the basis of the above evidence, we concluded that Atec's deal 15 was  
30 connected to the fraudulent contra-trading of Wetherby. The fact that the quantity of goods (3,000 units) supplied by Wetherby to Team Mobile exceeded the quantity (2,000 units) supplied by Team Mobile to Wireless 5 indicated to us that Team Mobile had split the original consignment.

*Deal 16 (1427)*

35 1008. Deal 16 involving the supply of 1,000 units of Nokia 8800 (Central European Specification) mobile telephones. Atec's invoice was dated 17 May 2006.

1009. The alleged deal chain was as follows:



- (1) *Compucell (Netherlands) to Imanse (France)* – the release note, referred to in the next link in the chain, cited Compucell as Imanse’s supplier in respect of the same type and quantity of goods.
- 5 (2) *Imanse to Okeda* – there was a release note dated 16 May 2006 by which Imanse released the same type and quantity of goods directly to Red WM, bypassing intervening members of the deal chain.
- (3) **Okeda (defaulting trader) to Time Corporates** – there was an invoice (04748) from Okeda to Time Corporates dated 17 May 2006 in respect of the same type and quantity of goods.
- 10 (4) **Time Corporates to Resolutions** – there was an invoice dated 17 May 2006 from Time Corporates to Resolution in respect of the same quantity and type of goods. There was also a corresponding purchase order from Resolutions to Time Corporates dated 17 May 2006
- 15 (5) **Resolutions to Red WM** – there was an invoice from Resolutions to Red dated 17 May 2006 in respect of the same quantity and type of goods.
- (6) **Red WM to The Fones Centre** – we were provided with an invoice from Red to The Fones Centre dated 17 May 2006 in respect of the same quantity and type of goods, together with a corresponding purchase order from The Fones Centre of the same date. There was also a release note 17 May 2006 from Red in respect of the same quantity and type of goods in favour of The Fones Centre and a release document addressed to Paul’s Freight of the same date in respect of the same type and quantity of goods.
- 20 (7) **The Fones Centre to New Order Trading** – we were provided with an invoice dated 17 May 2006 from The Fones Centre to New Order in respect of the same quantity and type of goods. There was also a corresponding purchase order from New Order of the same date and an allocation note from New Order to Paul’s Freight in respect of the same type and quantity of goods dated 17 May 2006 together with a New Order instruction to Paul’s Freight dated 17 May 2006 in respect of the same goods to “ship on hold”.
- 25 (8) **New Order to Atec** – we understood that this transaction was not in dispute. Nonetheless, we were provided with an invoice from New Order to Atec dated 17 May 2006 in respect of the same quantity and type of goods.
- 30 (9) *Atec to Silus BV* – there was an invoice from Atec to Silus BV dated 17 May 2006 in respect of the same type and quantity of goods.
- 35 1010. From the above evidence, we concluded that Atec’s deal 16 was connected with the fraudulent evasion of VAT by Okeda.

*Deal 17 (1428)*

1011. Deal 17 involved 3,000 units of Navman ICN 650 satellite navigation sets. Atec’s invoice was dated 23 May 2006.
- 40 1012. The alleged deal chain was as follows:

(1) *Universal Systems (Belgium) to Clifton Communications (defaulting trader)* – this transaction was evidenced by a payment instruction from ATB Enterprises to Easy MSI dated 23 May 2006, later in the deal chain.

5 (2) **TPPTB Clifton Communications (defaulting trader) to ATB Enterprises** – there were no documents showing a connection between Clifton Communications and ATB. Instead, HMRC pointed to the evidence of Mr Cook, an HMRC officer who gave a witness statement in relation to the fraudulent defaulter Clifton Communications. Mr Cook’s evidence was:

10 “For deals 17 & 18 we do not hold any documentation showing TPPTB [taxable person purporting to be] Clifton supplied ATB Enterprises (UK) Ltd. However between 22 May 2006 and 25 May 2006 ATB only purchased from TPPTB Clifton. Therefore on the balance of probabilities I concluded that deals 17 & 18 also originated from TPPTB Clifton and therefore an assessment for £486,150 was  
15 issued on 13 October 2010.”

In addition, Mr Saunders, the HMRC officer responsible for Atec, said in his witness statement:

20 “For invoices 1428 (deal 17) and 1429 (deal 18) the deal chains have been traced back as far as ATB Enterprises Ltd (“ATB”) which had previously been considered to be the acquirer. Subsequently it has been established that at the time ATB raised invoices 5560 and 5565, which appear in the relevant Atec deal chains, ATB had been purchasing from Clifton Communications Ltd (“Clifton”). It has not been possible to establish beyond doubt that Clifton was ATB’s supplier though  
25 based on the other deals at this time it seems very likely that this was the case.”

In Atec’s letter of 3 March 2014, in response to Judge Mosedale’s directions, Atec stated that Mr Cook was not required for cross-examination. Nonetheless, Atec also indicated in that letter that it did not accept Mr Cook’s evidence  
30 showed that Atec’s transactions were connected to a fraudulent tax loss.

Mr Cook’s evidence was therefore not challenged by Atec in cross-examination.

We have considered the evidence carefully and have come to the conclusion that, on the balance of probabilities, the taxable person purporting to be Clifton Communications did supply ATB in deal 17 and 18 on the basis that, during the  
35 period in question, ATB bought exclusively from Clifton Communications. We note in this connection that Clifton Communications did supply ATB in deal 23 (see below) on 24 May 2006.

40 (3) **ATB to Easy MSI** – we were provided with an invoice from ATB to Easy MSI dated 23 May 2006 in respect of the same quantity of goods. The invoice and the other documents referred to below referred to a Nav Man ICN 50, but we believe this was a typographical error and should instead have referred to “650”. Certainly, no suggestion to the contrary was made. In addition we were provided with a corresponding purchase order, a supplier declaration from ATB dated 23 May 2006, a corresponding pro forma invoice, and a delivery note  
45 from ATB to Easy MSI dated 23 May 2006. There was also a payment

instruction from ATB to Easy MSI dated 23 May 2006 requesting that Easy MSI made payment of £1,615,860 in respect of ATB's invoice to a company called Universal Systems SCS and only £350.502 to ATB. This obviously left ATB unable to pay the VAT on supplies to Easy MSI out of the proceeds of sale.

5

(4) **Easy MSI to Wetherby** – there was an invoice from Easy MSI to Wetherby dated 23 May 2006 in respect of the same quantity of goods. In this case, the reference on the invoice, and the other documents referred to below, was to Nav Man ICN 50. Again, we consider this was a typographical error. There was a corresponding purchase order from Wetherby of the same date, a pro forma invoice from Easy MSI, a delivery note from Easy MSI to Wetherby and a supplier declaration completed by Easy MSI dated 23 May 2006.

10

(5) **Wetherby to Team Mobile** – we were provided with an invoice from Wetherby to Team Mobile dated 23 May 2006 in respect of the same quantity of goods. Again, the description of the goods on the invoice was “nav/man icn 50”. There was also a supplier declaration from Wetherby in respect of the same goods dated 23 May 2006 and a corresponding purchase order from Team Mobile dated 23 May 2006.

15

(6) **Team Mobile to Wireless 5** – we were provided with an invoice from Team Mobile to Wireless 5 in respect of the same quantity of goods. The description of the goods was “Navman ICN 650”. Team Mobile's release note to Wireless 5 dated 23 May 2006 related to the same quantity but the make and model was described as “Navman 650”. There was an allocation note of the same date with the same quantity and the same description of the goods i.e. the “650” model number. There was a corresponding collection note from Team Mobile. Team Mobile's pro forma invoice dated 23 May 2006 was for the correct quantity but referred to the model number as “ICN 50”. Wireless 5's purchase order dated 23 May 2006 was for the same quantity and referred to the goods as Navman ICN 650”.

20

25

(7) **Wireless 5 to Atec** – we did not understand this transaction to be in dispute and we were provided with an invoice from Wireless 5 to Atec dated 23 May 2006 in respect of the same quantity and type of goods.

30

(8) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.

35

(9) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1013. Based on the above evidence, we have concluded that Atec's deal 17 was connected to the fraudulent evasion of VAT by the taxable person purporting to be Clifton Communications.

40 *Deal 18 (1429)*

1014. Deal 18 involved 3,000 units of Garmin Street Pilot 2720 satellite navigation sets. Atec's invoice was dated 23 May 2006.

1015. The alleged deal chain was as follows:

(1) *Universal Systems (Belgium) to Clifton Communications (defaulting trader)* – this transaction was evidenced by a payment instruction from ATB Enterprises to Easy MSI dated 23 May 2006, later in the deal chain.

5 (2) **TPPTB Clifton Communications (defaulting trader) to ATB Enterprises** – for the reasons given above in relation to deal 17, we consider that a TPPTB Clifton Communications supplied ATB.

10 (3) **ATB to Easy MSI** – we were supplied with an invoice dated 23 May 2006 from ATB to Easy MSI in respect of the same quantity and type of goods. There was also a corresponding pro forma invoice and purchase order on the same date. There was also a corresponding delivery note from ATB on the same date. ATB also gave a payment instruction on 23 May 2006 to Easy MSI instructing it to pay the bulk of the purchase price (£1,650,933.75) to Universal Systems SCS and only £528.75 to itself. Again, this left ATB unable to pay its  
15 VAT from the proceeds of sale.

(4) **Easy MSI to Wetherby** – we were provided with an invoice from Easy MSI to Wetherby dated 23 May 2006 in respect of the same quantity and type of goods. In addition, there was a corresponding pro forma invoice, delivery note, purchase order all of the same date.

20 (5) **Wetherby to Team Mobile** – we were provided with an invoice from Wetherby to Team Mobile dated 23 May 2006 in respect of the same quantity and type of goods. There was also a corresponding pro forma invoice, delivery instructions and a supplier declaration completed by Wetherby all of the same date. There was also a corresponding purchase order from Team Mobile of the  
25 same date.

(6) **Team Mobile to Wireless 5** – we were supplied with an invoice from Team Mobile to Wireless 5 dated 23 May 2006 in respect of the same quantity and type of goods.

30 (7) **Wireless 5 to Atec** – this transaction was not in dispute. Nonetheless there was an invoice from Wireless 5 to Atec dated 23 May 2006 in respect of the same quantity and type of goods.

(8) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.

35 (9) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1016. On the basis of the above evidence, we have concluded that Atec's deal 18 was connected to the fraudulent evasion of VAT by the taxable person purporting to be Clifton Communications.

#### *Deal 19 (1430)*

40 1017. Deal 19 involved the supply of 2,000 units of Garmin Nuvi 350 satellite navigation sets. Atec's invoice was dated 23 May 2006.

1018. The alleged deal chain was as follows:

- 5 (1) **TPPTB Clifton Communications (defaulting trader) to IPartner** – Mr Saunders’ witness statement stated that HMRC’s extended verification traced back deal 19 to Clifton Communications. IPartner’s deal listing (relevant to this and to a number of subsequent deals), contained in the exhibits to Mr Saunders’ witness statement, showed that it purchased from Clifton Communications 2000 Garmin Nuvi 350’s on 23 May 2006. The deal listing was supplied by IPartner to HMRC. We therefore accept that Clifton Communications supplied IPartner as HMRC contended.
- 10 (2) **IPartner to Easy MSI** – we were provided with an invoice from IPartner to Easy MSI dated 23 May 2006 in respect of the same quantity and type of goods. There was a corresponding purchase order from EC MSI and a pro forma invoice from IPartner on the same date.
- 15 (3) **Easy MSI to Wetherby** – there was an invoice from Easy MSI to Wetherby dated 23 May 2006 for the same quantity and type of goods. There was a corresponding purchase order from Wetherby and a pro forma invoice from Easy MSI both dated 23 May 2006. There was also a corresponding delivery note from Easy MSI to Wetherby on 23 May 2006 in respect of the same quantity and type of goods.
- 20 (4) **Wetherby to Team Mobile** – there was an invoice dated 23 May 2006 from Wetherby to Team Mobile in respect of the same quantity and type of goods. There was a supplier declaration from Wetherby to Team Mobile dated 23 May 2006 in respect of the same quantity and type of goods. There was a corresponding pro forma invoice from Wetherby dated 23 May 2006 addressed to Team Mobile and purchase order dated 23 May 2006 from Team Mobile.
- 25 (5) **Team Mobile to Wireless 5** – there was an invoice dated 23 May 2006 from Team Mobile to Wireless 5 in respect of the same quantity and type of goods. There was a corresponding pro forma invoice, allocation note, release note and collection note and purchase order, all of 23 May 2006.
- 30 (6) **Wireless 5 to Atec** – this transaction was not in dispute and, in any event, there was an invoice from Wireless 5 to Atec dated 23 May 2006 in respect of the same quantity and type of goods.
- (7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.
- 35 (8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1019. On the basis of the above evidence, we have concluded that Atec’s deal 19 was connected to the fraudulent evasion of VAT by a taxable person purporting to be Clifton Communications.

*Deal 20 (1431)*

1020. Deal 20 involved the supply of 4,000 units of Tom Tom Go 700 satellite navigation sets. Atec's invoice date was 23 May 2006.

1021. The alleged deal chain was as follows:

- 5 (1) *Universal Systems (Belgium) to Clifton Communications (defaulting trader)* – this transaction was evidenced by a payment instruction from IPartner to Easy MSI dated 23 May 2006, later in the deal chain.
- (2) **TPPTB Clifton Communications (defaulting trader) to IPartner** – The deal listing referred to in relation to deal 19 also contained a reference to the  
10 fact that IPartner had purchased 4,000 units of the same type of goods from Clifton on 23 May 2006. For the same reasons, we concluded that Clifton had indeed supplied IPartner as HMRC contended.
- (3) **IPartner to Easy MSI** – there was an invoice from IPartner to Easy MSI  
15 in respect of the same type and quantity of goods dated 23 May 2006 with a corresponding pro forma invoice, purchase order from Easy MSI and supplier declaration from IPartner all dated 23 May 2006. In addition, on 23 May 2006 IPartner instructed Easy MSI to pay Universal Systems SCS £177,546.60 and only £235 to itself.
- (4) **Easy MSI to Wetherby** – there was an invoice from Easy MSI to  
20 Wetherby dated 23 May 2006 in respect of the same quantity and type of goods. There was a corresponding purchase order from Wetherby, pro forma invoice from Easy MSI and delivery note from Easy MSI to Wetherby all dated 23 May 2006.
- (5) **Wetherby to Team Mobile** – there was an invoice from Wetherby to  
25 Team Mobile dated 23 May 2006 in respect of the same quantity and type of goods. There were corresponding delivery instructions from Wetherby, a pro forma invoice from Wetherby and a purchase order from Team Mobile, all of the same date. There was also a supplier declaration by Wetherby dated 23 May 2006.
- (6) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to  
30 Wireless 5 dated 23 May 2006 in respect of the same quantity and type of goods. There was a corresponding pro forma invoice and purchase order of the same date there were also corresponding release and allocation notes from Team Mobile in favour of Wireless 5 dated 23 May 2006.
- (7) **Wireless 5 to Atec** – although this transaction was not in dispute, there  
35 was an invoice from Wireless 5 to Atec in respect of the same type and quantity of goods dated 23 May 2006.
- (8) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.
- 40 (9) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1022. On the basis of the above evidence, we have concluded that Atec's deal 20 was connected to the fraudulent evasion of VAT by a taxable person purporting to be Clifton Communications.

*Deal 21 (1432)*

5 1023. Deal 21 involved the supply of 980 units of Sony Vaio VGN-TX2HP notebook computers. Atec's invoice date was 23 May 2006.

1024. The alleged deal chain was as follows:

10 (1) *Universal Systems (Belgium) to Clifton Communications (defaulting trader)* – this transaction was evidenced by a payment instruction from IPartner to Easy MSI dated 23 May 2006, later in the deal chain.

15 (2) **TPPTB Clifton Communications (defaulting trader) to IPartner** – The deal log referred to in relation to deal 19 also contained a reference to the fact that IPartner had purchased 980 units of the same type of goods from Clifton on 23 May 2006. For the same reasons, we concluded that Clifton had indeed supplied IPartner as HMRC contended.

20 (3) **IPartner to Easy MSI** – there was an invoice from IPartner to Easy MSI dated 23 May 2006 respect of the same quantity and type of goods. There was a corresponding pro forma invoice and purchase order and supplier declaration (from IPartner), all of the same date. On 23 May 2006 IPartner gave payment instructions to Easy MSI to pay £177,546.602 Universal Systems SCS.

(4) **Easy MSI to Wetherby** – there was an invoice dated 23 May 2006 from Easy MSI to Wetherby in respect of the same quantity and type of goods. There was a corresponding purchase order from Wetherby, pro forma invoice from Easy MSI, a delivery note from Easy MSI to Wetherby all dated 23 May 2006.

25 (5) **Wetherby to Team Mobile** – there was an invoice dated 23 May 2006 from Wetherby to Team Mobile in respect of the same quantity and type of goods. There was a corresponding pro forma invoice, purchase order supplier declaration, all dated 23 May 2006.

30 (6) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 23 May 2006 in respect of the same quantity and type of goods. There was a corresponding pro forma invoice and purchase order, both dated 23 May 2006.

35 (7) **Wireless 5 to Atec** – this transaction was not in dispute, but we were provided with an invoice from Wireless 5 to Atec dated 23 May 2006 in respect of the same quantity and type of goods.

(8) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.

(9) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1025. On the basis of the above evidence, we have concluded that Atec's deal 21 was connected to the fraudulent evasion of VAT by a taxable person purporting to be Clifton Communications.

*Deal 22 (1433)*

5 1026. Deal 22 involved 2,350 units of 60 GB Apple iPods. Atec's invoice was dated 24 May 2006.

1027. The alleged deal chain was as follows:

10 (1) *Universal Systems (Belgium) to Clifton Communications (defaulting trader)* – this transaction was evidenced by a payment instruction from Clifton to IPartner dated 24 May 2006, later in the deal chain. There was also a file dated 24 May 2006 in respect of the same type and quantity of goods from the freight forwarder showing the deal chain of Universal to Clifton to IPartner to Easy MSI to Crescent to London Mobile and finally to Atec. There was also an allocation note from Universal Systems dated 24 May 2006 requesting the  
15 allocation of stock of the same type and quantity to Clifton.

(2) **TPPTB Clifton Communications (defaulting trader) to IPartner** – there was an invoice from Clifton Communications to IPartner dated 24 May 2006 in respect of the same quantity and type of goods. There was also a corresponding pro forma invoice and purchase order both dated 24 May 2006.  
20 The transaction was also recorded in IPartner's deal listing referred to in relation to deal 19. In addition, there was a payment instruction dated 24 May 2006 from Clifton Communications to IPartner to pay Universal Systems SCS £659,386.50 and to pay Clifton Communications only £276.13.

(3) **IPartner to Easy MSI** – there was there was an invoice dated 24 May  
25 2006 from IPartner to Easy MSI in respect of the same quantity and type of goods. There was a corresponding pro forma invoice dated 24 May 2006 from IPartner to Easy MSI. There was a corresponding purchase order from Easy MSI, supplier declaration from IPartner. There was a payment instruction from IPartner dated 24 May 2006 instructing Easy MSI to pay most (£659,662.63) of  
30 the total amount shown due on the pro forma invoice to a company called Universal Systems SCS, with only £276.13 payable to IPartner. There was also a release note dated 24 May 2006 from IPartner authorising release of goods of the same quantity and type to Easy MSI.

(4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent  
35 dated 24 May 2006 respect of the same quantity and type of goods. There was a corresponding pro forma invoice and purchase order, both of the same date there were also release and allocation instructions from Easy MSI authorising the release and allocation of the same quantity and type of stock to Crescent.

(5) **Crescent to London Mobile Communications** – there was an invoice  
40 from Crescent to LMC dated 24 May 2006 in respect of the same quantity and type of goods. There was a corresponding purchase order from LMC and a release note from Crescent in favour of LMC, both dated 24 May 2006.



(6) **London Mobile Communications to Atec** – this transaction was not in dispute but we were, nonetheless, provided with an invoice from LMC to Atec dated 24 May 2006 in respect of the same quantity and type of goods.

5 (7) *Atec to H & H Import Export (France)* – by an invoice dated 24 May 2006, Atec exported the same type and quantity of goods to H & H Import Export.

1028. Based on the above evidence, we have concluded that Atec’s deal 22 was connected to the fraudulent evasion of VAT by a taxable person purporting to be Clifton Communications.

10 *Deal 23 (1434)*

1029. Deal 23 involved 510 units of Sony PSP (Silver Limited Edition). Atec’s invoice date was 24 May 2006.

1030. The alleged deal chain was as follows:

15 (1) *Universal Systems to Clifton Communications* – A file note from the freight forwarder dated 24 May 2006 set out the deal chain in respect of the same type and quantity of goods as follows: from Universal to Clifton to ATB to Easy MSI to Crescent to LMC to Atec. In addition, there was a stock allocation note dated 24 May 2006 from Universal Systems requesting the release of the same type and quantity of stock to Clifton. Finally, there was a  
20 payment instruction dated 24 May 2006 from ATB to Easy MSI requesting a third party payment by Easy MSI to Universal Systems – see below

25 (2) **TPPTB Clifton Communications (defaulting trader) to ATB Enterprises** – as with deal 17 and 18 there was no invoice produced from Clifton Communications in respect of its alleged sale to ATB. Mr Cook’s evidence was that between 22 May and 25 May 2006 ATB only purchased from the taxable person purporting to be Clifton Communications. Mr Saunders’ evidence was that HMRC’s extended verification traced back invoice 1434 to Clifton Communications, although Mr Saunders did not explain how this was done.

30 Furthermore, HMRC referred us (on HMRC Appendix 1, but without explanation) to an exhibit entitled “Job No 3458” dated 24 May 2006. The document evidently had been faxed from Edge Logistics, according to a fax legend at the bottom of the page. The document referred to the make of goods as being “Sony”, the model was “PSP” and the volume was “510”. The  
35 document then set out under the heading “Customer” the deal chain as follows:

40 “Universal  
Clifton  
ATB  
Easy [presumably Easy MSI]  
Cres [presumably Crescent]

London [presumably LMC]

Atec”

In the following links in the deal chain, we do not repeatedly refer to this document but it is, in our view, clear evidence of the deal chain in question.

5 There was also a stock allocation note from a company called Universal Systems – which appeared to be Clifton Communications’ supplier, according to the previous document – dated 24 May 2006 requesting that 510 “Sony PSP 1004k” be allocated by Edge Logistics Ltd to Clifton Communications. There was then a corresponding release note in the same terms dated on the same date.

10 On the basis of this evidence, we concluded that the taxable person purporting to be Clifton Communications had supplied ATB in the first leg of this deal chain.

(3) **ATB Enterprises to Easy MSI** – we were provided with an invoice from ATB to Easy MSI dated 24 May 2006 in respect of the same quantity and type of goods. In relation to the previous link in the chain, Edge Logistics was given as the delivery address. There was a corresponding purchase order from Easy MSI and a supplier declaration from ATB of the same date. There was also a release and allocation note from ATB addressed to Edge Logistics in respect of the same type and quantity of goods requesting allocation and release of the stock to Easy MSI. There was also a payment instruction from ATB, signed by a Mr Mohammed Faisal, to Easy MSI requesting payment by Easy MSI to Universal Systems of £80,059.80 and a payment to ATB of only £239.70.

(4) **Easy MSI to Crescent** – we were provided with an invoice dated 24 May 2005 from Easy MSI to Crescent in respect of the same type and quantity of goods. In addition, there was a corresponding supplier declaration from Easy MSI to Crescent dated 24 May 2006, a corresponding pro forma invoice of the same date and a corresponding purchase order from Crescent, also of the same date. There was also a release and allocation instruction dated 24 May 2006 from Easy MSI to Edge Logistics requesting the release of the same type and quantity of goods to Crescent. There was also a confirmation of receipt from Crescent (signed by a Mr Iftikhar Sheikh) dated 24 May 2006 addressed to Edge Logistics requesting confirmation of receipt from “our supplier Easy MSI Ltd”.

(5) **Crescent to London Mobile** – there was an invoice from Crescent to LMC dated 24 May 2006 in respect of the same type (“PSP”) and quantity of goods. In addition, there was a corresponding purchase order from LMC and a supplier declaration from Crescent both dated 24 May 2006. There was also an FCIB transfer on 24 May 2006 in part payment of Crescent’s invoice.

(6) **London Mobile to Atec** – we did not understand this transaction to be in dispute. There was, however, an invoice from LMC to Atec dated 24 May 2006 in respect of the same type and quantity of goods.

(7) *Atec to H & H Import Export (France)* – buy an invoice dated 24 May 2006, Atec exported the same type and quantity of goods to H & H Import Export.

1031. On the basis of the above evidence, we have concluded that Atec's deal 23 was connected to the fraudulent evasion of VAT by a taxable person purporting to be Clifton Communications.

*Deal 24 (1435)*

5 1032. Deal 24 involved the supply of 4,000 units of Tom Tom Go 700 satellite navigation sets. Atec's invoice was dated 30 May 2006.

1033. The alleged deal chain was as follows:

10 (1) **Golden (defaulting trader) to IPartner** – Mr Saunders' witness statement stated that HMRC's extended verification traced back invoices 1435, 1436, 1437, 1439 and 1440 (deals 24, 25, 26, 28 and 29) back to the fraudulent defaulting trader, Golden. There was no invoice from Golden to IPartner. IPartner's trade listing (see deal 19 above) recorded all its sales on 30 – 31 May 2006 and indicated that IPartner bought 4,000 units of Tom Tom Go 700 sets from Golden on 30 May 2006 at £268.40 per unit. The total consideration according to the column referring to IPartner's purchase order was £1,073,600. The listing also states that IPartner's buyer was Easy MSI. The trade listing spreadsheets were supplied by IPartner.

20 (2) **IPartner to Easy MSI** – see above as regards the reference in the trade listing to IPartner's buyer being Easy MSI. The deal listing for Easy MSI in respect of all Easy MSI's deals in May 2006 indicated that Easy MSI purchased the same quantity and type of goods from IPartner on 30 May 2006 and sold them to Fair General Traders on 30 May 2006.

25 (3) **Easy MSI to Fair General Traders Limited** – we were provided with an invoice from Easy MSI to Fair General Traders dated 30 May 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, purchase order from Fair General Traders Limited, a supplier declaration from Easy MSI, all dated 30 May 2006. There was also a delivery note dated 30 May 2006 from Easy MSI to Fair General Traders in respect of the same type and quantity of goods.

30 (4) **Fair General Traders Limited to Team Mobile** – there was an invoice from Fair General Traders to Team Mobile dated 30 May 2006 in respect of the same type and quantity of goods. There was also a corresponding supplier declaration completed by Fair General Traders, a corresponding purchase order from Team Mobile, both of the same date. There was also an allocation and release instruction from Fair General Traders to Team Mobile in respect of the same type and quantity of goods dated 30 May 2006.

35 (5) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 30 May 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice from Team Mobile and a purchase order from Wireless 5. There were also allocation, release and collection notes from Team Mobile in respect of the same type and quantity of goods dated 30 May 2006.

(6) **Wireless 5 to Atec** – this transaction was not in dispute and we were provided with an invoice from Wireless 5 to Atec dated 30 May 2006 respect of the same type and quantity of goods.

5 (7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 30 May 2006.

(8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1034. On the basis of the above evidence we concluded that Atec’s deal 24 was connected to the fraudulent evasion of VAT by Golden.

10 *Deal 25 (1436)*

1035. Deal 25 involved the supply of 3,000 units of I-mate k Jam mobile telephones. Atec’s invoice was dated 30 May 2006.

15 (1) **Golden (defaulting trader) to IPartner** – there was no invoice from Golden to IPartner. As with deal 24, IPartner’s trade listing, found in the exhibits to Mr Saunders’ witness statement (see deal 19), recorded all its sales on 30 – 31 May 2006 and indicated that IPartner bought 3,000 units of I-mate k Jam mobile telephones from Golden Limited on 30 May 2006 at £368.35 per unit. The total consideration according to the column referring to IPartner’s purchase order was £1,105,050. The listing also stated that IPartner’s buyer was  
20 Easy MSI. The trade listing spreadsheets were supplied by IPartner.

(2) **IPartner to Easy MSI** – see above as regards the reference in the deal listing to IPartner’s buyer being Easy MSI. In addition, the deal listing for Easy MSI in respect of all Easy MSI’s deals in May 2006 indicated that Easy MSI purchased the same quantity of goods from IPartner on 30 May 2006 and sold  
25 them to Fair General Traders on 30 May 2006. The description of the goods in Easy MSI’s deal listing was, however, for “Imate Jamin” rather than for “I-mate k jam”, which is the description of the goods on Easy MSI’s invoice of 30 May 2006 in respect of its sale of 3000 units of the goods. We, therefore, conclude that the reference to “Imate Jamin” was a typographical error and that the  
30 description was intended to refer to I-mate k Jam telephones.

(3) **Easy MSI to Fair General Traders** – there was an invoice from Easy MSI to Fair General Traders dated 30 May 2006 the same type and quantity of goods. There was a corresponding supplier declaration from Easy MSI, pro forma invoice and purchase order, all of the same date. There was also a  
35 delivery note dated 30 May 2006 from Easy MSI addressed to Fair General Traders.

(4) **Fair General Traders to Team Mobile** – there was an invoice from Fair General Traders to Team Mobile dated 30 May 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Team  
40 Mobile, a supplier declaration from Fair General Traders collection, release and allocation instruction from Fair General Traders to Team Mobile, all dated 30 May 2006.

5 (5) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 30 May 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice from Team Mobile and purchase order from Wireless 5, both dated 30 May 2006. There were also release and allocation notes from Team Mobile in favour of Wireless 5 in respect of the same type and quantity of goods dated 30 May 2006.

(6) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.

10 (7) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1036. On the basis of the above evidence, we have concluded that Atec’s deal 25 was connected to the fraudulent evasion of VAT by Golden.

*Deal 26 (1437)*

15 1037. Deal 26 involved the supply of 3,000 units of I-mate Jasjar mobile telephones. Atec’s invoice date was 30 May 2006.

1038. The alleged deal chain was as follows:

20 (1) **Golden (defaulting trader) to IPartner** – there was no invoice from Golden to IPartner. As with previous deals, IPartner’s deal listing (see deal 19) recorded all its sales on 30 – 31 May 2006 and indicated that IPartner bought 3,000 units of I-mate Jasjar mobile telephones from Golden Limited on 30 May 2006 at £458.40 per unit. The total consideration according to the column referring to IPartner’s purchase order was £1,375,200. The listing also showed that IPartner’s buyer was Easy MSI. The trade listing spreadsheets were supplied by IPartner. Easy MSI’s deal listing also showed that it acquired the same quantity and the same type of goods from IPartner on 30 May 2006 and sold them to Fair General Traders.

30 (2) **IPartner to Easy MSI** – see above as regards the reference in the deal listing to IPartner’s buyer being Easy MSI. In addition, the deal listing for Easy MSI (which was compiled from paperwork uplifted by HMRC officers from Easy MSI) in respect of all Easy MSI’s deals in May 2006 indicated that Easy MSI purchased the same quantity of goods from IPartner on 30 May 2006 and sold them to Fair General Traders on 30 May 2006.

35 (3) **Easy MSI to Fair General Traders** – there was an invoice from Easy MSI to Fair General Traders dated 30 May 2006 respect of same type (“I-mate Jas Jar”) and quantity of goods. There was a corresponding pro forma invoice, supplier declaration and purchase order, all dated 30 May 2006. In addition, there was a delivery note from Easy MSI to Fair General Traders dated 30 May 2006 in respect of the same quantity and type of goods.

40 (4) **Fair General Traders to Team Mobile** – there was an invoice dated 30 May 2006 from Fair General Traders to Team Mobile in respect of the same type and quantity of goods. There was a corresponding purchase order, supplier

declaration and an allocation and release instruction in favour of Team Mobile, all dated 30 May 2006.

5 (5) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 30 May 2006, marked as “Paid” on 31 May 2006, in respect of the same type and quantity of goods. There was a corresponding pro forma invoice and purchase order, both dated 30 May 2006. In addition, there were release and allocation notes from Team Mobile in favour of Wireless 5 both dated 30 May 2006.

10 (6) **Wireless 5 to Atec** – this transaction was not in dispute. We were, however, provided with an invoice from Wireless 5 to Atec dated 30 May 2006 in respect of the same type and quantity of goods.

(7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 23 May 2006.

15 (8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1039. On the basis of the above evidence, we have concluded that Atec’s deal 26 was connected to the fraudulent evasion of VAT by Golden.

#### *Deal 27 (1438)*

20 1040. Deal 27 involved the supply of 4,000 units of Tom Tom Go 500 satellite navigation sets. Atec’s invoice was dated 31 May 2006. Atec accepted that invoices existed for the entire alleged deal chain.

1041. The alleged deal chain was as follows:

25 (1) *Universal Systems (Belgium) to Cross View Consortium (defaulting trader)* – there was a third party payment instruction from Cross View Consortium to Easy MSI – see below.

30 (2) **Cross View Consortium (defaulting trader) to Easy MSI** – there was an invoice (1610) from Cross View Consortium to Easy MSI dated 31 May 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding pro forma invoice, purchase order from Easy MSI and supplier declaration. Furthermore, there were payment instructions from Cross View Consortium instructing Easy MSI to pay to a company called Universal £1,228,580 and only £472 Cross View. The total invoice amount on cross View Consortium’s invoice, including VAT, was £1,229,050. Therefore, Cross View would be unable to discharge its VAT liability from the payment from Easy MSI.

40 (3) **Easy MSI to Fair General Traders** – there was an invoice from Easy MSI to Fair General Traders dated 31 May 2006 in respect of the same quantity and type of goods. In addition, there was a corresponding purchase order, supplier declaration, pro forma invoice and delivery note all dated 31 May 2006.

5 (4) **Fair General Traders to Team Mobile** – there was a sales invoice from Fair General Traders to Team Mobile dated 31 May 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding purchase order, allocation and release instructions in favour of Team Mobile, all dated 31 May 2006.

10 (5) **Team Mobile to Wireless 5** – there was an invoice dated 31 May 2006 from Team Mobile to Wireless 5 in respect of the same type and quantity of goods. The customer’s copy of the invoice noted that it had been paid on 31 May 2006. There was a corresponding purchase order, pro forma invoice, allocation and release note, all dated 31 May 2006.

(6) **Wireless 5 to Atec** – this transaction was not in dispute. We were provided with an invoice from Wireless 52 Atec dated 31 May 2006 in respect of the same quantity and type of goods.

15 (7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 31 May 2006.

(8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

20 1042. Based on the above evidence, we have concluded that Atec’s deal 27 was connected to the fraudulent evasion of VAT by CrossView Consortium.

*Deal 28 (1439)*

1043. Deal 28 involved the supply of 3,000 units of Garmin Nuvi 350 satellite navigation sets. Atec’s invoice was dated 31 May 2006.

1044. The alleged deal chain was as follows:

25 (1) **Golden (defaulting trader) to IPartner** – there was no invoice from Golden to IPartner. As with the previous Golden deals, IPartner’s deal listing, (see deal 19) showed that IPartner bought 3,000 units of Garmin Nuvi 350 satellite navigation sets from Golden Limited on 30 May 2006 at £43.40 per unit. The total consideration according to the column referring to IPartner’s purchase order was £1,030,200. The listing also stated that IPartner’s buyer was Easy MSI. The trade listing spreadsheets were supplied by IPartner. Easy MSI’s deal listing also showed that it acquired the same quantity and the same type of goods from IPartner on 31 May 2006 and sold them to Fair General Traders.

35 (2) **IPartner to Easy MSI** – see above as regards the reference in the deal listing to IPartner’s buyer being Easy MSI. In addition, the deal listing for Easy MSI in respect of all Easy MSI’s deals in May 2006 indicated that Easy MSI purchased the same quantity of goods from IPartner on 31 May 2006 and sold them to Fair General Traders on 31 May 2006.

40 (3) **Easy MSI to Fair General Traders** – there was an invoice from Easy MSI to Fair General Traders dated 31 May 2006 in respect of the same quantity

and type of goods. In addition, there was a corresponding pro forma invoice, purchase order and supplier declaration, all dated 31 May 2006.

5 (4) **Fair General Traders to Team Mobile** – there was an invoice from Fair General Traders to Team Mobile dated 31 May 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding purchase order, supplier declaration, allocation and release note (in favour of Team Mobile), all dated 31 May 2006.

10 (5) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 31 May 2006 in respect of the same type and quantity of goods. There was also a corresponding pro forma invoice and purchase order.

(6) **Wireless 5 to Atec** – this transaction was not in dispute. There was an invoice from Wireless 5 dated 31 May 2006 in respect of the same type and quantity of goods.

15 (7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 31 May 2006.

(8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1045. On the basis of the above evidence, we have concluded that Atec’s deal 28 was connected with the fraudulent evasion of VAT by Golden.

20 *Deal 29 (1440)*

1046. Deal 29 involved the supply of 2,000 units of HP-iPAQ HX – 2750 “pocket” PCs. Atec’s invoice was dated 31 May 2006.

1047. The alleged deal chain was as follows:

25 (1) **Golden (defaulting trader) to IPartner** – there was no invoice from Golden to IPartner. As with the previous Golden deals, IPartner’s deal listing, recorded that IPartner bought 2,000 units of HP-iPAQ HX – 2750s from Golden Limited on 30 May 2006 at £263.35 per unit. The total consideration according to the column referring to IPartner’s purchase order was £526,700. The listing also stated that IPartner’s buyer was Easy MSI. The trade listing spreadsheets were supplied by IPartner. Easy MSI’s deal listing also showed that it acquired the same quantity and the same type of goods from IPartner on 31 May 2006 and sold them to Fair General Traders.

30 (2) **IPartner to Easy MSI** – see above as regards the reference in the deal listing to IPartner’s buyer being Easy MSI. There was an invoice from IPartner to Easy MSI dated 31 May 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Easy MSI and a delivery note to Easy MSI, both dated 31 May 2006.

(3) **Easy MSI to Fair General Traders** – there was an invoice from Easy MSI to Fair General Traders dated 31 May 2006 in respect of the same type and



quantity of goods. There was also a corresponding purchase order, supplier declaration, pro forma invoice and delivery note, all dated 31 May 2006.

5 (4) **Fair General Traders to Team Mobile** – there was an invoice from Fair General Traders to Team Mobile dated 31 May 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order and supplier declaration and an allocation and release note, all dated 31 May 2006.

10 (5) **Team Mobile to Wireless 5** – there was an invoice from Team Mobile to Wireless 5 dated 31 May 2006 in respect of the same type and quantity of goods. The customer copy of the invoice was marked as paid on 31 May 2006. There was also a corresponding pro forma invoice and purchase order, both dated 31 May 2006. Finally, there were corresponding allocation and release notes dated 31 May 2006.

15 (6) **Wireless 5 to Atec** – this transaction was not in dispute. There was an invoice from Wireless 5 to Atec dated 31 May 2006 in respect of the same type and quantity of goods.

(7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 31 May 2006.

(8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

20 1048. On the basis of the above evidence, we have concluded that Atec's deal 29 was connected to the fraudulent evasion of VAT by Golden.

#### *Deal 30 (1445)*

25 1049. Deal 30 involved the supply of 2,500 units of Archos AV 700 (video player/recorders). Atec's invoice was dated 16 June 2006. The invoice chain in this alleged deal chain was not disputed by Atec.

1050. The alleged deal chain was as follows:

(1) *Marubo International (Spain) to Astar* (defaulting trader) – there was a third party payment instruction from Astar to Unitech requesting payment by Unitech to Marubo – see below

30 (2) **Astar (defaulting trader) to Unitech** – there was an invoice (2200) from Astar to Unitech dated 16 June 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding supplier declaration and delivery note, both dated 16 June 2006. There was also a payment instruction dated 16 June 2006 by which Astar requested Unitech to pay £772,268.75 to a company called Marubo International (the invoice amount including VAT was 35 £772,415.63) and only £146.882 to Astar.

40 (3) **Unitech to Easy MSI** – there was an invoice from Unitech to Easy MSI dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Easy MSI dated 16 June 2006, containing a supplier declaration.

5 (4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 (marked that it had been paid on 4 July 2006) in respect of the same type and quantity of goods. There was also a corresponding pro forma invoice and purchase order dated 16 June 2006. There was also a corresponding confirmation of receipt from Crescent, a release, allocation and a delivery note, all dated 16 June 2006.

10 (5) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods. There was also a corresponding pro forma invoice and purchase order, both dated 16 June 2006. There was also a corresponding goods release note from Crescent to Cybacomms in respect of the same type and quantity of goods dated 16 June 2006.

15 (6) **Cybacomms to Atec** – this transaction was not in dispute there was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same quantity and type of goods.

(7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 16 June 2006.

(8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

20 1051. On the basis of the above evidence, we concluded that Atec's deal 30 was connected to the fraudulent evasion of VAT by Astar.

#### *Deal 31 (1446)*

25 1052. Deal 31 involved the supply of 3000 units of Apple iPod 60 GB Video Black. Atec's invoice date was 16 June 2006. Atec did not dispute the invoice chain in this deal.

1053. The alleged deal chain was as follows:

(1) *Marubo International (Spain) to Astar* (defaulting trader) – there was a third party payment instruction from Unitech to Easy MSI in favour of Marubo – see below.

30 (2) **Astar (defaulting trader) to Unitech** – there was an invoice (2205) from Astar to Unitech dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Unitech, a supplier declaration from Astar and a delivery note from Astar, all dated 16 June 2006.

35 (3) **Unitech to Easy MSI** – there was an invoice from Unitech to Easy MSI dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Easy MSI dated 16 June and containing a supplier declaration. There was also a delivery note from Unitech to Easy MSI in respect of the same type and quantity of goods but it was dated 14 June 2006. There was a payment instruction from Unitech to Easy MSI  
40 requiring payment by Easy MSI to Marubo of ££803,523.75 (Unitech's invoice amount, including VAT, was £803,700) and only £176.25 to Unitech.

5 (4) **Easy MSI to Crescent** – there was an invoice dated 16 June 2006 from Easy MSI to “Crescent [sic]” in respect of same type and quantity of goods, which was noted as paid on 3 July 2006. There was a corresponding pro forma invoice, purchase order and supplier declaration, all dated 16 June 2006. There was also an FCIB payment from Crescent to Easy MSI of £805,462.50 which was the amount (including VAT) owed in respect of Easy MSI’s invoice. Although the invoice reference on the payment did not correspond to the invoice reference on Easy MSI’s invoice, the exact amount made it clear that this was a payment in respect of Easy MSI’s invoice.

10 (5) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, purchase order and a release note (as well as a receipt and confirmation note), all dated 16 June 2006.

15 (6) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same type and quantity of goods.

(7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 16 June 2006.

20 (8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1054. On the basis of the above evidence, we concluded that Atec’s deal 31 was connected with the fraudulent evasion of VAT by Astar.

#### *Deal 32 (1447)*

25 1055. This deal involved the supply of 3,000 units of I-Mate K Jams mobile telephones. Atec’s invoice was dated 16 June 2006.

30 1056. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions Ltd (“RX”). Based on RX’s trading pattern the HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX’s conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses in relation to RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

35 1057. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

40 (1) **RX (defaulting trader) to Easy MSI** – Easy MSI’s monthly trader listing indicated that it purchased the same type and quantity of goods from RX on 16 June 2006 at a unit price of £373 and a total invoice price (including VAT) of £1,314,825. Mr Saunders’ evidence, which we accept, was that the monthly trader listing was based on paperwork uplifted from Easy MSI but that, after the

deal list had been prepared the underlying paperwork was misplaced within HMRC.

5 (2) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding purchase order, supplier declaration and pro forma invoice, all dated 16 June 2006. There was also a receipt and confirmation note from Crescent and a delivery note from Easy MSI, both dated 16 June 2006, in respect of the same type and quantity of goods.

10 (3) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods, which was marked as paid on 19 June 2006. There was also a purchase order from Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods. There was an FCIB transfer from Cybacomms to Crescent of £725,575 in respect of (in part) Crescent’s invoice to Cybacomms. There was  
15 also a Goods Release Note from Crescent to Cybacomms dated 16 June 2006.

(4) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same type and quantity of goods.

20 (5) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 16 June 2006.

(6) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1058. On the basis of the above evidence, we concluded that Atec’s deal 32 was connected with the fraudulent evasion of VAT on the basis that it was connected to  
25 RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss.

#### *Deal 33 (1448)*

1059. Deal 33 involved the supply of 3,000 units of I-Mate Jamin mobile telephones. Atec’s invoice date was 16 June 2006.

30 1060. The alleged deal chain was as follows:

(1) *Marubo International(Spain) to Astar (defaulting trader)* – there was a third party payment instruction from Astar to Venus Computers instructing Venus Computers to pay invoice to 2215 Marubo – see below.

35 (2) **Astar (defaulting trader) to Venus Computers** – there was an invoice (2215), included in the exhibits to Ms Riley’s statement, from Astar to Venus Computers dated 16 June 2006 in respect of the same type and quantity of goods. In addition, there was a corresponding purchase order from Venus Computers, supplier declaration completed by Astar, a delivery note from Astar to Venus Computers and a pro forma invoice, all dated 16 June 2006. In  
40 addition, there was a payment instruction from Astar also dated 16 June 2006 instructing Venus Computers to pay £1,366,818.75 to a company called Marubo

International and only £352,502 Astar. The total amount of Astar's invoice was £1,367,171.20.

Venus Computers' monthly trader listing showed that Venus Computers had bought the same type and quantity of goods on 16 June 2006 from Astar.

5 (3) **Venus Computers to Easy MSI** – there was no invoice from Venus Computers to Easy MSI. However, Easy MSI's monthly deal listing, as noted above (deal 32), showed a purchase of goods of the same type and quantity from Venus Computers on 16 June 2006. Moreover, Easy MSI's monthly trader listing showed that Easy MSI had purchased the goods from Venus Computers.

10 (4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 in respect of the same type and quantity of goods. The invoice was marked as paid on 5 July 2006. There was a corresponding pro forma invoice from Easy MSI and purchase order from Crescent, both dated 16 June 2006. In addition, there was a "Goods Received/Confirmation Note" dated 15 16 June 2006 from Crescent referring to "stock from our supplier Easy MSI" respect of the same quantity and goods described as "PDA-I Mate", which we take to be the same type of goods. There was also a release and allocation note dated 16 June 2006 from Easy MSI to its freight forwarder requesting release and allocation of the same type and quantity of stock to Crescent.

20 (5) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods ("PDA- I Mate, Jamins"). There was a corresponding pro forma invoice from Crescent and a purchase order from Cybacomms.

25 (6) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same type and quantity of goods.

(7) *Atec to Freitex (Germany)* – Atec sold the same type and quantity of goods to Freitex on an invoice dated 16 June 2006.

30 (8) *Freitex (Germany) to International Mobile (Italy)* – this transaction was evidenced by the deal log supplied by the German tax authorities.

1061. Based on the above evidence, we concluded that Atec's deal 33 was connected to the fraudulent evasion of VAT by Astar.

#### *Deal 34 (1449)*

35 1062. Deal 34 involved the supply of 3,000 units of Apple iPods – 60 GB Video White. Atec's invoice was dated 16 June 2006.

1063. The alleged deal chain was as follows:

40 (1) *Marubo International (Spain) to Astar (defaulting trader)* – there was a third party payment instruction from Astar to Venus Computers instructing Venus Computers to pay its invoice to Marubo – see below. There was a stock release and allocation form from the Spanish company Marubo to Astar dated

16 June 2006 in respect of 3000 iPods, indicating that Marubo was Astar's supplier.

5 (2) **Astar (defaulting trader) to RX** – there was no invoice from Astar to RX. There was a document from the freight forwarder (Edge Logistics) dated 16 June 2006 in respect of 8,000 units of Apple iPods which showed the following deal chain: Marubo→Astar→RX Tech→Easy→Crescent→A1→ Cyba→Atec. There was a release and allocation instruction from Astar to Edge Logistics dated 16 June 2006 requesting the allocation and release of 3,000 units of the same type of goods to Easy MSI.

10 (3) **RX to Easy MSI** – there was an invoice from RX to Easy MSI dated 16 June 2006 in respect of the same type and quantity of goods. There was also a corresponding purchase order from Easy MSI to RX dated 16 June 2006 (containing a supplier declaration) and a pro forma invoice of the same date in respect of the same type and quantity of goods. Also, there was a payment  
15 instruction dated 16 June 2006 from RX to Easy MSI instructing Easy MSI to pay a company called Marubo £799,998.75 and only £176.25 to RX. The gross invoice amount on RX's invoice to Easy MSI was £800,175.

20 (4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 in respect of the same quantity and type of goods. The invoice noted that the freight forwarders were Edge Logistics. There was a corresponding pro forma invoice from Easy MSI, purchase order from Crescent and supplier declaration from Easy MSI, all dated 16 June 2006. Finally, there was a release and allocation instruction dated 16 June 2006 from Easy MSI to Edge Logistics requesting release and allocation of the stock to "Crescent" in  
25 respect of the same type and quantity of goods.

30 (5) **Crescent to A1 Computing** – there was an invoice from Crescent to A1 Computing dated 16 June 2006 in respect of the same type and quantity of goods. The invoice noted that it had been paid on 16 June 2006. There was an FCIB transfer of £669,750 from A1 Computing to Crescent on 16 June 2006 in part payment of Crescent's invoice. There was a further FCIB transfer of £303,700 from A1 Computing to Crescent dated 19 June 2006 in final settlement of the balance of Crescent's invoice. There was a corresponding pro  
35 form invoice from Crescent, a supplier declaration from Crescent and a purchase order from A1 Computing, all dated 16 June 2006 in respect of the same type and quantity of goods. There was a goods release note from Crescent dated 16 June 2006 to Edge Logistics requesting release of the same type and quantity of goods to A1 Computing. There was a corresponding Goods Received/Confirmation Note of the same date in respect of the same type and quantity of goods.

40 (6) **A1 Computing to Cybacomms** – there was an invoice from A1 Computing to Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods (noting the freight forwarder as "Edge"). There was a corresponding pro forma invoice and purchase order in respect of the same type and quantity of goods, both dated 16 June 2006. In addition, there were shipping  
45 instructions from A1 Computing to Edge Logistics requesting shipment of

various quantities of electronic goods (including 3,000 units of iPods) to Cybacomms dated 16 June 2006.

5 (7) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same type and quantity of goods. There were also allocation, shipping instructions and release instructions from Cybacomms to Edge Logistics in relation to Atec for the same type and quantity of goods dated 16 June 2006.

(8) *Atec to H & H Import Export (France)* – Atec exported the goods to H & H Import Export on an invoice dated 16 June 2006.

10 1064. Based on the above evidence, we have concluded that Atec’s deal 34 was connected to the fraudulent evasion of VAT by Astar. It is worth noting that RX, the “blocker” trader, features in this deal chain i.e. a deal chain which traces back to a fraudulent defaulter.

*Deal 35 (1450)*

15 1065. Deal 35 involved the supply of 2,500 units of Apple iPods – 60 GB Video White.

1066. The alleged deal chain was as follows:

20 (1) *Marubo International (Spain) to Astar (defaulting trader)* – there was a third party payment instruction from Astar to Unitech instructing Unitech to pay the amount in respect of Astar’s invoice to Marubo – see below.

25 (2) **Astar (defaulting trader) to Unitech** – There was an invoice (2175), in the exhibits to Ms Riley’s witness statement, from Astar to Unitech dated 16 June 2006 in respect of the same type and quantity of goods. In addition, again in the exhibits to Ms Riley’s witness statement, there was a corresponding purchase order from Unitech and supplier declaration from Astar, both dated 16 June 2006. Furthermore, there was a payment instruction from a star to Unitech requesting Unitech to pay £666,371.8828 company called Marubo International and only £293.752 Astar. The total amount due in respect of Astar’s invoice (including VAT) was £666,665.63. There was also, a release and allocation instruction from Astar to Edge Logistics in respect of the same type and quantity of goods dated 16 June 2006.

35 (3) **Unitech to Easy MSI** – there was an invoice from Unitech to Easy MSI dated 16 June 2006 in respect of the same type and quantity of goods. There was also a corresponding purchase order and supplier declaration, both dated 16 June 2006. In addition, there was a payment instruction from Unitech requesting Easy MSI to pay Marubo International £666,665.63 and only £146.882 Unitech. Unitech’s invoice amount (including VAT) was £666,812.50.

40 (4) **Easy MSI to Crescent** – there was an invoice dated 16 June 2006 from Easy MSI to Crescent (“Crescent”) in respect of the same type and quantity of goods. There was a corresponding pro forma invoice from Easy MSI, a purchase order from Easy MSI and a supplier declaration from Easy MSI, all

dated 16 June 2006. There was a release and allocation instruction from Easy MSI to Edge Logistics in favour of Crescent in respect of the same type and quantity of goods, dated 16 June 2006. There was also a request to Edge Logistics to confirm receipt of the same type and quantity of goods from Crescent's supplier Easy MSI (included in the bundle in relation to the documents for deal 36). The date on this request was difficult to decipher but it appeared to be 18 June 2006, although, oddly, it appeared to have been faxed on 6 June 2006.

(5) **Crescent to A1 Computing** – there was an invoice from Crescent to A1 Computing dated 16 June 2006 in respect of the same type and quantity of goods. There were FCIB transfers from A1 Computing to Crescent on 16 June 2006 in respect of that invoice. There was a corresponding pro forma invoice from Crescent and supplier declaration from Crescent, both dated 16 June 2006. There was also a Goods Release Note dated 16 June 2006 from Crescent to Edge Logistics requesting the release of goods of the same type and quantity to A1 Computing.

(6) **A1 Computing to Cybacomms** – there was an invoice dated 16 June 2006 from A1 Computing to Cybacomms in respect of the same type and quantity of goods. In addition, there was a corresponding purchase order from Cybacomms to A1 Computing and a pro forma invoice dated 16 June 2006. There were shipping instructions from A1 Computing addressed to Edge Logistics dated 16 June 2006 in respect of a number of quantities of electronic goods including 2,500 iPods to be shipped to Cybacomms.

(7) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 16 June 2006 in respect of the same type and quantity of goods.

(8) *Atec to H & H Import Export (France)* – Atec exported the goods to H & H Import Export on an invoice dated 16 June 2006.

1067. Based on the above evidence, we concluded that Atec's deal 35 was connected with the fraudulent evasion of VAT by Astar.

#### *Deal 36 (1451)*

1068. Deal 36 involved the supply of 2,500 units of Article iPods – 60 GB Video White. Atec's invoice was dated 16 June 2006.

1069. The alleged deal chain was as follows:

(1) *Marubo International to Astar (defaulting trader)* – there was a freight forwarder's file dated 16 June 2006 showing the deal chain for 8,000 units of iPods including Marubo at the head of the chain. The deal chain was Marubo to Astar to RX Tech to Easy MSI to Crescent to A1 to Cybacomms to Atec. There was also a third party payment instruction from Astar requesting that Venus Computers should pay Marubo – see below. There was also a stock release and allocation note from Marubo in favour of Astar in respect of 2,500 units of



iPods dated 16 June 2006. This was one of three stock release notes totalling 8,000 units of iPods.

5 (2) **Astar (defaulting trader) to Venus Computers** – there was an invoice from Astar to Venus Computers dated 16 June 2006 (the freight forwarder was Edge Logistics) in respect of the same type and quantity of goods. There was a corresponding pro forma invoice dated 16 June 2006. There was also a supplier declaration from Astar in respect of that invoice dated 16 June 2006. There was also a payment instruction from Astar to Venus Computers requesting Venus Computers make payment to Marubo International of £666,371.88 (Astar's invoice, including VAT, totalled £666,665) and only £293.752 to Astar. We also note that Venus Computers' monthly trader listing showed the purchase of the same type and quantity of goods from Astar.

15 (3) **Venus Computers to Easy MSI** – there was no invoice from Venus Computers to Easy MSI. Easy MSI's monthly deal list (see deal 32 above) recorded that Easy MSI bought goods of the same type and quantity from Venus Computers on an invoice dated 16 June 2006 and sold the goods to Crescent on the same date. In addition, there was the deal list from Edge Logistics referred to in relation to deal 34 above. Venus Computers' monthly trader listing shows that it bought the same type and quantity of goods from Astar on 16 June 2006 and sold to Easy MSI also on 16 June 2006.

20 (4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, a purchase order from Crescent and a supplier declaration from Easy MSI, all dated 16 June 2006. In addition, there was a release and allocation instruction from Easy MSI to Edge Logistics in favour of Crescent dated 16 June 2006 in respect of the same type and quantity of goods.

25 (5) **Crescent to A1 Computing** – there was an invoice from Crescent to A1 computing dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, supplier declaration and Purchase order from A1 Computing, all dated 16 June 2006. There was an FCIB transfer of £669,750 from A1 Computing to Crescent on 16 June 2006 in respect of Crescent's invoice. There was also a goods release note from Crescent dated 16 June 2006 requesting the release of the same type and quantity of goods to A1 Computing.

30 (6) **A1 Computing to Cybacomms** – there was an invoice from A1 Computing to Cybacomms dated 16 June 2006. There was a corresponding pro forma invoice and purchase order, both dated 16 June 2006 and an uncompleted supplier declaration. There was also a shipping instruction from A1 to Edge Logistics requesting shipping to Cybacomms of a number of items which included 2,500 iPods dated 16 June 2006.

35 (7) **Cybacomms to Atec** – this transaction was not in dispute there was an invoice from Cybacomms dated 16 June 2006 in respect of the same type and quantity of goods.

(8) *Atec to H & H Import Export (France)* – Atec exported the goods to H & H Import Export on an invoice dated 16 June 2006.

1070. On the basis of the above evidence, we concluded that Atec’s deal 36 was connected to the fraudulent evasion of VAT by Astar.

5 *Deal 37 (1452)*

1071. Deal 37 involved the supply of 2,000 units of Sony PSPs. Atec’s invoice was dated 16 June 2006.

1072. The alleged deal chain was as follows:

10 (1) *Marubo International to Astar (defaulting trader)* – There was a stock release from Marubo in favour of Astar in respect of the same type and quantity of goods dated 16 June 2006. There was also a freight forwarder’s file for the same type and quantity of goods dated 16 June 2006 indicating a deal chain consisting of: Marubo to Astar to Venus to Easy MSI to Crescent to A1 to Cybacomms and to Atec. There were also third-party payment instructions from  
15 Astar to Venus Computers instructing Venus Computers to pay Marubo – see below.

(2) **Astar to Venus Computers** – there was an invoice (2190), in Ms Riley’s exhibits, from Astar to Venus Computers dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order  
20 from Venus Computer, a supplier declaration by Astar and pro forma invoice, all dated 16 June 2006. In addition there was an allocation and release note from Astar in favour of Venus Computers addressed to Edge Logistics dated 16 June 2006 requesting the release to Venus Computers of 2000 units of “PSP Games 1400 K”. Moreover, there was a payment instruction from Astar to Venus  
25 Computers requesting that it make payment in respect of invoice 2190 to a company called Marubo International in the amount of £311,962.50, with only £352.50 being paid to Astar. The total invoice amount (including VAT) on Astar’s invoice was £312,315.

30 There was a deal chain in a document from Edge Logistics dated 16 June 2006 setting out a deal chain in respect of 2000 units of Sony PSPs. The deal chain was:

Marubo → Astar → Venus → Easy → Crescent → A1 → Cyba → Atec.

(3) **Venus Computers to Easy MSI** – There was no invoice from Venus Computers to Easy MSI. However, in addition to the Edge Logistics deal chain  
35 document referred to above, there was a “request to release goods” from Venus to Edge Logistics dated 16 June 2006 requesting the release of goods of the same type and quantity (“PSP GAMES 1400 K”) to Easy MSI. Also, in the deal listing for Venus (compiled by HMRC from Venus’ sales and purchase invoices) Venus is recorded as having supplied the same type and quantity of  
40 goods to Easy MSI on 16 June 2006.

5 (4) **Easy MSI to Crescent** – there was an invoice from Easy MSI to Crescent dated 16 June 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice from Easy MSI and a purchase order from Crescent both dated 16 June 2006. In addition, there was a supplier declaration from Easy MSI in respect of the same type and quantity of goods dated 16 June 2006. There was also a release and allocation instruction from Easy MSI dated 16 June 2006 requesting that Edge Logistics release the same type and quantity of goods to Crescent. There was an FCIB transfer by Crescent to Easy MSI on 4 July 2006 in the amount of £311,375 in respect of Easy MSI’s invoice.

15 (5) **Crescent to A1 Computing** – There was an invoice from Crescent to A1 Computing dated 16 June 2006 in respect of the same type and quantity of goods. The description of the goods was “PSP Sony” which, in our view, was a reference to the same goods described in the earlier links in the deal chain. There was also a purchase order from A1 Computing in respect of 2,000 units of “Sony PSP”. There was an FCIB payment from A1 Computing to Crescent dated 16 June 2006 in the amount of £312,550 in respect of Crescent’s invoice.

20 (6) **A1 Computing to Cybacomms** – there was an invoice dated 16 June 2006 from A1 Computing to Cybacomms in respect of 2,000 units of “Sony PSP”. There was a corresponding purchase order from Cybacomms also dated 16 June 2006. There was an FCIB payment from Cybacomms to A1 Computing for £314,900 (i.e. the full amount of A1 Computing’s invoice). There was a shipping instruction from A1 Computing to Edge Logistics dated 16 June 2006 requesting that various quantities of goods be shipped to Cybacomms. These goods included 2,000 PSP’s.

25 (7) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec in respect of the same type and quantity of goods dated 16 June 2006.

30 (8) *Atec to H & H Import Export (France)* – Atec exported the goods to H & H Import Export on an invoice dated 16 June 2006.

1073. Based on the above, we have concluded that Atec’s deal 37 was connected to the fraudulent evasion of VAT by Astar.

#### *Deal 38 (1455)*

35 1074. Deal 38 involved the supply of 3,000 units of Nokia 8800 mobile telephones. Atec’s invoice was dated 27 June 2006.

1075. The alleged deal chain was as follows:

40 (1) *Kom Team (France) to A-Z (contra-trader)* – there was a purchase order from A-Z to Kom Team dated 27 June 2006 in respect of the same type and quantity of goods. There was also an invoice from Kom team to A-Z dated 27 June 2006 in respect of the same type and quantity of goods.

5 (2) **A-Z (contra-trader) to Stardex** – there was an invoice from A-Z to Stardex dated 27 June 2006 in respect of the same type and quantity of goods. On the same date, there was an allocation and release ship on hold request from A-Z to the freight forwarder, 1<sup>st</sup> Freight, to allocate and release goods of the same type and description to Stardex. There was an FCIB payment of £1,043,400 from Stardex to A-Z, in payment of A-Z’s invoice, on 3 July 2006.

(3) **Stardex to Atec** – this transaction was not in dispute. There was an invoice from Stardex to Atec dated 27 June 2006 in respect of the same type and quantity of goods.

10 (4) *Atec to Evolution (France)* – Atec exported the goods to Evolution on an invoice dated 28 June 2006.

(5) *Evolution (France) to Vundera (Latvia)* – according to information from the French tax authorities, Evolution sold the goods to Vundera, a Latvian company.

15 1076. On the basis of the above evidence, we consider that Atec’s deal 38 was connected to the fraudulent contra-trading of A-Z.

*Deal 39 (1456)*

1077. Deal 39 involved the supply of 1,500 units of Nokia N 80 mobile telephones. Atec’s invoice was dated 28 June 2006.

20 1078. The alleged deal chain was as follows:

(1) *Kom Team (France) to Jag Tec (contra-trader)* – there was an invoice from Kom Team to Jag Tec in respect of the same type and quantity of goods dated 28 June 2006. There was a corresponding purchase order from Jag Tec of the same date.

25 (2) **Jag Tec (contra-trader) to Stardex** – there was an invoice from Jag Tec to Stardex dated 28 June 2006 in respect of the same type and quantity of goods. There was a document from 1<sup>st</sup> Freight, the freight forwarder, recording verbal instructions from Jag Tec dated 28 June 2006 to “Ship on Hold” to Stardex.

30 (3) **Stardex to Atec** – this transaction was not in dispute. There was an invoice from Stardex to Atec dated 28 June 2006 in respect of the same type and quantity of goods.

(4) *Atec to Evolution (France)* – Atec exported the goods to Evolution on an invoice dated 28 June 2006.

35 (5) *Evolution (France) to Vundera (Latvia)* – according to information from the French tax authorities Evolution sold the goods to Vundera, a Latvian company.

1079. On the basis of the above evidence, we consider that Atec’s deal 39 was connected to the fraudulent contra-trading of Jag Tec.

*Deal 40 (1457)*

1080. Deal 40 involved the supply of 1,000 units of Apple iPods. Atec's invoice date was 3 July 2006. This deal involved the supply of two separate quantities of goods. The first quantity ("the initial chain 1") involved 752 units and the second quantity  
5 ("the initial chain 2") involved 252 units. These two supply chains, as far as relevant, were alleged to commence with two defaulting traders: Universal Appliances and Daraj Trading. The two separate supply chains to come together in a buffer company called Broadcast. We shall examine the two supply chains and then the supply chain from Broadcast. Atec has effectively admitted the existence of an invoice chain  
10 between it and the defaulting traders.

1081. Initial chain 1:

(1) *Macdelta (Cyprus) to Universal Appliances* – there was a third party payment instruction in favour of Macdelta – see below.

(2) **Universal Appliances to Novafone** – there was an invoice (016) from  
15 Universal Appliances to Novafone dated 12 June 2006 in respect of 752 units of the same goods. There were also payment instructions from Universal Appliances to Novafone instructing it to pay a company called Macdelta a total of £142,980.80. The total amount (including VAT) of Universal Appliances' invoice to Novafone was £143,498.64.

(3) **Novafone to A W Associates** – there was an invoice from Novafone to  
20 AW Associates dated 12 June 2006 in respect of 752 units of the same type of goods. There were payment instructions dated 12 June 2006 from Novafone instructing A W Associates to pay Macdelta £142,960.80 – Novafone's invoice amount to A W Associates was £143,805.90. There is also a corresponding  
25 purchase order from A W Associates dated 12 June 2006 in respect of the 752 units of the same type ("iPod") of goods.

(4) **AW Associates to High Speed** – there was an invoice from A W  
30 Associates to High Speed dated 12 June 2006 in respect of 752 units of the same type of goods. There was a corresponding purchase order from High Speed of the same date and in respect of 752 units of the same type of goods.

(5) **High Speed to Broadcast** – there was an invoice from High Speed to  
Broadcast dated 12 June 2006 in respect of 752 units of the same type of goods.

1082. Initial chain 2:

(1) *Macdelta to Daraj* – see third party payment instruction below.

(2) **Daraj Trading to Excell Distribution** – there was an invoice from Daraj  
35 Trading (number 11) to Excell Distribution dated 24 April 2006 in respect of 252 units of the same type of goods for total payment of £49,522.73 (inclusive of VAT). There was a corresponding purchase order from Excell Distribution dated 25 April 2006. There was a payment instruction from Daraj Trading to  
40 Excell Distribution dated 26 April 2006 in which Excell Distribution was requested to pay Macdelta £49,369.80.

(3) **Excell Distribution to Xcel** – there was an invoice dated 25 April 2006 from Excell Distribution to Xcel in respect of 252 units of iPods. There was a corresponding purchase order from Xcel the same quantity of “Apple iPod 60G Black” dated 25 April 2006.

5 (4) **Xcel to Cormila** – there was an invoice from Xcel to Cormila dated 25 April 2006 in respect of 252 Apple iPod 60G Black. There was a corresponding purchase order from Cormila, also dated 25 April 2006.

10 (5) **Cormila to Broadcast** – there was an invoice from Cormila to Broadcast dated 25 April 2006 in respect of 252 units of goods of the same description. There was a corresponding purchase order from Broadcast of the same date.

1083. The alleged unified deal chain from Broadcast to Atec was as follows:

15 (1) **Broadcast to Synectiv** – there were two invoices from Broadcast to Synectiv. The first was dated 12 June 2006 in respect of 752 units of the same goods. The second invoice was dated 25 April 2006 in respect of 252 units of the same type of goods. There were corresponding purchase orders from Synectiv dated 12 June 2006 and 24 April 2006 respectively.

20 (2) **Synectiv to Digitech** – there was an invoice from Synectiv to Digitech dated 29 June 2006 in respect of 1000 units of the same type of goods. There was a corresponding pro forma invoice and purchase order, both dated 29 June 2006.

(3) **Digitech to Atec** – this transaction was not in dispute. There was an invoice dated 29 June 2006 from Digitech to Atec in respect of 1000 units of the same kind of goods.

25 (4) *Atec to Freitex (Germany)* – Atec sold the goods to Freitex on an invoice dated 3 July 2006.

(5) *Freitex (Germany) sold the goods to Silus BV (Netherlands)* – this transaction was evidenced by information obtained from the German tax authorities.

30 1084. On the basis of the above evidence, we have concluded that Atec’s deal 40 was connected to the fraudulent default of Universal Appliances and Daraj Trading. We have taken into account the discrepancy in the date of the two initial invoice chains (and the very minor discrepancy in amounts between the initial and unified chains) but consider that, on the balance of probabilities, those two chains were united in Broadcast which on-supplied Synectiv, which in turn supplied Digitech, which then  
35 supplied Atec.

#### *Deal 41 (1459)*

1085. Deal 41 involved the supply of 2,000 units of Tom Tom 910 satellite navigation sets. Atec’s invoice was dated 4 July 2006.

40 1086. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions

Ltd (“RX”). Based on RX’s trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX’s conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1087. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

10 (1) **RX to RK Brothers** – there was an invoice dated 4 July 2006 from RX to RK Brothers in respect of the same type and quantity of goods. There was a corresponding purchase order from RK Brothers, a pro forma invoice from RX and a delivery note from RX, all dated 4 July 2006.

15 (2) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 4 July 2006 in respect of the same type and quantity of goods. There was also a release note from RK Brothers in favour of Crescent dated 4 July 2006 in respect of the same type and quantity of goods.

20 (3) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 4 July 2006 in respect of the same type and quantity of goods. There was also a corresponding purchase order from Cybacomms, supplier declaration from Crescent and pro forma invoice from Crescent, all dated 4 July 2006. In addition, there were a goods release note and a goods received/confirmation note, both from Crescent and both dated 4 July 2006 in respect of the same type and quantity of goods.

25 (4) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 4 July 2006 in respect of the same type and quantity of goods.

(5) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 4 July 2006.

30 (6) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1088. Based on the above evidence, we have concluded that Atec’s deal 41 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss.

35 *Deal 42 (1460)*

1089. Deal 42 involved the supply of 3000 units of Tom Tom 510 satellite navigation sets. Atec’ invoice was dated 4 July 2006.

40 1090. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions Ltd (“RX”). Based on RX’s trading pattern, HMRC asserted that on the balance of

probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX's conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1091. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

(1) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 4 July 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from RK Brothers of the same date.

(2) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 4 July 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Crescent of the same date. In addition, there were FCIB payments from Crescent to RK Brothers 10 July 2006 in respect of RK Brothers' invoice. There was also a release note from RK Brothers in favour of Crescent dated 4 July 2006 in respect of the same quantity and type of goods.

(3) **Crescent to Cybacomms** – there was an invoice dated 4 July 2006 from Crescent to Cybacomms in respect of the same quantity and type of goods. The invoice was marked as having been paid on 5 July 2006. In addition, there was a corresponding pro forma invoice, purchase order and supplier declaration, all dated 4 July 2006.

(4) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice dated 4 July 2006 from Cybacomms to Atec in respect of the same type and quantity of goods which was marked as having been paid on 5 July 2006.

(5) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 4 July 2006.

(6) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1092. Based on the above evidence, we have concluded that Atec's deal 42 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a "blocker", and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss.

#### *Deal 43 (1461)*

1093. Deal 43 involved the supply of 2,000 units of Snooper Indago satellite navigation sets. Atec's invoice was dated 4 July 2006.

1094. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already



concluded that the nature of RX's conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

5 1095. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

10 (1) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 4 July 2006 in respect of the same quantity of goods. The type of goods were described as “Snooker Indico” – which we take to be a typographical error which was repeated on the corresponding pro forma invoice and delivery note issued by RX on 4 July 2008. There was also a supplier declaration by RX dated 4 July 2006. Interestingly (and we thought tellingly), the purchase order dated 4 July 2006 from RK Brothers also contained exactly the same typographical error. It seems odd that both parties incorrectly described the goods on an order worth almost £1 million. The supplier declaration, however, gave a correct description of the goods.

20 (2) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 4 July 2006 in respect of the same quantity of goods. This time, however, RK Brothers described the goods correctly as “Snooper Indago”. There was a corresponding purchase order from Crescent dated 4 July 2006.

(3) **Crescent to Cybacomms** – there was an invoice dated 4 July 2006 from Crescent to Cybacomms in respect of the same type and quantity of goods. There was a corresponding purchase order and pro forma invoice, both of the same date.

25 (4) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 4 July 2006 in respect of the same type and quantity of goods.

(5) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 4 July 2006.

30 (6) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1096. Based on the above evidence, we have concluded that Atec's deal 43 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss.

#### *Deal 44 (1462)*

1097. Deal 44 involved 2000 units of Garmin C 340 Street Pilot satellite navigation sets. Atec's invoice was dated 4 July 2006.

40 1098. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions

Ltd (“RX”). Based on RX’s trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX’s conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1099. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

(1) **RX to RK Brothers** – there was an invoice dated 4 July 2006 from RX to RK Brothers in respect of the same type and quantity of goods. The goods were described as “Garmin Street Pilot”. There was a corresponding purchase order from RK Brothers dated 4 July 2006. There was a delivery note from RX to RK Brothers in respect of the same quantity and type of goods dated 4 July 2006.

(2) **RK Brothers to Crescent** – there was an invoice dated 4 July 2006 from RK Brothers to Crescent in respect of the same type and quantity of goods. The description of the goods was: “Garmin Street Pilot C 340”. There was a corresponding purchase order from Crescent dated 4 July 2006. Finally, there was a release of stock note from RK Brothers to Crescent dated 4 July 2006 in respect of the same type and quantity of goods. There were FCIB transfers in respect of RK Brothers’ invoice by Crescent on 7 and 10 July 2006.

(3) **Crescent to Cybacomms** – there was an invoice from Crescent to Cybacomms dated 4 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, and purchase order from Cybacomms, both of the same date. There was an FCIB transfer from Cybacomms to Crescent dated 5 July 2006 of £714,400 in full payment of Crescent’s invoice.

(4) **Cybacomms to Atec** – this transaction was not in dispute. There was an invoice from Cybacomms to Atec dated 4 July 2006 in respect of the same type and quantity of goods.

(5) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 4 July 2006.

(6) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1100. Based on the above evidence, we have concluded that Atec’s deal 44 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss.

#### *Deal 45 (1463)*

1101. Deal 45 involved the supply of 1000 units of Tom Tom Go 500 satellite navigation sets. Atec’s invoice was dated 5 July 2006.

1102. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions Ltd (“RX”). Based on RX’s trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already  
5 concluded that the nature of RX’s conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1103. Accordingly, it is necessary only to trace the deal chain as far as RX. The  
10 alleged deal chain is, therefore, as follows:

- (1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.
- (2) **RX Tech to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods.  
15 There was a corresponding pro forma invoice, delivery note and supplier declaration, all dated 5 July 2006. In addition, there was a payment instruction from RX to RK Brothers to pay a company called Koornmarkt (a Belgian company) £280,178.75 in respect of RX’s invoice (total amount, including VAT, of £280,237.50). According to the direction, only a paltry £58.75 was to  
20 be paid to RX.
- (3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 5 July 2006, which was marked as paid on 10 July 2006, relating to the same type and quantity of goods. There was a corresponding supplier declaration and purchase order, both of the same date. There was also an FCIB  
25 transfer by Crescent to RK Brothers on 10 July 2006 in part payment of RK Brothers’ invoice. There was, in addition, a release note from RK Brothers to Crescent dated 5 July 2006 in respect of the same type and quantity of goods.
- (4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 in respect of the same type and quantity of goods.  
30 There was a corresponding supplier declaration from Crescent and pro forma invoice, both dated 5 July 2006. There was an FCIB transfer from Team Mobile to Crescent on 6 July 2006, partly in respect of Crescent’s invoice.
- (5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type  
35 and quantity of goods.
- (6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.
- (7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

40 1104. Based on the above evidence, we have concluded that Atec’s deal 45 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. It is notable that Koornmarkt

featured at the beginning and end of this deal chain, which we considered an indication that the deal chain was contrived.

*Deal 46 (1464)*

5 1105. Deal 46 involved the supply of 2000 units of Tom Tom Riders satellite navigation sets. Atec's invoice was dated 5 July 2006.

10 1106. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX's conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

15 1107. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

(1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.

20 (2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, delivery note and supplier declaration. There was a purchase order dated 5 July 2006 from RK Brothers to RX in respect of the same quantity and type of goods ("Tom Tom Ryder"). There was also an instruction from RX to RK Brothers dated 7 July 2006 requesting that  
25 RK Brothers should pay a company called Koornmarkt £607,357.50 in respect of RX's invoice and only £117,502 RX. RX's invoice totalled (including VAT) £607,475.

30 (3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent in respect of the same type and quantity of goods. There was a corresponding purchase order from Crescent dated 5 July 2006. There was an FCIB payment from Crescent to RK Brothers dated 10 July which referenced RK Brothers' invoice, in the amount of £608,650. There was a release of stock note from RK Brothers dated 5 July 2006 in favour of Crescent in respect of the same type and quantity of goods. There was an FCIB transfer from Crescent to RK Brothers dated 10 July 2006 in respect of RK Brothers' invoice (559).

35 (4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 in respect of the same type and quantity of goods which was marked as having been paid on 6 July 2006. There was an FCIB payment in respect of that invoice from Team Mobile to Crescent in the amount of £609,825 dated 6 July 2006. In addition, there was a corresponding purchase  
40 order from Team Mobile, supplier declaration from Crescent and pro forma invoice from Crescent. There was also a goods release note from Crescent in

favour of Team Mobile dated 5 July 2006 in respect of the same type and quantity of goods.

5 (5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type and quantity of goods.

(6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

(7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

10 1108. Based on the above evidence, we have concluded that Atec's deal 46 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a "blocker", and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. It is conspicuous that Koornmarkt appeared at the beginning and end of this transaction chain – a sure sign  
15 that this was a contrived deal chain.

*Deal 47 (1465)*

1109. Atec's deal 47 involve the supply of 2000 I Mate K Jam mobile telephones. Atec's invoice was dated 5 July 2006.

1110. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were  
20 unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX's conduct and the factors identified by HMRC (in  
25 their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1111. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

30 (1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.

(2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, delivery note and supplier declaration, all dated 5 July 2006. In addition, there was a payment instruction from RX to RK  
35 Brothers to pay a company Koornmarkt £824,732.50 in respect of RX's invoice (total amount, including VAT, of £824,850). According to that direction, only £117.50 was to be paid to RX.

(3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 5 July 2006, marked as paid on 10 July 2006, relating to the  
40 same type and quantity of goods. There was a corresponding supplier

declaration, pro forma invoice, purchase order, delivery note, release of stock note, all of the same date. There was also an FCIB transfer by Crescent to RK Brothers on 10 July 2006 in full payment of RK Brothers' invoice (invoice 560).

5 (4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding supplier declaration from Crescent and pro forma invoice, both dated 5 July 2006. There was an FCIB transfer from Team Mobile to Crescent on 6 July 2006 partly in respect of Crescent's invoice. There was  
10 also a goods release note from Crescent and a goods received/confirmation note (also from Crescent), both dated 5 July 2006.

(5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type and quantity of goods.

15 (6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

(7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

20 1112. Based on the above evidence, we have concluded that Atec's deal 47 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a "blocker", and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. Again, Koornmarkt features at the beginning and end of this deal chain and we take this to be an indication that the deal chain was contrived.

25 *Deal 48 (1466)*

1113. Deal 48 involved the supply of 500 units of I-Mate Jasjar mobile telephones. Atec's invoice was dated 5 July 2006.

30 1114. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX's conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51,  
35 also traced back to a fraudulent tax loss.

1115. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

(1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.

5 (2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, purchase order (from RK Brothers), delivery note and supplier declaration, all dated 5 July 2006. In addition, there was a payment instruction from RX to RK Brothers to pay a company Koornmarkt £207,035 in respect of RX’s invoice (total amount, including VAT, of £207,093.75). According to that direction, only a mere £58.75 was to be paid to RX.

10 (3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 5 July 2006, which was marked as paid on 10 July 2006, relating to the same type and quantity of goods. There was a corresponding supplier declaration, purchase order, delivery note, release of stock note, all of the same date. There was also an FCIB transfer by Crescent to RK Brothers on 10 July 2006 in part payment of RK Brothers’ invoice (invoice 561).

15 (4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding supplier declaration from Crescent and pro forma invoice, both dated 5 July 2006. There was an FCIB payment from Team Mobile dated 6 July 2006 in satisfaction, *inter alia*, of Crescent’s invoice. There was also a goods release note from Crescent and a goods received/confirmation note (also from Crescent), both dated 5 July 2006.

(5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type and quantity of goods.

25 (6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

(7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

30 1116. Based on the above evidence, we have concluded that Atec’s deal 48 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. Again, the fact that Koornmarkt featured at the beginning and end of the deal chain indicated contrivance.

*Deal 49 (1467)*

35 1117. Deal 49 involved the supply of 500 units of I-Mate Jamin mobile telephones. Atec’s invoice was dated 5 July 2006.

40 1118. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the “blocker” trader RX Tech Solutions Ltd (“RX”). Based on RX’s trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX’s conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly

to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1119. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

5 (1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.

(2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, purchase order (from RK Brothers), delivery note and supplier declaration, all dated 5 July 2006. In addition, there was a payment instruction from RX to RK Brothers to pay a Koornmarkt £197,047.50 in respect of RX’s invoice (total amount, including VAT, of £197,106.25). According to that direction, only a mere £58.75 was to be paid to RX.

10 (3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 5 July 2006, which was marked as paid on 10 July 2006, relating to the same type and quantity of goods. There was a corresponding supplier declaration, purchase order, delivery note, release of stock note and goods received/confirmation note, all of the same date. There was also an FCIB transfer by Crescent to RK Brothers on 10 July 2006 in payment of RK Brothers’ invoice (invoice 562).

15 (4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 (marked as paid on 6 July 2006) in respect of the same type and quantity of goods. There was a corresponding purchase order, supplier declaration from Crescent and pro forma invoice, all dated 5 July 2006. There was an FCIB payment from Team Mobile dated 6 July 2006 in satisfaction, *inter alia*, of Crescent’s invoice. There was also a goods release note from Crescent dated 5 July 2006. There was an FCIB payment from Team Mobile to Crescent dated 6 July 2006 expressed to be, *inter alia*, in respect of Crescent’s invoice (1029).

20 (5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type and quantity of goods.

(6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

25 (7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

30 1120. Based on the above evidence, we have concluded that Atec’s deal 49 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a “blocker”, and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. As we have noted, the fact that Koornmarkt featured at both ends of the deal chain indicated contrivance.



*Deal 50 (1468)*

1121. Deal 50 involved the supply of 1,000 units of HPiPAQ hx2790 pocket PCs. Atec's invoice was dated 5 July 2006.

1122. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were  
5 unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions  
Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of  
probabilities these transactions traced to fraudulent tax losses. We have already  
concluded that the nature of RX's conduct and the factors identified by HMRC (in  
10 their submissions in relation to fraudulent tax losses regarding RX) allow us properly  
to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51,  
also traced back to a fraudulent tax loss.

1123. Accordingly, it is necessary only to trace the deal chain as far as RX. The  
alleged deal chain is, therefore, as follows:

15 (1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a  
third party payment from RK Brothers to Koornmarkt – see below.

(2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers  
dated 5 July 2006 in respect of the same type and quantity of goods. There was  
a corresponding pro forma invoice, purchase order (from RK Brothers), delivery  
note and supplier declaration, all dated 5 July 2006. In addition, there was a  
20 payment instruction from RX to RK Brothers to pay a company Koornmarkt  
£322,478.75 in respect of RX's invoice (total amount, including VAT, of  
£322,537.50). According to that direction, only £58.75 was to be paid to RX.

(3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to  
Crescent dated 5 July 2006 in respect of to the same type and quantity of goods.  
25 There was a corresponding supplier declaration, purchase order, delivery note,  
release of stock note (both from RK Brothers) and goods received/confirmation  
note, all of the same date.

(4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team  
Mobile dated 5 July 2006 (marked as paid on 6 July 2006) in respect of the  
30 same type and quantity of goods. There was a corresponding purchase order,  
supplier declaration from Crescent and pro forma invoice, all dated 5 July 2006.  
There was an FCIB payment from Team Mobile dated 6 July 2006 in  
satisfaction, *inter alia*, of Crescent's invoice. There was also a goods release  
note from Crescent dated 5 July 2006. There was an FCIB payment from Team  
35 Mobile to Crescent dated 6 July 2006 expressed to be in respect of Crescent's  
invoice (1030).

(5) **Team Mobile to Atec** – This transaction was not in dispute. There was an  
invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type  
and quantity of goods.

40 (6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July  
2006.

(7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1124. Based on the above evidence, we have concluded that Atec's deal 50 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a "blocker", and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. Once again, the fact that Koornmarkt appeared at the start and the end of the deal chain seemed to us to indicate contrivance.

*Deal 51 (1469)*

1125. Deal 51 involved the supply of 2,000 units of Tom Tom Go 710 satellite navigation sets. Atec's invoice was dated 5 July 2006.

1126. In relation to deals 32 (1447) and 41-51 (1459-1469) inclusive, HMRC were unable to trace the transaction chain beyond the "blocker" trader RX Tech Solutions Ltd ("RX"). Based on RX's trading pattern, HMRC asserted that on the balance of probabilities these transactions traced to fraudulent tax losses. We have already concluded that the nature of RX's conduct and the factors identified by HMRC (in their submissions in relation to fraudulent tax losses regarding RX) allow us properly to infer, on the balance of probabilities, that those deals, including deals 32 and 41-51, also traced back to a fraudulent tax loss.

1127. Accordingly, it is necessary only to trace the deal chain as far as RX. The alleged deal chain is, therefore, as follows:

(1) *Koornmarkt (Belgium) to RX Tech* – there was an instruction to make a third party payment from RK Brothers to Koornmarkt – see below.

(2) **RX to RK Brothers** – there was an invoice from RX to RK Brothers dated 5 July 2006 in respect of the same type and quantity of goods. There was a corresponding pro forma invoice, purchase order (from RK Brothers), delivery note and supplier declaration, all dated 5 July 2006. In addition, there was a payment instruction from RX to RK Brothers to pay Koornmarkt £737,782.50 in respect of RX's invoice (total amount, including VAT, of £737,900). According to that direction, only £117.50 and was to be paid to RX.

(3) **RK Brothers to Crescent** – there was an invoice from RK Brothers to Crescent dated 5 July 2006 in respect of to the same type and quantity of goods. There was a corresponding supplier declaration, purchase order, delivery note, release of stock note (both from RK Brothers) and goods received/confirmation note, all of the same date.

(4) **Crescent to Team Mobile** – there was an invoice from Crescent to Team Mobile dated 5 July 2006 (marked as paid on 6 July 2006) in respect of the same type and quantity of goods. There was a corresponding purchase order, supplier declaration from Crescent and pro forma invoice, all dated 5 July 2006. There was an FCIB payment from Team Mobile dated 6 July 2006 in satisfaction, *inter alia*, of Crescent's invoice. There was also a goods release

note from Crescent dated 5 July 2006. There was an FCIB payment from Team Mobile to Crescent dated 6 July 2006 expressed to be in respect of Crescent's invoice (1031).

5 (5) **Team Mobile to Atec** – This transaction was not in dispute. There was an invoice from Team Mobile to Atec dated 5 July 2006 in respect of the same type and quantity of goods.

(6) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

10 (7) *Freitex to Koornmarkt* – this transaction was evidenced by information received from the German tax authorities.

1128. Based on the above evidence, we have concluded that Atec's deal 50 was connected to the fraudulent evasion of VAT on the basis that it was connected to RX, acting as a "blocker", and that on the balance of probabilities, those deals in which RX was a supplier traced back to a fraudulent tax loss. This was another transaction in  
15 which Koornmarkt seem to feature at the beginning and end of the deal chain and we took this to be a clear indication of contrivance.

#### *Deal 52 (1470)*

1129. Deal 52 involved the supply of 1,000 units of Apple iPod 60 GB Video. Atec's invoice date was 5 July 2006.

20 1130. The alleged deal chain was as follows:

(1) *Freitex to Silus BV* – this transaction was evidenced by a warehouse file dated 7 July 2006 in the name of Freitex, denoting Silus BV as the shipper. The file gave the chain as follows: Star Express to Hendon Import and Export to Atec. The file indicated that Atec would ship the goods to France. The file  
25 referred to the same type and quantity of goods. In addition there was a CMR and a release note from Freitex dated 12 July 2006 in favour of Silus BV in respect of the same type and quantity of goods.

(2) *Silus BV to Phone City (defaulting trader)* –there was release note from Silus BV to Star Express (see later in the chain) dated 12 July 2006 in respect of  
30 the same type and quantity of goods.

(3) **Phone City (defaulting trader) to Cirex** – there was an invoice (PCSO 1686) from Phone City to Cirex dated 12 July 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Cirex and a supplier declaration of the same date. There was also a corresponding  
35 goods receipt note (GRN 1686) which was also dated 12 July 2006. There was an FCIB transfer from Cirex to Phone City on 14 July 2006 in respect of "1000 video iPods 12<sup>th</sup> July". Finally, there was a document from the freight forwarder, Hawks, entitled "Warehouse File" dated "7-7" which set out a deal chain for 1000 iPods. The shipper was noted to be Silus BV. The document  
40 noted that there would be an allocation of the goods to "Star Express/Hendon/Atec".

(4) **Cirex to Star Express** – there was an invoice from Cirex to Star Express dated 12 July 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order and supplier declaration, both of the same date.

5 (5) **Star Express to Hendon** – there was an invoice from Star Express to Hendon dated 12 July 2006 in respect of the same type and quantity of goods. There was a corresponding purchase order from Hendon. There was a copy of Hendon’s FCIB bank statement which showed a payment of £231,475 being made in respect of invoice number 727 (the invoice number of Star Express’ invoice) on 14 July 2006.

10 (6) **Hendon to Atec** – this transaction was not in dispute. There was an invoice from Hendon to Atec dated 12 July 2006 in respect of the same type and quantity of goods which was marked as having been paid on 14 July 2006.

(7) *Atec to Freitex* – Atec sold the goods to Freitex on an invoice dated 5 July 2006.

15 (8) *Freitex to Silus BV* – this transaction was evidenced by information received from the German tax authorities.

1131. On the basis of the above evidence, we concluded that Atec’s deal 52 was connected to the fraudulent evasion of VAT by Phone City.

### **Conclusions**

20 1132. We have, therefore, concluded that all of Atec’s 52 appealed transactions were connected to the fraudulent evasion of VAT.