



TC02308

Appeal number: MAN/2007/1346

VALUE ADDED TAX – input tax – denial of right to deduct on grounds that the Appellant knew or should have known that the transaction was part of fraud by others – alleged MTIC – whether shown that the Appellant’s transactions connected with fraudulent evasion of VAT – yes – whether Appellant “knew or should have known” of fraud – yes – valid refusal of right to deduct – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

1ST 4 REPORT LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE J BLEWITT
JUDGE D. S. PORTER**

Sitting in public at Manchester on 14, 17, 18, 21, 22 and 30 May 2012.

Mr Bridge, Counsel for the Appellant

Mr Chapman, Counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against HMRC's decision, contained in a letter to 1st 4 Report Limited ("Report") dated 16 October 2007, to refuse payment to Report of input tax reclaimed on Report's VAT return for the period 05/06. The total amount refused is £2,289,786.97. The disputed input tax was incurred in the purchases of mobile telephones, HMRC say, as set out in its Statement of Case, that "the input tax incurred
- 10 by the Appellant was done so in a transaction or transactions connected with the fraudulent evasion of VAT" and that Report knew or should have known of this fact. Report maintains that it did not know and had no means of knowing that its transactions were connected with such fraud.
- 15 2. Mr Richard Chapman of Counsel appeared on behalf of HMRC. Mr Ian Bridge of Counsel appeared on behalf of Report. Both produced skeleton arguments and written submissions which set out the issues to be determined by us. We were also provided with 19 lever arch files containing witness statements and documentary exhibits relied upon by both parties.
3. We heard evidence from the following witnesses:
- 20
- Mr Stephen Doyle, Case Officer for HMRC responsible for the extended verification of VAT period 05/06;
 - Mr Fu Lam, HMRC officer assigned to contra-trader Uni-brand Europe Limited ("Uni-Brand");
 - Mr Naveed Ashraf, Director of Report.
- 25 4. Other witnesses who were not called to give evidence but whose statements stood as their evidence were:
- 30
- Mr Michael Everett, HMRC officer assigned to contra-trader Uni-Brand Europe Limited ("Uni-Brand");
 - Mr Patrick Limpkin, HMRC officer assigned to defaulting trader Performance Europe Limited ("Performance");
 - Mr Andrew Monk, HMRC officer assigned to defaulting trader Termina Computer Services Limited ("Termina");
 - Mr Andrew Shorrocks, HMRC officer assigned to defaulting trader ICM (UK) Limited ("ICM");
- 35
- Ms Judith Mooney, HMRC officer assigned to defaulting trader Eclipse Windows and Doors Limited ("Eclipse");

- Mr Roderick Stone, HMRC Officer who provides an overview of the general nature and features of MTIC fraud;
- Ms Ann Fyfe, HMRC Officer who provided FCIB evidence.

5. We referred to the following cases:

5 *Axel Kittel and another v Belgium* [C-439/04]

Blue Sphere Global Ltd v HMRC [2009] EWHC 1150 Ch,STC 2239

Calltel Telecom Ltd; and another v HMRC [2007] UKVAT V20266

Calltel Telecom Ltd; and another v HMRC [2009] EWHC 1081 (Ch)

Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch)

10 *Mobilx Ltd (in administration) v HMRC* [2009] EWHC 133 (Ch)

The Commissioners for Her Majesty's Revenue and Customs v Brayfal Limited
FTC/53/2010

Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (CH)

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POWA (Jersey) Ltd v HMRC [2012] UKUT 50 TCC

Missing Trader Intra-Community Fraud

6. Although most readers of this decision will be familiar with the way in which
20 Missing Trader Intra-Community Fraud generally operates, it may assist in
understanding the facts of this case to give a brief overview of the description coined
by HMRC and which applies to this case; contra-trading.

7. Essentially contra trading is a variation on MTIC trading. In *HMRC and
25 Livewire & HMRC and Olympia Technology Ltd* [2009] EWHC 15 (Ch) at
paragraph 1 Lewison J provided this clarification as to the different forms that MTIC
fraud can take:

“i) In its simplest form it is known as an acquisition fraud. A trader imports goods
from another Member State. No VAT is payable on the import. He then sells on
those goods to a domestic buyer and charges VAT. He dishonestly fails to account
30 for the VAT to HMRC and disappears. The importer is labelled a “missing trader”
or “defaulter”.

ii) The next level of sophistication involves both an import and an export. A trader
once again imports goods from another Member State. No VAT is payable on the
import. Typically the goods are high value low volume goods, such as computer
35 chips or mobile phones. He then sells on those goods to a domestic buyer and

charges VAT. He dishonestly fails to account for the VAT to HMRC and disappears. The domestic buyer sells on to an exporter at a price which includes VAT. The exporter exports the goods to another Member State. The export is zero-rated. So the exporter is, in theory, entitled to deduct the VAT that he paid from what would otherwise be his liability to account to HMRC for VAT on his turnover. If he has no output tax to offset against his entitlement to deduct, he is, in theory, entitled to a payment from HMRC. Thus HMRC directly parts with money. Sometimes the exported goods are re-imported and the process begins again. In this variant the fraud is known as a carousel fraud. There may be many intermediaries between the original importer and the ultimate exporter. These intermediaries are known as “buffers”. The ultimate exporter is labelled a “broker”. A chain of transactions in which one or more of the transactions is dishonest has conveniently been labelled a “dirty chain”. Where HMRC investigate and find a dirty chain they refuse to repay the amount reclaimed by the ultimate exporter.

iii) In order to disguise the existence of a dirty chain, fraudsters have become more sophisticated. They have conducted what HMRC call “contra-trading”. The trader who would have been the exporter or broker at the end of a dirty chain, with a claim to repayment of input tax, himself imports goods (which may be different kinds of goods) from another Member State. Because this is an import he acquires the goods without having to pay VAT. This is the contra-trade. He sells on the newly acquired goods, charging VAT but this output tax is offset against his input tax, resulting in no payment (or only a small payment) to HMRC. The buyer of the newly acquired goods exports them and reclaims his own input tax from HMRC. Again there may be intermediaries or buffers between the contra-trader and the ultimate exporter. The fraudsters' hope is that if HMRC investigate the chain of transactions culminating in the export, they will find that all VAT has been properly accounted for. This chain of transactions has conveniently been called the “clean chain”. Thus the theory is that an investigation of the clean chain will not find out about the dirty chain, with the result that HMRC will pay the reclaim of VAT on the export of the goods which have progressed through the clean chain.”

8. In the present case, Report was, in all 6 transactions, in the position of the ultimate exporter of goods in a “clean chain”, more about which we will say later. We make it clear that throughout this decision the use of the terms “clean chain” and “dirty chain” are used for the purposes of convenience and without any inference of pre-judging the issue. It is not alleged by HMRC that the transactions in Report’s chain led to any tax loss, but it is alleged that the clean chains were a device used to conceal fraud and that if Report knew or should have known of the fraud, then by its involvement it was participating in it.

40 **The Legislation**

9. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 and the VAT Regulations 1995.

10. The provisions are in mandatory terms; if a trader has incurred input tax, which is properly allowable, he is entitled, as of right, to set it against his output tax liability

or to receive a repayment if the input tax credit due to him exceeds that liability. A trader is required to hold evidence to support his claim (under article 18 of the Sixth Directive and Regulation 29 (2) of the Value Added Tax Regulations 1995 (SI 1995/2518)). The right to deduct or right to a repayment is absolute and there is no discretion on the tax authority, save that the authority may accept less evidence than normally required.

Burden and Standard of Proof

11. The burden and standard of proof to be applied in this type of appeal was clarified by Moses LJ in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*") (paragraphs 81 and 82):

15 *"It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion.*

20 *But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant...Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in Kittel, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was"*

12. Both parties agreed that the standard of proof to be applied is the ordinary civil standard, namely whether, on the balance of probabilities, HMRC have proved either that Report knew or should have known that the transactions in which it was taking part were connected with fraud.

Case Law

13. The European Court of Justice in *Optigen Ltd and Others v HMRC* [C-354/03] ("*Optigen*") made it clear that output tax can be recovered even though the transaction is outside the VAT scheme. It was confirmed in the cases of *Kittel v Belgium, Belgium v Recolta Recycling* [2008] STC 1537 ("*Kittel*") and *Mobilx Ltd (in administration) v HMRC* [2009] STC 1107 that there is no discretion on the part of the Authorities to withhold any tax repayment where the objective criteria for compliance with the VAT regime are met. However where a trader does not comply with the objective criteria because there is a fraud, that trader cannot recover any tax.

40 The case of *Kittel* extended the concept of knowledge to include a trader who ought to

have known that there was a fraud and the test was further clarified and refined by Moses LJ in *Mobilx* at paragraph 24:

5 *“The scope of VAT is identified in Art. 2 of the Sixth Directive. It applies, in addition to importation, to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. A taxable person is defined in Art. 4.1 as a person who carries out any of the economic activities specified in Art. 4.2. Art. 5 defines the supply of goods and Art. 6 the supply of services. The scope of VAT, the transactions to which it applies and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of*
10 *those objective criteria are essential to achieve:-*

15 *“the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned.” (Kittel para 42, citing BLP Group [1995] ECR1/983 para 24.)*

And at paragraph 30:

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

Moses LJ summarised this position at paragraph 43:

25 *“A person who has no intention of undertaking an economic activity but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person’s VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see Halifax § 59 and Kittel § 53). 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, equally, fails to meet the objective criteria*
30 *which determine the scope of the right to deduct.”*

14. The position was recently summarised by Lewison J in *Brayfal Ltd v HMRC* [2011] UK UT B6 (TCC) as follows:

35 *“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 1-6161 (“Kittel”). What the Court of*
40 *Appeal decided was:*

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)

5 *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*
10 *connected with such fraudulent evasion. (60)*

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". (59)

15 *...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*
20 *connected with fraudulent evasion of VAT. The circumstances may well establish that he was. (82)".*

15. In the case of *Megtian Ltd v HMRC* [2010] STC 840 at 851 (“*Megtian*”) it was said:

25 *“I do not read Lewison J's analysis [in Livewire] 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.*

30 *[35] In the first place, Lewison J was, as he made very clear, addressing the question what had to be demonstrated against an honest broker who was not a dishonest co-conspirator in the tax fraud. In the present case, the tribunal's conclusion, after hearing oral evidence from and cross-examination of Mr Andreou, Megtian's shareholder and principal manager, was that Megtian knew that the transactions on*
35 *which it based its claim were connected with fraud: see para 112 of the decision. Participation in a transaction which the broker knows is connected with a tax fraud is a dishonest participation in that fraud: see below.*

40 *[36] Secondly, 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 [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.'

5 [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.

10 [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
15 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."

16. We take the view that the *Mobilx* test applies to contra-trading in the same way as
20 it does a "simple" MTIC; it being a variation on the same type of fraud. We note the guidance of Moses LJ that the test should not be "over-refined" and we adopt the comments of Briggs J in *Megtian* that *Livewire* did not advocate a "rigid prescription" to be applied as to what HMRC must prove. In applying the *Mobilx* test we are satisfied that conspiracy is not something which HMRC must plead or prove and that
25 the test which we must apply does not require a finding as to what details, if any, Report knew of the overall scheme to defraud, but rather whether he knew or had the means to know that by entering into the relevant transactions it was participating in and thereby aiding a fraud.

17. We reminded ourselves of the comments of Judge Bishopp in *Calltel Telecom Ltd v HMRC* [2007] UKVAT V20266 (at 52):

35 "It is difficult to see how a trader, entering into a chain of transactions in which every trader accounts correctly for VAT (and which is not tainted for some other reason) could have the means of knowing that it is a device for concealing, or avoiding the consequences of discovery of, another, fraudulent, chain of transactions. Nevertheless it is, we think, possible that a trader could have the means of knowing that, by his participation, he is assisting a fraud. Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating a conspicuously generous profit for no evident reason. A trader receiving such an offer would be well advised to ask why it had been made; if he did not he would be likely to fail the test set
40 out at paragraph 51 of the judgment in *Kittel*."

18. Having considered the case law carefully, we took the view that Report's entitlement to a repayment would be lost if HMRC proved, to the standard set out

above, that through its director, Report knew or should have known that its transactions **were** connected with fraud (our emphasis).

19. We bore in mind the comments of Clarke J in *Red 12 Trading Limited v HMRC* [2009] EWHC 2563 (Ch) at [84]at paragraphs 109 – 111:

5 “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,
10 from a pattern of transactions of which the individual transaction in question forms
part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of
an individual transaction may be discerned from material other than the bare facts of
the transaction itself, including circumstantial and 'similar fact' evidence. That is not
to alter its character by reference to earlier or later transactions but to discern it.

15 To look only at the purchase in respect of which input tax was sought to be deducted
would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular,
or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that
there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of
input tax. The same transaction may be viewed differently if it is the fourth in line of a
20 chain of transactions all of which have identical percentage mark ups, made by a
trader who has practically no capital as part of a huge and unexplained turnover with
no left over stock, and mirrored by over 40 other similar chains in all of which the
taxpayer has participated and in each of which there has been a defaulting trader. A
tribunal could legitimately think it unlikely that the fact that all 46 of the transactions
in issue can be traced to tax losses to HMRC is a result of innocent coincidence.
25 Similarly, three suspicious involvements may pale into insignificance if the trader has
been obviously honest in thousands.

30 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”.

20. Our approach to the issue was therefore to recognise that, while we must
consider the merits of the individual transactions, we should not view each transaction
in isolation as, in our view, to do so would be an artificial exercise but rather we
decided that the surrounding circumstances of each transaction and the totality of the
35 deals were relevant considerations. We were conscious to ensure that in considering
the knowledge of Report, through Mr Ashraf, we only took account of information
known to him at or during the relevant period; for that reason we were cautious when
considering the information provided in witness statements as to the general mobile
phone market or opinions provided by HMRC officers as to MTIC frauds, nor did we
40 attach any significant weight to evidence established with the benefit of hindsight.

Agreed Facts

21. We were helpfully provided with a document which contained company details which had been agreed by the parties:

1st 4 Report

5 *Directors:*

- Online Nominees Ltd appointed 10 December 2004, resigned 10 December 2004;
- Zahid Atcha appointed 11 December 2004, resigned 24 October 2005;
- Naveed Ashraf appointed 24 October 2005;
- 10 • Mohammed Riaz appointed 17 November 2008, resigned 5 May 2010.

Company Secretaries:

- Irfan Ormerji appointed 11 December 2004, resigned 24 October 2005;
- Saadia Sajjad appointed 24 October 2005, resigned 18 September 2008;
- Umer Rashadi appointed 6 March 2006, resigned 18 September 2008.

15 *Shareholders:*

- 599 ordinary £1 shares issued.
- Ashraf Naveed 100% shareholding (599 shares).

Financial Information:

- Short term directors loans £198,014.

20

Butt Trading Limited (“Butt”)

Directors:

- Abid Butt appointed 1 June 2004, resigned 26 October 2005;
- Naveed Ashraf appointed 4 July 2005. Resigned 23 June 2008;
- 25 • Muhammad Dar appointed 6 July 2005.

Company Secretaries:

- Syed Kazmi appointed 1 June 2004, resigned 5 September 2005;
- Saadia Sajjad appointed 5 September 2005, resigned 17 July 2007;
- Muhammad Dar appointed 17 January 2007.

Shareholders:

- 5
- 99 ordinary £1 shares issued.
 - Muhammad Dar 59.59% shareholding (59 shares) having previously held 80%;
 - Naveed Ashraf 40.40% shareholding (40 shares) having previously held 20%;
 - Abid Butt previous shareholder.

Winding Up:

- 10
- Petition by the Secretary of State for Business Innovation & Skills presented on 23 June 2009;
 - Business Innovation & Skills wound up in the public interest by Order of District Judge Khan dated 17 September 2009.

Undisputed Background Facts

- 15 22. Mr Ashraf was born on 24 March 1961. He came to the UK in 1981 and was involved in the clothing business in Manchester for four or five years until his factory burned down. Thereafter Mr Ashraf worked as a taxi driver in Manchester for about ten years. In 2003 Mr Ashraf joined Mr Dar, a friend since childhood, in Pakistan buying and selling mobile telephones. In 2005 he returned to the UK with the
- 20 intention of continuing as a trader in the mobile phone industry with Mr Dar who had told him that the UK had a big market in such trade. In July 2005 Mr Ashraf took over Butt with Mr Dar and in October 2005 Mr Ashraf became a director of Report.
23. Report was incorporated on 10 December 2004 and registered for VAT with effect from 22 December 2004.
- 25 24. Report's VAT1 application was dated 15 July 2005 and signed by Mr Zahid Atcha, which we note was prior to Mr Ashraf's appointment as Director on 24 October 2005. Report's business activities were declared as the provision of limited company reports and business consultancy with an estimated turnover of £60,000 and no EU trade.
- 30 25. By letter dated 8 September 2005, HMRC were informed by Mr Atcha that the Company had commenced trading in online sales of electrical goods such as MP3 players and personal media players via an Ebay shop. In a letter to HMRC dated 26 September 2005, Mr Atcha notified HMRC that the Company's business activity had

changed to “e-commerce business supplying business credit reports, now expanding into online electrical sales.” The Company submitted quarterly returns.

26. The Company’s first VAT Return covering the period 22 December 2004 to 28 February 2006 (02/06) declared output tax as nil and input tax of £2,009,548.39 and sought a repayment in that sum. By letter dated 3 May 2006 HMRC notified Report that the sum of £2,009,548.39 would be paid on a “without prejudice” basis.

27. Report’s VAT Return for the period 1 March 2006 to 31 May 2006 (05/06) was received by HMRC on 15 June 2006. Output tax was declared as nil and input tax was declared as £2,289,786.97 and a repayment claim was made in that sum.

28. By letter dated 7 July 2006, HMRC notified Report that the 05/06 Return was the subject of an extended verification.

29. By letter dated 16 October 2007 Mr Doyle, the HMRC officer responsible for carrying out the extended verification, notified Report of his decision to deny repayment of the input tax claimed in the Return. The decision letter set out that all 6 of Report’s deals had been traced back via a contra trader, Uni-Brand, to tax losses. Following his extended verification, Mr Doyle was satisfied that Report’s transactions formed part of an overall scheme to defraud HMRC and that Report either knew or should have known of this.

30. By Notice of Appeal dated 13 November 2007 Report appealed HMRC’s decision. The grounds of appeal were:

(1) On 14.8.2006 HMRC confirmed that they have received due diligence documents relating to MK Digital World (Cyprus) Ltd and Olympic Europe BV and the vat registration of MK Digital.

(2) On 24.8.2006 HMRC requested, in preparation for the interview on 1st September 2006 certain documents to be available on the date of the interview.

(3) All such documents were duly presented

(4) Following the visit on 1st September 2006 HMRC requested some further documents in their two letters one undated and one dated 7th September 2006, all such documents were duly presented.

(5) Report has offered full compliance with the various requests for documentation both in correspondence and at the interview.

(6) Report has carried out extensive due diligence both in the course of their business and in response to HMRC specific requests.

(7) Report has requested for any further documentation which may assist the HMRC pursuant to Schedule 11 Section 4 of the Value Added Tax Act 1994. No further requests have been made by the HMRC.

(8) In their letter of 8.2.2007 HMRC alleged that Report has made supplies to DBP Trading Ltd, Burslem Stock on Trent. To clarify the situation Report has made

numerous requests to provide them with the evidence so that they could check the allegation. No such evidence has ever been presented.

(9) HMRC have deducted the VAT on these alleged invoices and have adjusted Report's repayments claim and have refused to refund the amount without any grounds

Preliminary Issues

31. A number of issues were raised by the parties both prior to and during the hearing, which it may be helpful to address at this point.

32. The first related to a formal application by Mr Chapman on behalf of HMRC to admit additional evidence. The evidence emanated from documents uplifted from Report's premises by HMRC's Criminal Investigations Team on 3 November 2006. The documents which, we were told, amounted to in excess of 3,000 in number, had been copied onto a CD, a copy of which had been provided to Report on 1 May 2008 and a further copy was subsequently sent to Report's previous representatives Abbey & Co. HMRC sought to adduce a small number - approximately 6 or 7 - of these documents. It was submitted by Mr Chapman that no prejudice would be caused to Report as the documents belonged to him and two copies of the CD compiled by HMRC from which the documents subject of the application were taken had been supplied to Report and his former representatives.

33. Mr Bridge, on behalf of Report, objected to the application and requested that we did not view the documents until a decision had been reached in principle as to whether evidence could be admitted at such a late stage in proceedings. Mr Bridge submitted that the Tribunal had issued Directions on 2 November 2011 for the service of evidence by both parties. A late application was made by HMRC to admit additional evidence on 5 April 2012 which Report had not opposed. It was submitted that this application, made on the morning of the first day of evidence and 6 years after the period relevant to this appeal, should be refused.

34. We did not view the documents that HMRC sought to admit. We noted that although Mr Doyle referred in his witness statement to the fact of documents being uplifted by the Criminal Investigations Team on 3 November 2006, the documents were not exhibited by him nor had they formed part of his decision in refusing Report's repayment claim. There have been a number of hearings before this Tribunal at which Directions were agreed in respect of the service of evidence and additional evidence, including the hearing before Judge Demack as far back as 2 November 2011 and more recently before us on 5 April 2012; on neither occasion had HMRC raised this issue. We accepted that Report had received a copy of the CD from HMRC, as had his former representatives, however Report's current Counsel, Mr Bridge, had not received a copy of the CD and consequently was not in a position to consider the remainder of the documents contained on the CD which HMRC did not seek to adduce in addition to those which formed the subject of this application. To do so would, no doubt, be a time consuming and lengthy process which would result in a delay in hearing this case. In our view, HMRC's application came too late in the

proceedings and in the interests of justice, and bearing in mind the overriding principles, we refused HMRC's application.

35. The second issue which arose related to HMRC's principal witness, Mr Doyle who was responsible for the extended verification of Report's 05/06 Return and who made the decision against which Report now appeals. Mr Bridge submitted that Mr Doyle was not an expert witness as defined by the Civil Procedure Rules and consequently should not be permitted to express opinions either in his witness statements or in oral evidence to the Tribunal. Mr Bridge relied upon a decision from the Supreme Court of South Australia, *R v Bonython [1984] SASR 45*, which sets out the circumstances in which a Court or Tribunal can receive opinion evidence. It was submitted by Mr Bridge that the opinions expressed by Mr Doyle within his witness statement are fundamentally inadmissible on the basis that he is not an expert. Mr Bridge added that the Civil Procedure Rules are clear in requiring that an expert witness set out a declaration as to his independence and that Mr Doyle does not do so, nor can he be deemed to be independent as it is his decision to refuse Report's repayment claim which is the subject of this appeal.

36. In response, Mr Chapman submitted that the starting point is the purpose for which Mr Doyle is called as a witness for HMRC, namely to justify his decision to refuse Report's repayment claim, which inevitably involves him explaining to the Tribunal his views which led to his decision. Mr Chapman pointed out that Mr Doyle would be cross-examined on any views he expressed and the strength of his opinions. Mr Chapman clarified that HMRC did not put Mr Doyle forward as an expert witness, but rather the opinions held by Mr Doyle formed the body of evidence which the Tribunal must assess in determining this appeal. Mr Chapman invited the Tribunal to distinguish between the admissibility of evidence and the separate issue of weight to be attached to evidence, submitting that the evidence of Mr Doyle, including the opinions expressed by him, is relevant to the issue of weight only. Mr Chapman contended that if Mr Doyle's opinions were excluded from these proceedings as inadmissible, the Tribunal would be adopting an approach contrary to that taken at both First and Upper Tier level and above.

37. We rejected Mr Bridge's submission as misconceived; Mr Doyle made the decision on behalf of HMRC against which Report now appeals. In order for the Tribunal to assess the strength of that decision and reach a conclusion as to whether there has been a valid refusal of Report's right to deduct, it is necessary to hear how Mr Doyle reached his decision, including the opinions which formed the basis of that decision. In our view, to exclude Mr Doyle's opinions would leave the Tribunal with an impossible task of attempting to determine whether HMRC's decision was valid, without hearing any justification of it. The weight to be attached to Mr Doyle's evidence is a separate issue, and a matter upon which the Tribunal must make findings of fact having assessed the evidence.

38. During the oral evidence of Mr Doyle, an issue arose in relation to HMRC's internal policy guidance provided to officers which provided guidance as to risk factors identified as common to MTIC frauds. Mr Doyle was cross examined on the use of such a tool, to which he stated that he drafted the decision letter to Report

“from guidance and information from departmental policy”. Mr Bridge requested disclosure of the policy document referred to by Mr Doyle. Mr Chapman objected on the basis that the document is internal policy guidance and that Mr Doyle accepted in cross examination that he had adopted the information contained within the document in his decision letter.

39. We did not order disclosure of the document requested by Mr Bridge. Mr Doyle confirmed in oral evidence that such a document existed and that he had been guided by the document in drafting his decision letter. In our view, disclosure of such a document would not provide any further assistance to us in determining the issues in this case.

40. The final issue which arose during the evidence concerned the witness Mr Lam who was the HMRC assurance officer for Uni-Brand. Mr Lam has given oral evidence about Uni-Brand in a number of other Tribunal appeals. In particular, Mr Bridge drew our attention to Mr Lam’s evidence in the case of *Livewire*, in which Mr Lam’s evidence to the Tribunal was that Uni-Brand were not knowingly involved in fraud, however in the present appeal Mr Lam’s witness statement asserted the contrary. In our view, this was a matter upon which Mr Lam could be cross-examined and we will set out his evidence in more detail in due course. However, during the course of Mr Lam’s evidence, he referred to other cases in which he had given evidence, namely *Edgeskill Limited (V20533)* and *Mobile Export 365 Ltd and Shelford (IT) Ltd (TC00649)* (“*Shelford*”). Mr Bridge invited the Tribunal to order disclosure of Mr Lam’s witness statements and transcripts of evidence in those cases. Mr Bridge was unable to explain how the disclosure of those documents would assist his case, stating that without seeing the documents he was not in a position to know whether they would assist or not. Given that Mr Lam accepted in cross examination that his view had changed, for reasons which are set out later in this decision, we did not accept that disclosure of the witness statements or transcripts would assist us in reaching our decision. In our view the issue of Mr Lam’s shift as to the knowledge of Uni-Brand was a matter which we could take into account in assessing the credibility and reliability of his evidence. We did not accept that the point at which that change in view occurred, whether it was before or after the cases of *Edgeskill* and *Shelford*, was relevant to our assessment of the witness’ evidence.

Issues

41. The issues to be determined in this case can be summarised as follows:

- (a) Was there a tax loss;
- (b) Did the tax loss occur as a result of fraud;
- (c) If yes, were the transactions in this appeal connected with fraud;
- (d) If so, did Report know or should it have known that the transactions in this appeal were connected with fraud.

42. It was conceded by Mr Bridge on behalf of Report that HMRC had shown that a fraudulent tax loss existed in each of the “dirty chains” and that Report’s transactions were connected with fraud.

43. The sole issue for us to decide in this case is whether Report, through its Director Mr Ashraf, knew or should have known that its transactions were connected to fraud.

Transactions connected to fraudulent tax losses

44. Although Report did not dispute that the 6 transactions which are the subject of this appeal were connected to fraudulent tax losses, it may be helpful to give a brief summary of those transactions and their connections to fraud.

45. The table below sets out Report’s six transactions, which all involved mobile telephones:

	Period 05/06	date paid	VAT paid	%	Profit
15	1001. Uni-Brand deal dated 10/5/06 £975,000. vat £170,625 = £1,145,625 <u>£975,000. vat £170,625 = £1,145,625</u> £1,950,000 £341,250 = £2,291,250	10/5			
20	M K Digital £2,010,000	12/5	£281,250	3.00%	£60,000
	1002. Uni-Brand deal dated 10/5/06 £700,000 vat £122,500 = £ 822,500 <u>£700,000 vat £122,500 = £ 822,500</u> £1,400.000 vat £245,000 = £1,645,000	10/5			
25	MK Digital £1,440,000	12/5	£205,000	2.50%	£40,000
	1005 Uni-Brand deal dated 11/5/06 £2,100,000 vat £387,500 = £2,467,500	11/5			
30	M K Digital <u>£2,160,000</u>	12/5	£307,500	3.00%	£60,000
	1006. Uni-Brand deal dated 11/5/06 £1,500,000 vat £262,500 = £1,762,500	11/5			
35	Olympic Europe BV <u>£1,550,000</u>	12/5	£212,500	3.00%	£50,000
	1007. Uni-Brand deal dated 11/5/06 £1,100,000 vat £192,500 =£1,292,500 £1,100,000 vat £192,500 =£1,292,500 <u>£1,100,000 vat £192,500= £1,292,500</u> £3,300,000 vat £577,500 =£3,877,500	12/5			
40		12/5			

M K Digital	£3,405,000	£472,500	3.18%	£105,000
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Period 05/06	date paid	VAT paid	%	Profit
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1008. Uni-Brand deal dated 12/5/06

10	£ 1,375,000 vat £240,625= £1,615,625	12/5		
	<u>£ 1,375,000 vat £240,625= £1,615,625</u>	17,18,19, and 24 /5		
	£ 2,750,000 vat £481,250= £3,231,250			

Olympic Europe BV	£2,830,000	£401,250	2.50%	£80,000
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15

Totals Purchases	£15,295,000.00
Sales	<u>£13,395,000.00</u>
VAT paid Report	£ 1,880,000.00
VAT repayment	<u>£ 2,289,786.97</u>
20 Profit after repayment of VAT	£ 409,786.97
Profit from above figures	£ 395,000.00

Deals 1001 and 1002

25 46. Deals 1001 and 1002 both took place on 10 May 2006 and involved the purchase of a total of 20,000 mobile phones by Report from Uni-Brand which were sold on to M K Digital for a total of £3,450,000.

30 47. WTC Trading Company (“WTC”) acquired the goods on 10 May 2006 and sold them to Uni-Brand as shown on 4 invoices (each invoice showed 5,000 mobile phones: 10,000 of which were Nokia 6280s and 10,000 were Motorola V3i): UNB0322 and UNB0323 at a cost of £970,000 for each transaction, and UNB0324 and UNB0325 at £697,500 for each transaction.

35 48. The deal documentation supplied by Report to HMRC showed that on 10 May 2006 Mr Mohamed Iqbal of Uni-Brand made a stock offer via fax timed 16:42 to Report of 10,000 Nokia 6280 mobile phones and 10,000 Motorola V3i mobile phones.

49. Report completed purchase orders for the phones on 10 May 2006 and on the same date M K Digital placed an order by fax timed 18:26 for the phones. M K Digital requested that the goods be delivered to Uithoom in Holland.

40 50. Four sales invoices were issued by Uni-Brand to Report dated 10 May 2006, each for 5,000 mobile phones. Uni-Brand sold the goods (invoice numbers 1592, 1593, 1594 and 1595) at prices of £975,000 plus VAT for each of the two deals

involving Nokia 6280s and £700,000 plus VAT for each of the two deals involving Motorola V3i totalling £3,936,250 with VAT of £341,250 and £245,000 (identified in bold in the deal table at paragraph 45 above) to which we refer later when considering the payments through the FCIB.

5 51. Report issued two sales invoices to M K Digital (1001 and 1002) on 10 May 2006, each for 10,000 mobiles phones. M K Digital purchased the goods at a price of £2,010,000 for 10,000 Nokia 6280 phones and £1,440,000 for 10,000 Motorola V3i phones totalling £3,450,000.

10 52. The mobile phones purchased by Report on 10 May 2006 were in Lommel, Belgium and due to be delivered to Uithoom in Holland in accordance with M K Digital's request The goods were to be inspected there, the parties to abide by the inspection by Freight Connection, the freight forwarders in Holland. On 11 May 2006 the goods were shipped to the UK, as evidenced a Eurotunnel ticket dated 11 May 2006 and CMR 56453363, 40 pallets, vehicle: BH-NV-41 dated 11 May 2006
15 provided to HMRC by Report. The goods were then transported to Uithoom in Holland via 10 vans on the following day, 12 May 2006.

53. The documents suggest that the goods were inspected by NK Ltd from Southall on 13 May 2006, who indicated that the IMEI numbers had not been checked. Given that it would appear that the goods were in Uithoom in Holland on 12 May 2006 it is
20 unclear how they could have been inspected by N K Ltd.

54. Release notes dated 15 May 2006 were issued by Report to Freight Connection BV in Holland to release the 20,000 mobile phones to M K Digital, who appear to have already sold them to Olympia 5 days earlier.

25 55. On 10 May 2006 M K Digital sold the goods to Olympic Europe BV, as evidenced by invoices 0E/059/05/06 and 0E/060/05/06 at a cost of £2,010,000 for 10,000 Nokia 6280 phones and 10,000 and £1,450,000 for 10,000 Motorola V3i phones.

Deal 1005

30 56. WTC acquired 5,000 Nokia 8800 mobile phones on 10 May 2006 and sold the goods to Uni-Brand for £2,095,000.

57. On 11 May 2006, Report purchased the goods as shown by invoice number 1602, at a cost of £2,100,000 plus VAT of £387,500.

35 58. Also on 11 May 2006, Report sold the goods to M K Digital, as shown by invoice number 1005, for £2,160,000 who sold the goods to Olympic on the same date for £2,165,000.

Deal 1006

59. WTC sold 5,000 Nokia 9300i mobile phones to Uni-Brand on 10 May 2006 for £1,495,000.

60. On 11 May 2006 Report purchased the goods for £1,500,000 plus VAT of £262,500 and sold them on the same day to Olympic for £1,550,000.

Deal 1007

5 61. WTC sold a total of 15,000 Nokia N70 mobile phones to Uni-Brand in three separate deals on 10 May 2006, at a cost of £1,095,000 per deal.

62. Uni-Brand sold the goods to Report on 12 May 2006 in three deals at a cost of £1,100,000 plus VAT of £192,500 per deal.

63. Report sold the goods in one transaction to M K Digital on 12 May 2006 at a price of £3,405,000.

10 64. An inspection report provided by Report to HMRC showed that the consignment was inspected at Report's request on 15 May 2006.

65. A stock offer document to M K Digital provided by Report to HMRC was dated 12 May 2006 but stated that the goods would not be available until 15 May 2006.

15 66. On 12 May 2006, M K Digital sold the goods to Olympic at a price of £3,420,000.

Deal 1008

67. WTC sold a total of 10,000 Nokia N90 mobile phones (in two transactions) to Uni-Brand on 10 May 2006 for £1,370,000 per transaction.

20 68. On 12 May 2006, Uni-Brand sold the goods to Report in two transactions at a cost of £1,375,000 plus VAT of £240,625 on each transaction.

69. On the same date, Report sold the goods in one transaction to Olympic at a price of £2,830,000.

Uni-Brand

25 70. In each of the transactions which are the subject of this appeal, Report's supplier was Uni-Brand. Mr Lam was the assurance officer responsible for investigating Uni-Brand.

30 71. Uni-Brand is a private limited company which was incorporated on 18 December 2000 and was run by its director, Mohammed Iqbal, and the company secretary, Mrs Shehnaz Iqbal, who were both appointed on 3 January 2001. The company has been registered for VAT since 18 December 2000; the VAT 1 application for registration described the main business activities of the company as "buying and selling a range of products to wholesalers and retailers, etc" with an

estimated annual taxable turnover of £100,000 in the following 12 months. The actual turnover for that period was approximately £440,000.

5 72. Mr Iqbal originally registered for VAT as a sole proprietor, T/A Uni Brand, with effect from 17 November 1998. The main business activity was described as “buys and sells supplier branded merchandise” with an anticipated turnover of £100,000 for the following 12 months. The business operated from Mr Iqbal’s home address of 25 Manor Avenue, Preston, PR2 8DN. In the two years of trading as a sole proprietor Mr Iqbal submitted eight VAT returns; three were nil returns and the highest quarterly amount of outputs was £44,799 in the period 11/00.

10 73. HMRC carried out a routine visit in January 2001. The visit report showed that Mr Iqbal was in full time employment until January 2001 and carried out the business in spare time. The principal outputs were toiletries, food, drinks, clothing and children’s clothing.

15 74. Mr and Mrs Iqbal were also involved in the running of VAT registered Globcom Limited which traded in the supply of mobile phones. The company is linked to Uni-Brand by way of common director, shareholder, premises, accountants, VAT and legal advisers. Both companies’ day to day activities were controlled by Mr Iqbal.

20 75. Mr and Mrs Iqbal were also company officials for UK registered company Uniprop (UK) Ltd which was not registered for VAT and which bought and sold real estate.

76. Mr Lam’s witness statements set out the background to Uni-Brand. We accepted Mr Lam’s explanation that when he gave evidence in *Livewire*, far less was known about the involvement and role of contra-traders and that as his investigations into Uni-Brand continued, his view as to its knowledge changed.

25 77. Mr Bridge cross-examined Mr Lam about his evidence to the Tribunal in the *Livewire* case and asked why, in that case he believed that Uni-Brand was not aware of the fraud by Eclipse, but in this case he considered that they were. Mr Lam explained that his view in *Livewire* was based on information available to him at that time but that since that time he had obtained further information, which led him to
30 form a different conclusion, which he had expressed in two subsequent cases, namely *Edgeskill* and *Shelford*. We did not find that this undermined Mr Lam’s credibility or reliability. It is right to note that much of the information provided by Mr Lam does not directly impact on Report’s case and the overview contained in this decision is simply designed to assist in understanding the role of Uni-Brand.

35 78. The turnover of Uni-Brand increased from nil in VAT period 05/05 to £79,010 in 08/05 to £15,000,000 in 11/05 to £405,000,000 in VAT period 05/06. The May 2006 VAT return was selected for extended verification. The return showed:

- Output Tax: £35,616,191.87
- EC Acquisition Tax: £35,122,412.50

- Total Output Tax: £70,738,604.37
- Input tax: £70,682,693.94
- Due to HMRC: £55,910.43
- Outputs: £405,652,346.00
- 5 • Inputs: £404,306,466.00
- EC Supplies: £202,131,250.00
- EC Acquisitions: £200,699,500.00

79. The extended verification revealed that Uni-Brand acted as a broker in 56 deals, all of which were traced back to a tax loss calculated as £35,077,174.00. The defaulting traders involved were:

- Termina Computer Services Ltd which was issued with an assessment for £6,068,925.00,
- ICM UK Ltd which was issued with an assessment for £8,120,991.00,
- 15 • Performance Europe Ltd which was issued with an assessment for £9,049,895.00,
- Eclipse Windows, Doors and Conservatories Ltd which was issued with an assessment for £15,552,092.00.

80. In the same period, Uni-Brand acquired 135 mobile phone deals from 3 suppliers in the EU for a total value of £235,821,912 (acquisition tax included) and then sold to other UK traders for a total value of £236,384,937 (VAT included). The UK traders sold the goods back to the EU and submitted repayment returns for the same period.

81. HMRC noted that Uni-Brand had organised its affairs in such a way that the outputs for the period are evenly split at 50.17% standard rated and 49.83% zero rated. The value of the goods acquired from the EU, and subsequently sold via contra transaction chains, are offset by the value of goods sold to the EU by Uni-Brand, that have originated via tax loss transaction chains and defaulting traders listed above.

82. HMRC produced flow charts for the period 05/06 which showed Uni-Brand's dual trading role. In summary, the 56 deals in which Uni-Brand acted as a broker trader traced back to a tax loss of £35,077,174. Uni-Brand acted as a UK acquirer in 135 deals for 988,500 mobile phones for a net value of £210,342,500, VAT £35,234,937.50. Eleven of those 135 transactions involved Report which purchased 55,000 mobile phones on 11 May 2006, 12 May 2006 and 13 May 2006 for a total value of £15,275,000 (including VAT of £2,275,000).

83. In cross-examination Mr Lam clarified that in May 2006 Uni-Brand had carried out approximately £200,000,000 of business with the VAT element being in the region of £35,000,000. Mr Lam took us through a diagram which showed the role of Uni-Brand and its links to other traders, including Report. Mr Lam could not recall when he had drawn up the diagram but stated that it had developed throughout his investigations. He accepted that the diagram, when looked at in totality, showed a scheme but that a particular trader may not have been aware from the deal in which he was involved that he was part of such a scheme.

84. Mr Lam confirmed that Uni-Brand's previous VAT repayment claim in November was approved without extended verification on the basis that HMRC were satisfied by documents produced by the company. Mr Lam explained that the process of extended verifications was brought in by HMRC in April 2006 and that he had been the officer responsible for denying Uni-Brand's repayment claim in the 02/06 period following being tasked with responsibility for Uni-Brand on 28 March 2006.

15 **Findings on whether there was a tax loss**

85. We accepted the unchallenged evidence that Uni-Brand had played a dual trading role by organising its trading position in the 05/06 period to offset the value of goods acquired and subsequently sold via contra transaction chains against the value of goods sold to the EU by Uni-Brand that originated via tax loss transaction chains. The output tax was due on 135 acquisition deals for 988,500 mobile phones, which were sold to 13 UK traders, one of which was Report. Those traders then exported the mobile phones to 10 traders outside of the UK. Uni-Brand claimed the input tax on 56 broker deals which were traced back to tax losses of £35,077,174 involving four companies: Termina Computer Services Ltd, ICM UK Ltd, Performance Europe Ltd and Eclipse Windows, Doors and Conservatories Ltd (the dirty chain). Assessments were raised against each of the four companies for the outstanding VAT; none of the companies have appealed or paid their respective assessments.

86. The tax losses were not challenged by Report and consequently we were satisfied that there were tax losses of £35,077,174 occasioned by the four defaulting traders in Uni-Brand's 56 broker deals in the 05/06 period.

Findings on whether the tax loss was fraudulent

87. The evidence in relation to the defaulting traders was not challenged and we found as a fact that the tax losses occasioned by Termina Computer Services Ltd, ICM UK Ltd, Performance Europe Ltd and Eclipse Windows, Doors and Conservatories Ltd were fraudulent for the reasons summarised below:

- (a) The companies achieved excessively high turnovers within short periods of time, often from a standing start;
 - (i) Performance made net sales in 23 days over 10 days in excess of £51,000,000;
 - (ii) Termina made in excess of £222,000,000 in less than 2 months;

- (iii) ICM's insolvency write off is £8,406,340.33;
- (iv) Eclipse had a turnover in excess of £88,000,000 (net) in a period of under 10 days.
- (b) Termina Computer Services Ltd and ICM UK Ltd failed to declare any of their transactions or render VAT returns;
- (c) Third party payments by all of the companies meant that they were unable to discharge their VAT liabilities;
- (d) The assessments raised against the companies were not paid or appealed;
- (e) The deregistration of the companies was not appealed;
- (f) Misleading and false information was given by directors and company officers from Eclipse about documentation and associations with other companies.

88. In our view, the issue of Uni-Brand's knowledge of the fraud was not an issue upon which we are required to make a finding, however for the sake of completeness, we did consider this issue and found that the following factors were indicative of knowledge on the part of Uni-Brand:

- (a) Uni-Brand's 56 deals all traced back to a fraudulent tax loss;
- (b) The artificial balancing of its trading position whereby outputs for the period were 50.17% standard rated to 49.83% zero-rated;
- (c) The fixed mark ups of 50p in 84 deals and £1 in 51 deals;
- (d) The third party payments made by UK traders in the defaulting transaction chains to traders unconnected to the immediate supply which showed that the third party payment requests were passed from supplier to supplier at the beginning of the chain. The second supplier for each deal fulfilled the requests by passing them on to the third supplier who made the payments;
- (e) The lack of clarity as to title of the goods and risks taken in releasing goods prior to payment;
- (f) The increase in turnover from £79,010 in 08/05 to £405,000,000 in 05/06 with only 3 members of staff employed by Uni-Brand's associated company, Globcom;
- (g) The absence of any evidence of stock returns, faulty items, warranty claims, damaged goods or over/short orders and the fact that all goods were purportedly sourced, ordered, inspected and sold within a one day period with the specifications of suppliers and customers always matching up exactly;
- (h) The absence of any formal written contracts with suppliers/customers;

- (i) Uni-Brand's failure to carry out independent due diligence before trading with counterparties;
- (j) The limited product research on three websites;
- (k) The identical pattern of 21 transaction chains;
- 5 (l) The very small profit margin as compared with the volume of sales and purchases; notwithstanding the significant turnover, Uni-Brand's gross profit rate fell from 1.88% in 2004 to 0.37% in 2005 to 0.21% in 2006.

10 89. On the basis of the findings of fact listed above, we are satisfied that Uni-Brand knowingly acted as a dishonest contra trader in the 05/06 VAT period as part of an orchestrated scheme designed to defraud the Revenue.

Were Report's transactions in 05/06 connected with fraudulent VAT losses?

15 90. There was no challenge by Report to HMRC's tracing of Report's transaction chains in 05/06 or to the trading method used by Uni-Brand in offsetting its input tax claim against output tax which linked the clean chains to the dirty chains.

20 We found as a fact that in the 05/06 VAT period Report purchased the mobile phones which are the subject of this appeal from Uni-Brand which was a dishonest contra-trader. Uni-Brand offset its input tax repayment claims in its 05/06 broker transactions which were traced back to fraudulent tax losses against output tax liabilities on its sales to Report. Consequently we found as a fact that Report's transactions in 05/06 were connected to fraudulent tax losses.

Did Report know, or should he have known that the transactions in this appeal were connected to fraud?

25 ***Report's awareness of MTIC fraud***

30 91. A letter was issued to Report by HMRC on 23 November 2005 which outlined the problems of MTIC VAT fraud generally, the commodities involved and how to verify customers/suppliers' VAT numbers. Accompanying the letter was Public Notice 726 which advised on joint and several liability in the supply of specified goods and advised businesses to carry out checks to establish the legitimacy of their suppliers and ensure the integrity of a supply chain.

92. On 30 November 2005 Report's premises was visited by HMRC officers. Mr Atcha was interviewed who provided the officers with an incorrect number for Report.

35 93. Following a letter from Report dated 8 December 2005 to HMRC advising of a change of address, HMRC officers visited the Bury premises and interviewed Mr Ashraf and Mr Ali. A further visit was made on 30 March 2006 as a result of Report's submission of its first VAT return (02/06) which claimed a repayment of

£2,009,548.39. Mr Ashraf and Mr Ali were present and confirmed that Mr Ali compiled the VAT return. Customers were found via the International Phone Traders website (IPT) and the company was financed by a £200,000 loan from Mr Ashraf.

5 94. Report was informed that the company's 02/06 return would undergo verification and on or about 3 May 2006 the repayment claimed in the return was made by HMRC on a "without prejudice" basis as enquiries were continuing.

10 95. In addition to HMRC's involvement with Report Mr Ashraf was also advised as to MTIC fraud as a result of his involvement with Butt Trading Ltd (Butt), for example on 2 September 2005 a visit note exhibited by Mr Doyle showed that Mr Ashraf and Mr Ali were present when HMRC officers interviewed them regarding MTIC deals. The visit note recorded that Mr Ali acted as interpreter as Mr Ashraf could not understand the Officers' questions.

96. A Redhill VAT Office letter was also issued to Butt on 30 August 2005, at which time Mr Ashraf was a director.

15 97. On 7 October 2005 HMRC issued a letter to Butt which advised that the VAT period 07/05 repayment was to be released without prejudice to HMRC's continuing enquiries. The letter also advised that Butt's 3 transactions in 07/05 commenced with a defaulting trader.

20 98. On 1 December 2005 Butt was notified by letter from HMRC that the VAT period 10/05 repayment would be made on a "without prejudice" basis.

99. Butt's 01/06 return was subject to verification. IMEI numbers were requested by HMRC in a letter dated 3 March 2006 which also requested that the trader obtained IMEI numbers for future consignments. The 01/06 return was subsequently repaid on a "without prejudice" basis.

25 100. Butt's 04/06 return was subjected to an extended verification, notified to the Company by letter dated 26 May 2006. A letter of the same date informed Butt that enquiries into its 01/06 return revealed that all 14 of its transactions commenced with a defaulting trader. The letter referred to Public Notice 726 which was issued to Butt prior to the submission of Report's 05/06 return.

30 101. By letter dated 29 June 2006 (which post dates the transactions subject of this appeal) HMRC notified Butt that the IMEI numbers supplied in respect of its transactions between November 2005 and April 2006 revealed the following: in period 01/06 1,947 IMEI numbers were identified as previously scanned by HMRC and 26 of the sample of 2,220 IMEI numbers were identified on the Central
35 Equipment Information Register and HMRC were informed that the numbers had previously been blocked by mobile phone networks. In the same period 22 of the 2,220 samples were identified on the Stolen Equipment National Database. In period 04/06 2,063 of the 4,051 IMEI numbers supplied were identified as previously scanned by HMRC. Of those, 929 belonged to phones that have previously been
40 exported on at least one occasion and 28 were identified as previously blocked by phone networks.

102. Mr Ashraf was appointed as a director of Gani Ltd (Gani) on 17 November 2005. Gani's premises were the same as those of Butt and Report.

103. A Redhill VAT Office letter was sent to Gani on 21 December 2005 and enclosed Public Notice 726.

5 104. By letter dated 7 February 2006, Gani was notified by HMRC that its 12/05 return was to undergo verification. The 2 deals carried out by the Company in that period commenced with a defaulting trader.

105. HMRC submitted that Mr Ashraf's involvement with Report, Butt and Gani was evidence of his awareness of MTIC fraud generally prior to the submission of Report's 02/06 and 05/06 returns.
10

106. Mr Ashraf's witness statement confirmed that he had had contact with HMRC from October 2005 when he took over Report. At the time of the HMRC's visit in December 2005 Report had engaged in one transaction. Mr Ashraf notes that HMRC officers had sight of his due diligence documentation in respect of the transaction and confirmed that they were happy with the due diligence he had undertaken.
15

107. Mr Ashraf confirmed that HMRC had sent letters to Report advising of fraud generally in the mobile phone industry. He noted that at no stage did HMRC identify any specific traders involved in Report's transactions that were potentially involved in fraudulent dealings and that all of the visits by HMRC mentioned MTIC fraud in general terms only.
20

108. We were referred to the witness statement of Mr Stone, a senior HMRC officer whose role is to provide technical oversight of MTIC fraud for HMRC. Officer Stone has oversight of the operational delivery and operational policy.

109. His statement dated 1 December 2008 gave an overview of the background and general nature of MTIC fraud. We noted that the statement was generic and did not specifically refer to the appeal before us, however it did outline the scale of fraud within the trade at the relevant time "...in 2005-2006, in particular, a large proportion of the wholesale mobile phone trade was contrived for the purpose of committing MTIC fraud...".
25

30 ***Taking over Report and knowledge of trade sector***

110. Mr Ashraf explained in his oral evidence that he took over Report as 100% shareholder from Mr Atcha. He stated that he had asked his accountant to find him a "ready made company". As regards negotiations for purchasing the Company, Mr Ashraf appeared to be unclear as to how the company had been formed and he was
35 unaware what its previous trade had been. He insisted, however, that in taking over the company he had not acted against the law. It appears that Report had moved into mobile phones and electronic communications just prior to his involvement, however Mr Ashraf stated "I can't remember what they used to do before me."

111. Mr Ashraf's witness statement asserted that HMRC had failed to understand the market in which Report was operating. Report would firstly be contacted by a potential purchaser with a request for goods; that first contact would be via a telephone call. Report would then search for stock at a reasonable price and once the stock was identified, Report would return to the potential purchaser with an offer for the goods. If accepted, Report would return to its supplier to agree a deal with a view to onward sale to its own customer. Report had a specific order on each deal before purchasing the goods.

112. Report contended that the transactions it carried out were typical and accepted practice of the industry.

113. In cross-examination Mr Ashraf explained that his research had identified the United Kingdom as a substantial market. When asked what research he had done to find out about the various trades in the United Kingdom, Mr Ashraf stated that he had researched on the IPT website and that there were people in Dubai to whom Report would sell.

114. Mr Ashraf was assisted by an interpreter, Mrs Usman, as Mr Bridge had indicated that, although Mr Ashraf spoke English, he was concerned that his client might not understand the nuances of the questions asked. Although Mr Ashraf had driven a taxi in Manchester for some ten years, we agreed that, in the interests of justice and to ensure complete fairness to Mr Ashraf, he should have the benefit of the assistance an interpreter. It was submitted by Mr Bridge that the transactions were often conducted in the mother tongues of the participants; however we note that all the documentation around the transactions is in English. In all of those circumstances we were entirely satisfied that Mr Ashraf was able to understand and follow the proceedings.

115. Mr Ashraf appeared to have no understanding as to how the mobile phone market operated but also how each individual transaction was constructed. In re-examination Mr Bridge took Mr Ashraf through deal documentation, the majority of which he was able to identify with a great deal of hesitation and uncertainty, others he identified inaccurately. Mr Ashraf asserted that his understanding came from "*a bit of paper by HMRC which...told me what kind of things I should look at before I carried out a deal*".

116. Mr Ashraf did no better when asked how the mobile phones were sourced, the price negotiated, and the subsequent sale to Report's customers concluded. We do not propose to extrapolate at length from the stenographer's notes but we think it is helpful to do so to a limited degree in order to demonstrate the way in which Mr Ashraf gave evidence throughout the proceedings. We were surprised at his total lack of understanding of these types of transactions. Mr Chapman cross-examined as to the documentation required, such as purchase orders and invoices. The evidence was:

40 "*Mr Chapman How did you know what documents had to go to who and when?*"

Mrs Usman(The interpereter) No, nobody. I don't know.

Mr Chapman So this was just from your own knowledge of the trade sector?

Mrs Usman When we used to get them from Dubai (interrupted by Mr Ashraf). When we did our first deal, then they went through the whole procedure with us.

5

Mr Chapman Who went through the procedure?

Mrs Usman I did it along with a girl called Saadia.

Mr Chapman So she told you what to do?

Mrs Usman No, she didn't tell me but it was the person that we actually got the stuff from.

10

Mr Chapman Your supplier?

Mrs Usman The person we got the stuff from, he asked us to send the such and such a document.

Mr Chapman Well what was the such and such a document?

15 *Mrs Usman First it was the stock offer.*

Mr Chapman What? That you had to send to who?

Mrs Usman The person we were dealing with, it was that person.

Mr Chapman I am sorry you are going to have to explain that Mr Ashraf.

Mrs Usman He thinks it was Elite Mobile.

20 *Mr Chapman Elite Mobile told you what documentation you needed to provide?*

Mrs Usman He has just actually said to me you know, send me this, send me that.

Mr Chapman So he was telling you what to send?

25 *Mrs Usman He said to me that we needed this [unclear] information letter.*

Mr Chapman *Right. Well how did you know whether that was correct because he was telling you?*

Mrs Usman *What was wrong? What do you mean?*

5 **Mr Chapman** *Well he would only help you with the documents he needed as a supplier. What happened about the documents for your documents that you would send to a customer and expect to get back from a customer? How did you know about all of that?*

10 **Mrs Usman** *I picked up a lot of things from the leaflet that HMRC gave me and that, you know, told me what to do”.*

117. Despite Mr Chapman reiterating that he was merely trying to elicit why the transactions were completed in the way that they were, Mr Ashraf answered many of the questions by stating there was nothing wrong in way Report bought and sold the mobile phones and that it was not against the law.

15 **Risk**

118. Mr Ashraf stated that he did not believe there was any risk when trading with mobile phones in the United Kingdom market. Report incurred no loss and no one stole Report’s money. He explained that the goods were, in any event, paid for prior to their release to the customer. During cross-examination Mr Bridge suggested that there was no word for ‘Risk’ in the Pakistani, Urdu and Punjabi languages. When the interpreter was asked by Judge Blewitt whether that was the case the interpreter said that Mr Ashraf understood what risk meant as there was such a word in the languages.

“**Mr Chapman** *Is your case that there was no risk of the company losing any money in any of these deals?*

25 **Mrs Usman** *Yes that is what we thought. I mean I wasn’t doing the business if I was going to lose.”*

Mr Chapman *Well how did you reach the conclusion that there wouldn’t be any risk in these deals?*

30 **Mrs Usman** *The, to whomever we supplied to they used to give us the money to us beforehand and the person that we got the goods from we used the money to pay them as well....*

I don't think there was any risk there because we were doing everything right from our end (unclear) we didn't think there was a problem.

5 *Mr Chapman* *Well that's answering a different question, Mr Ashraf; my question to you was whether or not it struck you as odd that these deals were so easy.*

Mrs Usman *No...*

Turnover

10 119. In the period 22 December 2004 to 28 February 2006 Report achieved a net income of £13,500,000. HMRC noted that this was despite the fact that Report appeared to have only employed 1 member of staff. Furthermore, the deals were mostly conducted during the last few days of the quarter, with no trading activity the remainder of the time.

15 120. The transactions the subject of this appeal, were conducted in 3 days, in the last month of the quarter to the value of £13,500,000. HMRC submitted that it is implausible that Report, with little capital and assets of only a fax machine, telephone and computer could enter into such high value trade. Mr Ashraf contended that
20 Report's turnover was entirely typical for its business due to the high value of the items being traded. The minimal staff is irrelevant as the nature of the trade is such that large numbers of staff are not required and only minimal office equipment is required.

Loans/Funding

25 121. Mr Ashraf stated to HMRC in a visit on 30 March 2006 that the Company was funded by a £200,000 loan from himself. However on the visit of 1 September 2006 Mr Ashraf had denied that the Company was supported by any funding either by way of personal loans, bank loans or overdraft. Mr Ashraf is quoted as telling HMRC that the Company "*owe nobody anything and nobody owes the company anything*".

30 122. Report's year end 31 December 2005 Audited Accounts declared that Report had not received any loans. Within the list of Creditors, the Directors Loan Account reveals the sum of £198,014. The sum is supported by a deposit of £199,985 into the then business account of Report at HSBC on 23 November 2005 with details of Mr Ashraf. In oral evidence Mr Ashraf confirmed that he had made a £200,000 loan when
35 he started Report, which remains outstanding. Mr Ashraf stated that he raised the loan from his cousin, Mr Sati, in Pakistan. Mr Ashraf had also made a loan to Butt, which was financed by the sale of two properties he owned in Pakistan. He stated that there was no agreement in place with his cousin as to when the loan would be repaid or the interest rate on the loan, but he intended to "*give him something*". In re-examination

Mr Ashraf clarified that he agreed with his cousin that “*whatever the profit would be, I would give him 25% of that.*” As regards a business plan, the evidence was that Mr Ashraf intended to carry on the same work as he had done before- the sale and purchase of mobile phones. He had felt no need to explain to his cousin what he had in mind as his cousin understood he would be repaid:

5
“Mr Chapman: Did you have a business plan in place as to what you were going to do with this company?”

Mr Ashraf: The same work that we were doing before...mobile phones.

10 **Mr Chapman: So your business plan was just “I’m going to buy and sell mobile phones”?**

Mr Ashraf: Yes

123. Judge Porter asked Mr Ashraf how he had funded the VAT, to which he replied by saying that he had used the £200,000 he had introduced into the business. Judge Porter pointed out that the VAT which Report had to finance on the first deal was £281,250 and so £200,000 would not be enough as Report needed to finance £1,880,000. Mr Ashraf then said that he had paid for it out of the VAT repayment from the previous quarter in February. Judge Porter enquired how he had paid the VAT for the earlier quarter, to which Mr Ashraf replied “*Perhaps, I borrowed it from Butt or something. I can’t remember.*” Mr Ashraf reiterated that he could not recall without making checks and consequently the Tribunal did not feel that any further re-examination on the issue would assist.

Inspections

124. Report instructed N K Limited to carry out inspections of the goods while at Interken’s warehouse. The request was faxed to Interken, which arranged the inspection and charged Report in addition to freight charges. The documentation showed that Report requested a “*100% inspection and please conduct 10% IMEI report and send to us*”. Mr Doyle noted in his evidence that Report had failed to produce any examples of the contract which existed between it and NK Ltd nor any documentation confirming of what a 100% inspection was comprised.

125. The deal documentation provided by Report included N K Ltd’s inspection reports which showed that a 100% inspection percentage check was carried out on all deals. Mr Doyle noted that this amounted to a 100% check of 55,000 phones over only 4 days. Furthermore, although Report had requested a 10% IMEI check, this was only carried out in respect of deals 1001 and 1002; records for the remaining 4 deals state that the IMEI percentage was “nil”. HMRC queried why there was no evidence to show that Report had queried the fact that it had not received the full inspection service requested but was invoiced for it. In the absence of an explanation, HMRC suggested that this was an indicator of the contrived nature of the transactions and Report’s knowledge or means of knowledge of that fact.

125. As regards IMEI numbers, Mr Doyle requested at his visit on 1 September 2006 that a listing be made available to HMRC, to which Mr Ali stated that the listing would be forwarded by post. Mr Doyle reiterated his request for IMEI numbers in letters to Report dated 6 and 7 September 2006. A letter received by HMRC from Mr Ashraf on 11 September 2006 made no mention of the IMEI numbers.

126. In oral evidence Mr Doyle clarified that Mr Ashraf stated he had passed the IMEI numbers over to the VAT Office, but there was no record of their receipt. He later explained that he had looked through the records of documents uplifted by Criminal Investigation team and found numbers, which he assumed to be the IMEI numbers of Report. Mr Ashraf confirmed that Interken was requested to arrange inspection reports to include 100% inspection of the goods and a 10% IMEI check. The consignment selected for the inspection reports was at the discretion of Interken. Mr Ashraf noted that it was not a requirement for Report to have inspections carried out but rather it was an additional measure taken by Report. He stated that the IMEI number lists requested by HMRC had been provided.

Specification of the goods

127. HMRC noted the fact that the majority of phones traded in Report's six deals were non-United Kingdom specification despite being traded in the United Kingdom. It was submitted that this was a risk factor which highlighted the possibility that the goods were part of an MTIC fraud chain. In cross examination Mr Doyle stated that he could not understand why a United Kingdom trader would sell non-United Kingdom specification phones in the United Kingdom and, when viewed in the context of risks within the trade sector, it should have acted as an alert to Report that the goods originated from abroad and may be part of a carousel or MTIC fraud scheme. Mr Doyle accepted that he was unaware as to the number of phones exported from the United Kingdom at that time or whether there was a substantial market in adaptors for the phones.

128. HMRC contended that there was no commercial reason for the goods to be imported into the United Kingdom because they would have been unusable on the United Kingdom retail market and there was no evidence to suggest that Report had thought this unusual or sought to verify the issue. Mr Ashraf argued that the non UK specification of the phones was irrelevant.

Associations

129. Mr Doyle highlighted various associations of Report. Mr Zahid Atcha resigned from Report in October 2005 yet information from the Inland Revenue exhibited by Mr Doyle showed Mr Atcha to be an employee of Report as at 26 February 2007. Saadia Sajjad, who was an officer of Report during the relevant period, was also an officer of Butt, alongside Mr Abid Ali Butt. Butt had a repayment claim of £2,273,687.50 denied in the VAT period 04/06 on the grounds that the directors, including Mr Ashraf, had knowledge or means of knowledge that their transactions were connected to fraud.

130. Mr Abid Ali Butt was also a director of Yoush Marketing Limited, alongside Mr Ashraf and Artis Systems Ltd. Both Companies had their 2006 VAT returns verified by HMRC MTIC teams resulting in denials of input tax due to alleged involvement in an overall scheme to defraud the revenue: Yoush Marketing Ltd in the sum of
5 £1,353,625 and Artis Systems Ltd in the sum of £1,096,987. Both Companies have appealed the decisions although there has been no contact from Artis with HMRC or the Tribunals Service since September 2008 and it has been classed as a missing trader by HMRC.

131. Mr Butt and a German National, Mr Mohammed Yousaf Arain, were arrested on
10 suspicion of cheating the public revenue in connection with a £580,000,000 United Kingdom VAT fraud in 2005 and are currently on bail. The matter is being investigated by HMRC's Criminal Investigation Team, who are also investigating the business activities of Butt, Yoush Marketing Ltd, Gani (of which Mr Ashraf was also a director), Artis Systems Ltd and Report. The traders' records were uplifted by the
15 Criminal Investigation Team. Report, Butt, Yoush Marketing Ltd and Artis Systems Ltd all shared the same bookkeeper, Mr Akhtar Ali.

132. In oral evidence Mr Doyle explained that he had attempted to show the connection between the people mentioned as associates of Mr Ashraf and the fact that they later carried out transactions tainted with fraud. HMRC contended that it was not
20 sheer coincidence that the individuals named above are collectively involved in activities which have resulted in the sum of £28,780,940 input tax being denied.

133. Mr Ashraf denied that Mr Atcha had ever been employed by Report after 24 October 2005, or that he had had any involvement in Report's trading activities after that date. Mr Ashraf stated that he had never seen the Inland Revenue PAYE return for
25 February 2007 exhibited by Mr Doyle. In contrast to Mr Doyle's oral evidence that Mr Butt, who had been appointed as director of Butt on 1 June 2004 and resigned on 26 October 2005, overlapped Mr Ashraf (appointed as director on 4 July 2005) by approximately 3 months, Mr Ashraf's witness statement denied that he was ever a director alongside Mr Butt and stated that Mr Butt's interest in Butt ended when Mr
30 Ashraf took over the company. In oral evidence Mr Ashraf corrected the error in his witness statement and stated that his recollection had been that a week or two after he had taken over Butt, Mr Butt had resigned. Mr Ashraf accepted the documentary evidence produced by HMRC which showed that Mr Butt had been a director at the same time as him for approximately 2 months.

35 134. Mr Ashraf accepted that Mr Ali carried out the bookkeeping for Report, however he stated he was not aware of which other companies Mr Ali worked for. He also stated that he had no involvement with Yoush Marketing Ltd and denied that it was an associate company to either Report or Butt.

135. In cross-examination Mr Ashraf confirmed that he was director and sole
40 shareholder of Gani, which was another Company which his accountant had found for him. Gani had been funded by another friend, Mr Shah, and his wife who invested £150,000.

136. Mr Ashraf stated that Mr Dar (his co-director and co-shareholder at Butt) had no involvement with Report, although he (Mr Dar) was aware of it and the Companies shared premises. Mr Dar was also aware of Report's counterparties because there was paperwork in the office showing, for example that Report was trading with Uni-Brand. Mr Ashraf stated that there was no competition between the Companies despite the fact that they shared customers. Mr Ashraf was not aware of a Director's duty to Shareholders. He stated that he and Mr Dar were good friends who had a good understanding with each other. Mr Ashraf did not perceive any conflict of interest as to whether a deal went through Butt or Report.

137. There was considerable confusion as to how Report and Butt shared out the customers. Initially Mr Ashraf said that Butt carried out all the deals in April and Report all the deals in May. Judge Blewitt pointed out that he had also said that whoever answered the telephone carried out the deal. Mr Ashraf was unable to explain with any clarity how the transactions were shared between the companies.

15

Legal Title to Goods

138. HMRC relied on the lack of clarity as to where title to the goods rested as evidence of the contrived nature of Report's transactions. Mr Doyle's evidence set out a number of confusing aspects found within the deal pack documents provided by Report, for example in respect of deals 1001 and 1002 the inward documentation when the goods are transported from Belgium to the UK show the customer as WTC Trading Company GMBH, rather than Uni-Brand. Interken Freighters (UK) Ltd which arranged the transport from Belgium to the UK then invoiced Uni-Brand for its services.

139. In respect of deal 1005, when the goods were purchased by M K Digital Report invoiced M K Digital on 11 May 2006 and received payment on 12 May 2006. However, M K Digital had sold the same goods to Olympic on 11 May 2006. The goods were not despatched from the UK to their destination in Holland until 14 May 2006. Mr Doyle noted that Report's sales invoices contained the declarations: "*All goods remain the property of 1st 4 Report Ltd until payment is received*" which, he submitted, was at odds with the fact that the goods had apparently been sold by M K Digital prior to their payment to Report.

140. As regards deal 1007 the goods were sold to M K Digital, invoiced on 12 May 2006. M K Digital paid Report on the same date, however an NK Ltd inspection report the goods were not inspected (at Report's request) until 15 May 2006. Report had made a stock offer to M K Digital on 12 May 2006; the letter contained the declaration that the goods (15,000 phones) "will not be available until 15 May 2006" yet M K Digital sold the goods to Olympic on 12 May 2006.

141. In cross examination Mr Doyle explained that having examined Report's documents he remained unclear as to when the actual title passes. He stated that this was, in his view, a hallmark of fraud. It was clear to us that Mr Ashraf did not understand what the wording on Report's invoices as to title meant. Under pressure,

when cross-examined, he said: “*It means what is written on there*”. Furthermore, he was unable to identify when Report was legally committed both to buy and sell the phones.

142. In re-examination by Mr Bridge Mr Ashraf did no better:

5 **Mr Bridge** *Right. Now you were asked at great length about title and ownership and you’ve just used a phrase there, “when the deal is done.” When do you say the deal is done? What do you say? When do you regard yourself as bound by the deal?*

Mrs Usman *When there is confirmation order when we actually take confirmation from each other. By that time the deal is done.*
10

Mr Bridge *So when do you take confirmation of the order from each other?*

Mrs Usman *When we are able to get the stock from somewhere and when we know that we can get the stock from somewhere then we can actually confirm with them that the deal can be done.*
15

Payment Terms/Contracts

143. Report provided no documentary evidence to show that contracts were entered into with either its supplier or customers. Mr Doyle noted that in respect of the May 2006 transactions Report’s customers paid in full via bank transfers on 12 May 2006 a total of in excess of £13,000,000. In turn, the majority owed to Uni-Brand was then paid by Report on 12 May 2006. Mr Doyle submitted that to take such a significant risk was not to be expected in legitimate, arms length transactions, particularly when viewed in the context of the limited due diligence checks undertaken by Report. To do so, HMRC submitted, was to be exposed to the risk that Report was left with goods for which it was not paid or without goods required to fulfil customers’ orders. HMRC contended that this practice was indicative of the fact that Report knew that the transactions were contrived.
20
25

144. In addition, the lack of any formal contracts with customers, supplier or freight forwarder meant that there was no formally documented returns/exchange policies for the parties should the goods transpire to be faulty. In cross examination Mr Doyle stated that he would have expected to see more than invoices and similar documentation contained in the deal packs given the high risk commodities which were traded and the significant sums of money involved. By way of example, he was not aware of the type of contract that an authorised distributor would have or whether it would have any more documentation than that provided by Report, although he noted that Report’s documentation was put together within 3 days. Whilst we accept that in many smaller commercial transactions there may not be formal contracts
30
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between the parties, who might well rely on the deal documentation to establish what they understood was agreed, in our view, in a transaction of over £1,500,000, we have would expect the parties to agree the terms of the transaction in writing.

Back to Back transactions.

- 5 145. HMRC also noted that the transactions took place on a back to back basis and that Report was never left with unsold stock. It was submitted that the fact that the requirements of a customer and sourcing the goods could be instantly matched was suggestive of the contrived nature of the deals.

Due Diligence

10 M K Digital World (Cyprus) Limited (“M K Digital”)

146. This Company was Report’s customer in deals 1001, 1002, 1005 and 1007. The total value of goods supplied to M K Digital was £9,015,000 and the total input tax denied by HMRC in respect of supplies to M K Digital was £1,531,250.

- 15 147. The Company registered for VAT with the Cypriot fiscal authorities with effect from 1 September 2004 and its registration was cancelled by the same authorities on 31 October 2006.

148. A mutual assistance response received from the Cypriot Authorities exhibited by HMRC showed M K Digital declared onward supplies of purchases from Report to Olympic Europe BV in Holland (Report’s only other customer in the relevant period).

- 20 149. HMRC EU applications exhibited also showed M K Digital had purchased goods in excess of £112,000,000 from 9 UK based traders in the second quarter of 2006. 6 of those traders had purchased goods directly from Uni-Brand and the remaining 3 purchased from suppliers who purchased from Uni-Brand. The UK traders included Yoush Marketing Ltd and Butt and the majority of traders used Interken Freight
25 Forwarding to despatch the goods to the same warehouse in Holland: Freight Connections BV. HMRC contended that this was evidence of the contrived nature of fraudulent activities with the supply chains. Mr Doyle noted that prior to 05/06 Report had never dealt with M K Digital.

- 30 150. The due diligence provided by Report to HMRC in respect of M K Digital included:

- Four photographs, one of Mr Ashraf in an office, a gentleman and a lady who were not identified and a photograph of a company name plate;
- A certificate of Incorporation;
- A copy VAT certificate in Greek with no translation provided;
- 35 • Company profile;

- Copy passport information of M K Digital’s director Moizuddin Khan issued in India and Dubai;
- A document consenting to provide Report a reference;
- 5 • Trade references of the Company’s referees. The Company provided contact and phone details: Digital World FZE based in Dubai and Genesis Logistics Ltd based on Cyprus. The contact name for Digital World FZE was Moiz Khan, the director of M K Digital;
- A site visit questionnaire dated 2 May 2006;
- One page of a Dun and Bradstreet report.

10 151. Mr Doyle highlighted anomalies in the due diligence, for example the two trade reference letters requested that the referees return the forms to Report by 10 May 2006, the same date as the supplies were made by Report to M K Digital. The letter from Genesis advised that the people it dealt with at M K Digital were Bhuwan Bhasker and Moiz Khan, the latter being the contact for the other referee Digital
15 World FZE.

152. The site visit questionnaire provided no information as to who conducted the visit and contained little more than M K Digital’s name, address, telephone numbers, company registration and names of directors. In cross-examination Mr Doyle explained that he expected more detailed site visit reports (in respect of all of Report’s
20 counterparties), for example with financial records, who was present or a record of any agreement at the meeting. Mr Doyle also noted that Report did not visit any of its counterparties until very close to the dates of the transactions.

153. Mr Doyle noted that the Dun and Bradstreet report contained no information regarding the trading data or commercial viability of the Company. Furthermore there
25 was no evidence that Report had sought verification of the Company’s VAT number via Redhill.

154. In respect of Report’s customers and supplier, Mr Doyle added in oral evidence that he had been guided by the paperwork provided by Report in reaching his decision to deny the repayment claim. He stated that there was no evidence of negotiations
30 between Report and counterparties, for example by way of a note or record of contact.

155. HMRC contended that the due diligence checks carried out by Report were wholly inadequate and, in the main, worthless.

156. Mr Ashraf stated that at the time of each deal with M K Digital Report took steps via Redhill to ensure that M K Digital held a valid VAT registration number and that
35 the Company was entirely legitimate. On each occasion the response from Redhill was positive.

157. He stated that he had no knowledge as to where M K Digital sold on the goods or any knowledge as to the other trading activities of M K Digital.

158. It was accepted that Report had not dealt with M K Digital prior to the 05/06 VAT period as Report had only started trading in mobile phones a few months before that period and consequently all of Report's customer were relatively new.

5 159. Mr Ashraf stated that his due diligence in respect of M K Digital included visiting the Company's premises in Cyprus, taking photographs and meeting the staff. He also obtained various documents from the Company including a utility bill, bank statement and a copy of the director's passport.

10 160. A site questionnaire was completed by a Mr Bhasker which confirmed that Mr Ashraf had attended the premises of M K Digital. In addition a Dun and Bradstreet report identified the two individuals who were representative of the Company. As Report never provided M K Digital with credit, a Dun and Bradstreet report was not required for that purpose. The goods were not released until M K Digital had paid for them.

15 161. Mr Ashraf denied that the due diligence checks were inadequate and added that HMRC failed to set out what it contended adequate checks would be.

20 162. Mr Ashraf could not recall when he first met M K Digital but stated that he had visited the company's premises to see if it existed. It was put to Mr Ashraf that he had obtained a Dunn and Bradstreet report yet the document produced by Mr Ashraf, as part of his due diligence, provided no information about the Company's net worth. Mr Ashraf stated that "*I didn't feel there was any problem dealing with them*" but provided no further explanation.

Olympic Europe BV, Holland ("Olympic")

163. Olympic was registered for VAT by the Dutch authorities with effect from 21 October 2003 and compulsory deregistered on 21 July 2006.

25 164. Olympic were supplied by Report in deals 1006 and 1008. The value of the supplies was £4,380,000 and the input tax denied in relation to those supplies was £743,750.00.

30 165. Information provided by the Dutch authorities and exhibited by Mr Doyle showed that Olympic was founded in October 2003 by Mazin Waljih, born in Baghdad but now a British Citizen with a last known address of 5 Seamer Road, Teesside. On 13 May 2004 the shares of the company were sold to Shoeb Mohmed, a UK national who was born in Preston and has the last known address of 78B Pembroke Road, Ilford, Essex.

35 166. Mr Waljih was a director of Tigertrade Ltd which was identified by HMRC as an active MTIC player following a visit from MTIC Officer in March 2003.

167. Olympic's only principal place of business in Holland was a rented mailbox at the Regus Business Centre, Hoofddorp, Holland. All incoming mail was sent to the UK home address of Mr Waljih.

168. The declarations submitted by Olympic and exhibited by Mr Doyle showed purchases from the UK exceeding the value of £139,000,000 in the second quarter of 2006. HMRC submitted that to achieve such a high turnover from an accommodation address and with no employees is beyond credibility.

5 169. The due diligence provided by Report to HMRC in respect of Olympic included:

- Six photographs: a Regus Office nameplate (outside) that did not show Olympic's name, a board of names situated inside a reception that did not show Olympic's name, Regus office (unmanned), office entrance (no name plate), the view of an office from a corridor and a picture of a desk, laptop, telephone and empty chair;
- A Company profile and collection of documents (assumed to originate from the Dutch tax authorities) which were in Dutch and had no translation;
- A Regus invoice addressed to Olympic dated 20 March 2006 which purportedly shows charges for an office and associated facilities;
- 15 • The name of referees supplied by Olympic, namely Trade 24/7 and freight forwarder Worldwide Logistics BV;
- Trade reference letters from Just Fabulous (UK) Ltd and The Accessory People Global Ltd;
- 20 • A Dun and Bradstreet report which provided no significant positive or negative information in respect of the Company.

170. Mr Doyle noted that the Regus invoice addressed to Olympic dated 20 March 2006 is at odds with information received from the Dutch Tax authorities in December 2005 which stated that Olympic did not have a regular business address in the Netherlands and all incoming mail was forwarded to the director's United Kingdom address.

171. Report did not seek a reference from the referee Trade 24/7 or Worldwide Logistics BV nor was the VAT registration verified via Redhill.

172. As with M K Digital, HMRC contended that the due diligence conducted in respect of Olympic was wholly inadequate and suggestive of the knowledge of Report that the transactions into which it entered were contrived and lacked any risk.

173. Mr Ashraf denied that his due diligence checks on Olympic were in any way inadequate. He stated that he had attended the office address provided by Olympic and taken photographs of the same. He met Mr Mohamed and carried out a Dun and Bradstreet report although, as with M K Digital, Report did not provide the Company with credit as the goods were not released until payment was received.

174. He could not recall how contact was first made with the Company, how trade references had been requested or whether they had been obtained. Mr Ashraf was

unable to recall why trade references had been provided to HMRC by Report from The Accessory People Global Ltd and Just Fabulous when they were not companies which had been named as referees by Olympic.

Uni-Brand

- 5 175. The due diligence provided by Report to HMRC in respect of Uni-Brand included:
- 3 photographs, including one with an unidentified gentleman;
 - Company Profile;
 - Certificate of Incorporation;
 - 10 • VAT Certificate;
 - Banking details of FCIB;
 - Copy of Uni-Brand's Director's UK passport, Mr Mohammed Iqbal;
 - A Regus office rental invoice dated 25 October 2005 addressed to Globecom Limited;
 - 15 • A site visit questionnaire in respect of a visit on 19 April 2006;
 - Name of a reference supplied by Uni-Brand: Interken Freight Forwarder;
 - Names of referees: Our Communication Ltd and Shelford Trading Ltd;
 - Two trade reference letters completed by Yoush Marketing Ltd and Artis Systems Ltd;
 - 20 • Europa website VAT validation checks conducted on the day of the deals;
 - Supplier's Declaration.

176. Mr Doyle noted that the site visit questionnaire did not make clear who had carried out the visit and which Uni-Brand site was visited, the trading office in Brentford or the registered office in Southport.

- 25 177. He also highlighted that Report had requested on 19 April 2006 and 11 May 2006 (the latter date being after transactions with Uni-Brand had taken place) that Uni-Brand provide 2 references; one from an authorised trader and one from the Company's freight forwarder. Uni-Brand provided the name Interken Freight Forwarder in response to both requests. Furthermore, Report supplied no evidence
- 30 that a reference was ever obtained from Interken. Similarly there was no evidence that Report had obtained references from Our Communication Ltd or Shelford Trading Ltd.

178. As regards the two trade reference letters completed by Yoush Marketing Ltd and Artis Systems Ltd, Mr Doyle noted that the references were a “box ticking exercise” and no comments had been written by the referees regarding Uni-Brand’s credibility. In cross examination Mr Doyle expanded on his written evidence, stating that he would have expected Report to obtain as much information as possible about a supplier or customer. The letters were also undated, although Report had requested that the forms be returned by Yoush Marketing Ltd by 9 May 2006 and by Artis Systems Ltd by 10 May 2006. Report commenced trading with Uni-Brand on 10 May 2006. The director of Yoush Marketing Ltd was Mr Butt, Mr Ashraf’s co-director in Butt, and the bookkeeper for Artis Systems Ltd was Ali Akhtar who was also employed in a similar role at Butt, Yoush Marketing Ltd and Report. In cross examination Mr Doyle stated that he did not view the references as at arm’s length and he submitted that the trade references cannot be deemed independent or meaningful in such circumstances.

179. Mr Doyle relied on the fact Report made requests to Redhill for verification of Uni-Brand’s VAT registration number on 10, 11 and 12 May 2006. Report did not await a response before trading with Uni-Brand and clearance was not issued from Redhill until 16 May 2006, by which time all deals had been concluded. In cross examination Mr Doyle also clarified that the requests made to Redhill demonstrated that Report only contacted Redhill literally a day or hours before they were to do the deal.

182. In summary, Mr Doyle’s view was that collectively the documents produced were wholly inadequate to support dealings of such a scale in such a short time.

180. Report requested Uni-Brand to complete a supplier’s declaration for each transaction. The document requested that Uni-Brand confirm details, for example that the Company carried out checks on its supplier in accordance with procedures implemented by HMRC in April 2003. HMRC submitted that such information as provided on the document was meaningless as there was no way for Report to check its veracity.

181. In respect of all the due diligence carried out, Mr Ashraf stated that the purpose of such checks was to check whether a company had a valid VAT registration and whether Report was dealing with a proper company. Mr Ashraf explained that the due diligence was also a requirement of HMRC in addition to being carried out for Report’s satisfaction.

183. Mr Ashraf stated that he had no knowledge of any other transactions that Uni-Brand was involved in nor was he aware where the goods he purchased were located. Mr Ashraf was advised that the goods were held by Interken Freighters (UK) Ltd; he had no involvement as to how the goods were transported or by which company but: *“simply paid for the goods to be transported and was invoiced by Interken”*.

184. He denied that the reference obtained from Yoush Marketing Ltd was improper in any way as it was an independent company to Report.

185. The Supplier Declarations were not a requirement but rather an additional check carried out for Mr Ashraf's further satisfaction and he had no reason to suspect that the checks were not carried out.

5 186. Mr Ashraf contended that HMRC have failed to set out the further enquiries that it considered he should have made and relied on the fact that HMRC had not raised any concerns during its visits to Report.

10 187. In respect of all of the due diligence checks undertaken by Report, Mr Ashraf submitted that HMRC had attended at Report's premises prior to the 05/06 deals and inspected the paperwork yet failed to raise any concerns as to the checks carried out. Furthermore, Report had received a repayment from HMRC in respect of its 02/06 return, where the due diligence undertaken had been no more than that carried out in respect of its 05/06 transactions.

15 188. Mr Ashraf stated in cross-examination that the site visit report had not been completed by him but he could not recall the date of the visit, which was unclear on the document. He believed that trade references were important but he could not recall what the process was for obtaining that information from Uni-Brand. When asked why two sets of trade references appeared to have been provided, on 19 April 2006 and 11 May 2006, Mr Ashraf stated that they must have been sent by Uni-Brand.

20 189. The names provided by Uni-Brand were Howe Communications Ltd, Shelford Trading Company Ltd and Interken Freight Forwarders. Mr Ashraf was unable to recall why he had approached Yoush Marketing Ltd and Artis Systems Ltd for references rather than the companies offered by Uni-Brand nor was he able to recall who had provided the names of Yoush Marketing Ltd and Artis Systems Ltd as references.

25 190. Mr Ashraf stated that although the trade references requested that the document be returned before 10 May 2006, they had been received before that date, however he could not recall the exact date.

30 191. He accepted that in fact the first deal carried out by Report with Uni-Brand had taken place on 28 February 2006 but he could not recall whether the deal had taken place prior to receiving trade references.

35 192. Mr Chapman queried why one of the references appeared, from a date and fax number on it, to have been faxed to Artis Systems on 8 September 2006 following a request for the document by HMRC at a visit on 1 September 2006. Mr Ashraf was unable to explain save to say that there would have been no point in obtaining the reference after the deal. Mr Chapman suggested that it might have been included in the pack to confuse HMRC to which Mr Ashraf replied:

"This is your thinking but with these dates you cannot see them clearly. Sometimes when we receive the fax the timing is wrong because they haven't set the timing and the date right"

193. Mr Ashraf contended that HMRC had been satisfied by Report's due diligence in the previous quarter and he had attempted to improve on it in the 05/06 period.

Freight Forwarders

5 194. Mr Doyle highlighted the absence of documentation provided by Report to show that any due diligence had been carried out on Report's freight forwarders, Interken Freight Forwarder.

10 195. Mr Ashraf stated that he had been to visit the freight forwarders to check how they worked and what kind of safety there was but he could not recall why there were no trade reference documents. He was unsure as to whether they played a crucial role in the deals, when asked by Mr Chapman. Although Report were entrusting them with £13,000,000 worth of stock, Report only used them to move the stock as it (Report) was not in a position to deliver the goods themselves. He stated that HMRC should have questioned the due diligence in relation to the freight forwarders earlier and
15 asked why he trusted them so much.

Movement of Goods

196. Mr Doyle highlighted the movement of the goods as evidence of contrivance. WTC Trading Company GMBH, Austria ("WTC") were the EU supplier to Uni-Brand in the transactions connected to this appeal. CMRs obtained from Interken
20 showed that prior to the sale from WTC to Uni-Brand the goods were purportedly held in Belgium.

197. Mr Doyle queried why, incurring apparently unnecessary shipping and insurance costs, the goods were then despatched from Belgium to the UK then to Holland. Mr Doyle submitted that there was no economic or commercial reason for the goods to
25 enter the UK other than to facilitate the fraud.

198. Mr Doyle also highlighted specific deals as evidence of the contrived nature of the transactions. By way of example, Mr Doyle referred to the chain of events set out at paragraphs 45 to 53 above. HMRC questioned why the goods were despatched from Belgium to the UK and on to Holland on 12 May 2006 as opposed to Belgium to
30 Holland (a distance of 94 miles) when the ultimate destination of the goods was known to be Holland on 10 May 2006.

199. Mr Doyle also highlighted that Report issued release notes dated 15 May 2006 to Freight Connection BV in Holland to release the goods to M K Digital, when M K Digital had sold the stock to Olympic on 10 May 2006, as evidenced by invoices
35 exhibited by HMRC.

200. Mr Ashraf stated that Report was not advised that the goods were in Belgium, only that Interken held the stock. He therefore had no knowledge about the transport of the goods from Belgium to the United Kingdom which was arranged by Interken and for which Report paid a fee.

201. He stated that Report had no knowledge of the company from which Uni-Brand bought the goods or the company that purchased the goods from M K Digital, which is usual business practice. Report was, therefore, unaware as to when M K Digital sold the goods.

5 ***Insurance***

202. Report supplied a booklet to HMRC which it stated was the insurance policy. Mr Doyle noted that Report's name was not contained on the policy. Mr Ashraf stated that insurance of the goods was arranged by Interken. He explained that insurance was necessary as anything could happen to the goods in transit; they could get lost or stolen. He said that he used to look at the documents sent by the insurance company. Mr Chapman pointed out that there was an excess of 10% of any claimed amount with a minimum of \$3,500 and a maximum of \$17,500. Mr Ashraf appeared to be unaware of that and when asked if the policy had been sent to Report before it carried out any of the deals he said, as with many of his answers, he said that he could not remember.

15 ***Mark-Ups and Profit***

203. Mr Doyle's evidence summarised the percentage profits for Uni-Brand and Report as follows:

Deal	Phone	Uni-Brand	Report
1001	Nokia	£1 per phone (0.5%)	£6 per phone (3.7%)
1002	Motorola V3	50p per phone (0.35%)	£4 per phone (2.8%)
1005	Nokia 8800	£1 per phone (0.47%)	£12 per phone (2.8%)
1006	Nokia 9300i	£1 per phone (0.33%)	£10 per phone (3.3%)
1007	Nokia N70	£1 per phone (0.45%)	£7 per phone (3.18%)
1008	Nokia N90	£1 per phone (0.36%)	£8 per phone (2.9%)

204. Mr Doyle's initial view was that the mark up applied by Report was not commercially viable. He also highlighted that the profit mark-ups on the goods sold by Uni-Brand were fixed at either 50p or £1, irrespective of the make, model or quantity of goods which HMRC submitted lacked commercial reality. In cross-examination Mr Doyle expended on his written evidence by saying that he had

noticed very small mark ups throughout the chains until the export, at which point the mark up, although still low in normal commercial practice, was higher than the rest of the supply chains. Mr Doyle accepted that given the volume of trade, although it appeared to be a low mark up, it could be commercially viable.

5 205. Mr Ashraf stated that Report was never aware of the price at which its supplier purchased the goods. Likewise Report's purchaser was not aware of the price at which Report had purchased the goods. Report was not in a position to comment on the prices paid by others as it had no access to such information but Mr Ashraf noted that
10 the prices of mobile phones fluctuated on a daily basis. In oral evidence, Mr Ashraf was referred to HMRC's site visit questionnaire in which Mr Ashraf was recorded as saying that the mark up was 10 – 15%. He stated that he was sure he had not said that to HMRC. In re-examination Mr Ashraf clarified that he had not had an interpreter present when HMRC officers visited and interviewed him and that he had not understood a lot of the comments. It was put to Mr Ashraf that Mr Ali had acted as his
15 interpreter during the interview, to which he replied that Mr Ali was Report's bookkeeper, not his interpreter. Mr Doyle was subsequently recalled to give his recollection to the Tribunal. He stated that Mr Ashraf had requested that the questions be relayed through Mr Ali, which was done, and that he (Mr Doyle) had accepted that the questions were understood.

20 206. Mr Ashraf was unable to say how he arrived at Report's purchase and sale price, as he did not have a working knowledge of the market place. When asked by Mr Chapman what knowledge he had he replied:

Mrs Usman *“Knowledge is that we used to parcel the phones, not trade. We weren't retailing. We didn't have a repair shop.*

25 *Mr Chapman* *Well did you have a clear idea of all the different features on these phones?*

Mrs Usman *What do you mean?*

Mr Chapman *Well if you're selling something you need to have a fairly good idea of what it is you're selling, surely?*

30 *Mrs Usman* *They were phones, they were phones we were selling, what else was it?*

FCIB Evidence

207. Ann Fyfe, a Higher Officer in the MTIC team at Salford, provided a witness statement which was agreed by the parties and treated as her evidence-in-chief. At the
35 request of Mr Doyle she had analysed the transactions for all the deals but provided flow charts for the 3 deals numbered 1001, 1002 and 1007. The documentation required to compile the payment details came from the Bankmaster Plus system. The FCIB account reference gives information about each account. The full FCIB account

reference is in the format "00/000/000000/00". The first two digits indicate the currency (in this case sterling); the next three digits identify the type of account (in this case a current account, which could be operated digitally, and in all the different trader accounts was numbered 801); the next six digits are the customer's reference and the last two digits the currency for that customer (again sterling). The description column in the Bankmaster Plus System contains the narrative attached to the transaction by the account holder. Also within the narrative is the Electronic Banking (EB) reference which uniquely identifies each monetary movement. It appears that these numbers are sequential and the EB reference links a payment from one FCIB account to another account as the next sequential transaction as the same number appears in the narrative for the accounts of all paying and receiving traders. As a result Mrs Fyfe has been able to follow the payments through the various traders' accounts.

208. Mrs Fyfe started in Report's account and then followed the payments through all the other traders:-

- (i) Four payments were made to Report on 12 May 2006 by MK Digital being £2,010,000, £1,440,000, £2,160,000 and £3,405,000. These payments correspond to payments due to Report on invoices 1001,1002,1005 and 1007;
- (ii) One payment of £4,380,000 was paid to Report being the totals of invoice 1005, £1,550,000 and invoice 1008, £2,830,000;
- (iii) These five payments, totalling £13,395,000, were all made on 12 May 2006 and are equal to the total sales figure for the six deals in the deal table above.
- (iv) The payments are traced through the EB numbers. For example the EB number for the payment of £2,010,000 from M K Digital to Report is EB000000954415 in deal 1. The payment of £2,010,000 appears in Report's accounts under the same number EB000000954415. In fact there are only 83 transactions in the entire FCIB between EB 000000954415 and EB00000054498, the payment of £3,405,000. This means that in the time it took the money to pass through the accounts MK Digital, Report and Uni-Brand had telephoned each other, presumably on separate occasions as the payments were made in different amounts to the invoices.

209. Mrs Fyfe prepared 3 cash flow charts: for Deal 1001, Mrs Fyfe first identified the FCIB account numbers for all the traders. The payments were made through the following traders: M K Digital > Report > Uni-Brand > WCT Trading Company > Artlons Trading Ltd > Wall Street General Trading > MIB Trading Ltd > Phone 4 You Trading > Zorba SO > Olympic Europa BV as follows:-

- M K Digital paid Report £2,010,000

- Report paid Uni-Brand £2,291,250 (being two payments of £1,145,625)
- Uni-Brand paid WTC £1,940,000 having retained £351,250 being the VAT paid by Report and a further £10,000. It is unusual that it has retained the VAT as it ought to have paid it on to the United Kingdom supplier it bought the phones from
- WCT paid Artlons £4,825,000 (3 payments £985,000, £3,270,000 and £570,000)
- Artlons paid Wall Street £4,810,000 (3 payments £3,255,000, £985,000 and £570,000)
- Wall Street paid MIB and £1,481,265 £2,562,515 (2 payments £1,081,250 and £1,481,265)
- MIB paid Phone 4 £1,551,250
- Phone 4 paid Zorba £4,830,000 (2 payments £1,550,000 and £2,830,000)
- Zorba paid Olympic £4,380,000 (Olympic are customers of MK Digital)

210. Mrs Fyfe concluded that the money flow was circular. Uni-Brand has retained the VAT of £351,250 due from Report and a further £10,000. Mr Ashraf was unable to explain how Report funded the VAT when it would appear that Report had used the entirety of the money paid by M K Digital, which includes Report's profit of £60,000. (See paragraph 45 above for the deal table).

211. Mrs Fyfe has only traced the payments to Olympic and not on to M K Digital in this instance. Her Broker statement, in her exhibit on page 6 of bundle 18, identifies a sale from MK Digital to Olympic. She has also traced the payments to M K Digital from Olympic in the cash flow charts for deal 1002. Significantly Report also traded with Olympic in deal 1008.

212. Deal 1002: the payments were made through the following traders: M K Digital > Report > Uni-Brand > WTC > Artlons > Wall Street > MIB > Phone 4 You > Zorba > Olympic as follows:-

- M K Digital paid Report £1,440,000
- Report paid Uni-Brand £1,645,000 (2 payments of £822,500)
- Uni-Brand paid WTC £1,395,000 and retained the VAT of £245,000 payable by Report plus a further £5000. As pointed out above Uni-Brand should have paid the VAT on to its supplier.
- WCT paid Artlons £4,825,000 (3 payments of £985,000, £3,270,000 and £570,000)
- Artlons paid Wall Street £4,810,000 (3 payments £3,255,000, £985,000 and £570,000)
- Wall Street paid MIB £2,562,515 (2 payments £1,081,250 and £1,481,265)
- MIB paid Phone 4 £1,551,250

- Phone 4 paid Zorba £4,380,000 (2 payments £1,550,000 and £2,830,000)
- Zorba paid Olympic £13,435,000 (3 payments £5,635,000, £3,420,000 and £4,380,000)
- 5 • Olympic paid MK Digital £9,055,000 (2 payments £5,635,000 and £3,420,000)

10 Mrs Fyfe has concluded that the payments were circular in nature. In this flow chart the payments go to M K Digital. Again Uni-Brand has retained the VAT of £245,000 and a further £5000 its profit. It is unclear how Report has paid the VAT save that it has again used the entirety of the money paid by M K Digital, which includes Report's profit of £40,000. (See paragraph 45 above for the deal table).

15 213. Mrs Fyfe confirmed that the additional traders in the deals above arise from the interrogation of the FCIB accounts. They are more extensive than the original list completed from the invoices. She has also produced details of the dates on which the individual traders applied to open their accounts with the FCIB as follows:-

- MIB Trading in Dubai 22/2/2005
- Artlons in Cyprus 20/4/2005
- **Olympic in the Netherlands 25/5/2005**
- 20 • Call Back in Dubai 16/6/2005
- Wall Street in Dubai 26/6/2005
- **Uni-Brand in Middlesex 29/6/2005**
- Zorba in Slovakia 21/9/2005
- **Report in Bolton 24/11/2005**
- 25 • **M K Digital in Cyprus 7/12/2005**

214. Mrs Fyfe has also examined the ownership of Olympic, MIB and Zorba. Significantly:

- 30 • Mr Shoeb Mohamed, whose company Olympic Europe BV is based in the Netherlands, is a British citizen with a British passport living in London.
- Mr Mustansar Butt, whose company MIB Trading FZE is based in Dubai, is a Pakistani citizen, who lives in Pakistan.
- Mr Sebastian Max Enrique Davalos Davlia, whose company Zorba SRO is based in Slovakia, is a Swedish citizen living in Marbella in Spain.

35 Mrs Fyfe concluded from all her enquiries that the transactions are not normal commercial trading and that they have been contrived to extract VAT from HMRC.

40 215. Mr Ashraf confirmed that the correct account number for Report with FCIB was 204073. He was unable to comment on the Bankmaster Plus system, which was not available to him and he had no knowledge of other companies' accounts. He stated that he knew when Report was going to receive a payment as the customer would tell him and he checked it online. This means that he would receive a telephone call from M K Digital in Cyprus to say that the £2,010,000 would be paid to Report's FCIB

5 account. When the money was received Report would telephone Uni-Brand to say it was paying the money it owed to Uni- Brand. For some unknown reason Report did not pass on the £2,010,000 plus the VAT of £281,250, but decided to make two payments of £1,142,625. There was no explanation as to why the payment made was so complicated; a process which was repeated with the other payments, however the issue was not pursued by HMRC in cross examination and therefore we did not speculate or consider the matter further.

10 216. By agreement between both Counsel, the Tribunal was invited not to reach its decision by taking into account the evidence of IP addresses upon which HMRC did not rely.

Submissions

15 217. Mr Chapman submitted Report's first VAT return was for the period 22 December 2004 to 28 February 2006 declaring output tax at nil and input tax of £2,009,548.39. Report sought a repayment of that amount which was paid on a without prejudice basis. Report has accepted that the apparently 'dirty chains' commenced with a defaulter and that those defaults were fraudulent. Report does not, however, accept that there was a connection between the purchases and those tax defaults.

20 218. The legal position is that a claim for repayment or deduction of input tax may be denied where the trader knew or should have known that, by his purchase, he was participating in a transaction connected with the fraudulent evasion of VAT. Circumstantial evidence of fraud of a sufficient definite type will often indicate that a trader has chosen to ignore the obvious explanation (in the sense of the only reasonable explanation) as to why he was presented with an opportunity to reap a large and predictable reward over a short space of time.

25 219. The tax losses have been identified in the evidence provided to the Tribunal and are not disputed. HMRC's primary case is that Report knew of the connection to fraud. Mr Chapman submitted that on the balance of probabilities: -

- a. The deals were orchestrated or contrived.
- 30 b. Mr Ashraf either knew this or closed his mind to this, and
- c. Mr Ashraf either knew this or closed his mind to the fact that the only explanation was that they were connected to fraud.

220. Mr Chapman submitted that the evidence provided to the tribunal establishes Mr Ashraf's knowledge for the following reasons:

- 35 a. Mr Ashraf's general lack of credibility. He was evasive and refused to answer questions during cross-examination. Mr Ashraf's outburst during cross-examination without the need for translation demonstrated a good grasp of English;

- b. The interplay between the various companies of which Mr Ashraf was a director. He had no understanding of his obligations as a director or to the concept of a conflict of interest. It appeared that Mr Dar of Butt did not mind that Report was dealing with Butt's customers;
- 5 c. Mr Ashraf's lack of knowledge about Report's business. He did not appear to know how the mobile phones were purchased and sold. This can only lead to the conclusion that he did not carry out the deals himself or that they were orchestrated. Either way the transactions were contrived;
- 10 d. Mr Ashraf's insistence that there was no risk and failure to acknowledge that there might have been a risk. In those circumstances his failure to appreciate that there was a risk can only mean that there was none because the transactions were contrived;
- e. Other illustrations of the artificiality of the transactions:
- 15 i. The source of funding. Mr Ashraf appeared to have been able to borrow money from his friends or from selling property he owned. Unfortunately there was no evidence forthcoming as to how he had funded the entirety of the VAT in the transactions save that he might have borrowed the money from Mr Butt or
- 20 Mr Dar;
- ii. Report's due diligence. This had been constructed to satisfy HMRC's requirements and not to ensure that the transactions were commercially viable;
- 25 iii. The negotiation of the deals. Mr Ashraf was unable to explain how he reached a decision with regard to the pricing of the phones. He had suggested in an interview that the mark ups were 10% to 15% when in fact they were only 2.8% to 3.7%;
- 30 iv. The ease of profit. Mr Ashraf was to make £400,000 gross from only six deals in 3 days. This profit was made, according to Mr Ashraf, with only two employees;
- v. The apparent absence of a contract. Mr Ashraf's position was that there was no oral or written contract. The tribunal is asked to take judicial notice of the fact that this is wholly unrealistic in the commercial world;
- 35 vi. Mr Ashraf's attitude to the passing of title. Mr Ashraf clearly did not understand what this meant;
- vii. Insurance: Again Mr Ashraf did not demonstrate a clear understanding of the insurance position.

5 f. The absence of a reasonable alternative explanation to the transactions being connected to fraud. During the opening submissions and also during the cross-examination of Mr Doyle, Report's position appears to be that the transactions were bound to be implicated in fraud as this was unavoidable. It is submitted that this is not a reasonable explanation. The fact that a transaction is inevitably fraudulent does not justify entry into it: a burglar cannot justify his activities on the basis that burglary is inherently criminal. Crucially, it was open to Report to decide not to enter into the transactions.

10 221. If the Tribunal does not accept that Report actually knew of the connection to fraud, HMRC's alternative position is that Report should have known of the connection with fraud, relying on the same reasons as set out above.

15 222. Mr Bridge submitted that the repayment of £2,289,786.97 has been refused because Report bought all the goods traded during the ending 31/505/06 from Uni-Brand. There is no default in the chain of transactions in which Report traded as Uni-Brand is a contra-trader and has avoided a substantial VAT reclaim by off-setting its VAT liabilities. The circumstances of this case do not give rise to the irresistible conclusion that Report was knowingly involved in fraud. If there may be an innocent explanation for the connection to fraud then the circumstantial evidence cannot be
20 relied upon to conclude guilt (in this case the knowledge of connection to fraud).

25 223. In this case, all of the facts and circumstances are explicable by reference to the fact that at the time of trading the market was flooded with telephones which were the subject of a VAT default. It would be miraculous, given what is evident from the statement of Mr Stone, if a trader managed to undertake wholesale transactions in telephones, which had not at some previous time been the subject of an acquisition fraud.

30 224. The evidence of Mr Doyle and Mr Lam cannot be admissible in so far as any observations have been made by them as a matter of their opinion. The leading authority on the admission of expert evidence is *R v Bonython* [1984] SASR 45 a decision of the South Australia Supreme Court. Further Mr Lam had given evidence in *Livewire* to the effect that Uni-Brand was not involved in fraud. In this appeal he has given contrary evidence and agreed that whilst he could say for certain that there was a criminal scheme he could not say who was knowingly involved. HMRC has also often found it difficult to know who is involved.

35 225. There is no evidence that Report, through Mr Ashraf, was aware of the trading pattern of Uni-Brand or of any previous suspicious circumstances. Nor was there any evidence that anything had been done to prevent Uni-Brand from taking part in on-going fraudulent activity. Report undertook reasonable due diligence and concluded that Uni-Brand was a proper company to do business with.

40 226. Mrs Fyfe's evidence does not demonstrate anything other than that money was paid during the course of transactions which were undertaken merely that the money changed hands quickly and that it often did so.

227. Mr Doyle had little experience in commercial matters and could hardly comment on what might be expected in a legitimate market. Mr Bridge submitted, in the light of Mr Stone's evidence, that HMRC had directed Mr Doyle and others to carry out extended verification. HMRC had become aware of the extent of MTIC fraud, which has resulted in innocent traders, as well as defaulters, to have their repayments refused.

228. Mr Ashraf gave evidence through an interpreter in Punjabi. He was not fluent in English. He also said that he could not remember much of what had happened because he had serious diabetes and it had affected his memory. He was given an opportunity at the conclusion of a long day of giving evidence to describe the paper work- he effectively declined and soon thereafter he left the tribunal feeling tired. He successfully dealt with the paper work during re-examination the following day.

229. The shortcomings in Mr Ashraf's evidence could possibly be attributed to the use of an interpreter and fatigue. There is a real danger on focussing on the minutiae of the case rather than on the day to day reality of business. The simple and real explanation for what is seen in the deals is that Mr Ashraf entered into these deals believing that he had done everything HMRC had requested him to do and that against that backdrop he had recently received the VAT re-payment of the previous quarter's money. Mr Chapman asked Mr Ashraf if he was closing his eyes to whether there was anything suspicious about the deals. In putting the question Mr Chapman revealed a trap for the unwary. The legal test is nothing to do with suspicion. It is all to do with knowledge.

The Decision

Findings of fact on whether Report knew, or should have known, that its transactions were connected to fraud.

231. We have considered the law, oral and written evidence and submissions of Counsel carefully in reaching the following findings of fact.

Awareness of MTIC fraud

232. It was not disputed that Report through Mr Ashraf, was aware of existence, prevalence and characteristics of fraud within the industry as a result of his involvement in not only Report but also Butt. Indeed, Report relied on the evidence of Mr Stone which highlighted that at the time of trading the market was flooded with telephones which were the subject of VAT default.

233. We did not accept Mr Bridge's submission that, in view of the fraud which was rife within the trade sector, it would be miraculous if a trader managed to undertake wholesale transactions in telephones which had not at some point been the subject of an acquisition fraud. In our view, any reasonable businessman would demonstrate caution in deciding whether or not to trade in such an area as a result of his awareness that fraud and would ensure that he took precautions to guard against entering into transactions connected to fraud. We found that the fact that a significant amount of fraud existed was not a reasonable explanation for Report to enter into transactions

without regard to whether or not those transactions were connected to fraud; to do so would be to potentially facilitate fraud by turning a blind eye. It was, on each occasion, the choice of Report as to whether it carried out the deals and in our view any reasonable businessman would only do so having first taken every possible step
5 to satisfy himself that the transactions were not connected to fraud.

234. We considered Mr Bridge's submission that HMRC had not warned Report about any of its counterparties. We noted that at the time of Report's transactions contra-trading was a relatively new concept and HMRC, it would appear, were unaware of the scale of such fraud and the mechanisms by which schemes operated.
10 In those circumstances, HMRC cannot be criticised for the steps it took to warn traders in the industry generally, and having been so warned as to the prevalence of fraud, it was for Report to satisfy himself that its transactions were legitimate.

235. We found that Report's knowledge of fraud generally within the industry was a relevant background against which to assess the nature of Report's trading and we were satisfied that Mr Ashraf had a good understanding of the consequences of being
15 involved in or linked to such fraud both prior to commencing trade through Report and which increased throughout its trading.

Taking over Report and knowledge of trade sector

236. We noted the following in respect of the deal documentation (1005) that Mr
20 Ashraf was taken through:

- The stock offer from Uni-Brand dated 11 May 2006 had no confirmation from Report confirming that they were interested.
- As regards the Supplier Declaration sent to Uni-Brand and returned signed by M Fahad, dated 11 May 2006, it is unclear whether this was faxed or sent by post. As
25 there is no faxed detail on the form we assume it must have been returned by post and as such could only have been received after the transaction took place so that Report could not have been reassured by its content. As all the deals took place over 3 consecutive days Report would not have received the declaration in time at least for those carried out on Wednesday and Thursday 10 and 11 May. The post
30 might have been sufficient to return the declaration for the deals on the 10 May in time for the deals on the 12 but we think it unlikely.
- As regards the transaction report from FCIB confirming the payment of £2,467,500 on 12 May 2006 by Report to Uni-Brand, it is unclear how Report funded the balance of the VAT of £307,500.

35 237. In respect of the sale documentation to M K Digital we found that:

- In respect of the stock offer from report addressed to M K Digital, Mr Ashraf did not know whether the Stock offer or invoice came first.

- The inspection was carried out by NK Ltd from Slough on 13 May 2006. The report indicates that the IMEI numbers were not checked. There is no indication that the document was sent by fax and in any event the inspection occurred **after** the goods had been shipped back to Europe.
- 5 • The insurance covered no other commercial risks.
- The shipping instruction requested that the goods be ‘ship and hold to their customers MK Digital’ however in cross examination Mr Ashraf did not appear to know what this meant.
- 10 • The CMR dated 14 May 2006 indicated that the goods should be ‘ON HOLD’ however Mr Ashraf did not appear to understand what this meant merely saying ‘*that it meant what it said on the form*’. There is a second and third CMR for the same number of phones on two further vehicles all going on the 17.20 ferry. It is unclear why there are only 3000 phones and not 5000.
- 15 • As regards the ticket for the trip from Dover to Calais on 14 May 2006 we found it peculiar that the phones were sent to Southall on 11 May 2006 and returned to Europe on 14 May 2006, particularly when MK Digital had requested that the parties should rely on the inspection by Freight Connection BV and we queried why could the phones not have stayed in Holland?

238. We considered the documentation to be window dressing. Mr Ashraf clearly did not understand how the transactions Report entered into worked. He was unable to identify any of the documents in Report’s pack in any meaningful way either in cross examination or re-examination. It was suggested that all the parties spoke Punjabi or Urdu but all the documentation is in English. The documentation makes no commercial sense at all. Significantly MK Digital is based in Cyprus. If, therefore, it sold the goods on in Holland, which it presumably was going to do if it went to the trouble of having them delivered to Holland, it would have to pay VAT on the sale in Holland.

239. In our view, the submission that Report’s memory had been affected by the lapse of time was not plausible when viewed against the evidence that this was an industry in which Mr Ashraf had worked not only in Pakistan but also in three separate companies in the UK. Even accepting that Mr Ashraf was involved to a lesser degree in trading with Butt and Gani, he was the sole director of Report and, on the face of it, had the main responsibility for trading. We inferred from Mr Ashraf’s inability to explain either the sequence of a deal or the documents involved that the transactions were not only orchestrated but that they were carried out by someone other than Mr Ashraf. On either view, this was indicative of Mr Ashraf’s knowledge of the fraud.

240. In the absence of any medical evidence in support of the submission that Mr Ashraf’s memory was also affected by diabetes, we were not satisfied that it explained what, in our view went beyond a lack of memory but rather what was in fact a lack of understanding as a whole.

241. Mr Ashraf's evidence as to how he had come to take over Report was evasive and unconvincing. He put forward no credible reason as to why he made the decision to purchase a "readymade company" and Mr Ashraf's evidence as to how Report was found, approached and negotiated with was vague. He minimised his role, stating that
5 his accountant had "*got the company*" and "*checked it all*" and we found it implausible that Mr Ashraf would have so little knowledge as to what the Company traded in prior to his involvement and what checks were carried out to ensure that the Company was legitimate.

242. We noted that Mr Ashraf was involved in two other companies which carried out the same type of trade; Butt and Gani. Mr Ashraf was also the sole director of Gani and no credible explanation was given for establishing Report in addition to Gani. We found Mr Ashraf's evidence that he wanted to keep the companies separate as his
10 cousin had provided the loan for Report and a friend had provided funding for Gani was not a credible explanation for establishing a trading vehicle (Report) which to all intents and purposes was identical to Gani. Despite his involvement in both
15 companies, Mr Ashraf was unable to explain with any clarity the need to set up Report.

243. Whilst this was not, of itself, indicative of Mr Ashraf's knowledge that the transactions were connected to fraud, we nevertheless found that it was relevant to his
20 credibility and another example of the vague nature of his evidence.

244. The level of research conducted by Mr Ashraf prior to taking over Report was implausible and indicative of his knowledge that the Company was to be used for the purpose of facilitating a fraud. In our view, any reasonable businessman would have ensured that he was fully aware of the industry into which he ventured, whether set
25 out in a detailed business plan or explained orally. Mr Ashraf confirmed that there was no business plan in place in respect of Report and we found his oral evidence that he had been told by Mr Dar (who in turn had been told by people in Dubai) that the UK market was bigger to be unbelievable.

Risk

30 245. Mr Ashraf's evidence (in cross examination and reiterated in re-examination) that there was no commercial risk in a business dealing with a high volume of goods with such a significant value was implausible. Clearly most businesses carry risk to some degree, and in the case of Report, where there was a lack of clarity as to legal
35 title and no apparent recourse in the event of failure by a counterparty to pay for or provide the goods (more about which we will say later) we found as a fact that Report's view was indicative of his knowledge that the transactions were contrived, thereby mitigating any risk that would usually be present in a genuine, arm's length transaction carried out in similar circumstances.

246. Mr Ashraf's evidence on this issue was unconvincing; he stated that there was no
40 risk as the goods were not released until payment had been made and appeared not to have even thought of the possibility that after payment the goods may not have been provided or that the customer may have cancelled the order after Report had

confirmed it to its supplier. In our view, any reasonable businessman would have obtained advice prior to trading in order to guard against such an event occurring and we rejected Mr Ashraf's evidence that "*that's never happened to me before so whenever it happens I will think about it*" as wholly implausible and indicative of his knowledge that there was no risk of such an event occurring due to the contrived nature of the deals.

Turnover

247. We asked ourselves why Report, a small and new company with a limited history of dealing in mobile phones in the UK, was approached with offers to buy and sell very substantial quantities of such mobile phones.

248. We considered how likely in the ordinary commercial world it would be for a company in Report's position to be approached to supply substantial quantities of particular types of phones and to be able to find without difficulty a supplier able to provide exactly that type and quantity over such a short period of time and resulting in a substantial turnover.

249. We concluded that the only reasonable explanation for the circumstances in which Report entered into the impugned transactions was that they were connected with fraud. We could not ignore the compelling similarities between the pattern and nature of trading of a relatively young company which held no stock, had no left over stock and which consistently achieved a significant turnover.

250. Mr Ashraf's failure to query why he was able, with such apparent ease, to achieve such a high turnover in such a short period of time was not representative of a prudent businessman involved in legitimate trade.

Loans/Funding

251. Mr Ashraf's ability to obtain such a significant loan (£200,000) from his cousin apparently without either a business plan or any detailed discussion as to projected earnings or potential risk was, in our view, implausible unless the parties knew that they were participating in an orchestrated scheme..

252. We noted that when asked by Judge Porter how he had paid the VAT on deal 1001 amounting to £281,250 he said that he had paid it from the £200,000 he had borrowed from his cousin. Judge Porter pointed out that that was insufficient as £281,250 was due and a total of £1,900,600 (actually £1,880,000) was to be paid for the 6 deals. Mr Ashraf then said that he paid it out of the £2,009,548.39 he had received from HMRC by way of repayment from the earlier period 02/06. Judge Porter then asked how he paid the VAT for the earlier period to which he replied that he was not sure; perhaps he had borrowed the money from Mr Dar. We rejected Mr Ashraf's evidence on this issue as vague and unconvincing. If there was a loan as Mr Ashraf suggests it would have amounted to £1,880,000 and until the repayment is still outstanding. There has been no evidence of any attempt by anyone to request repayment.

253. We found it unlikely that the profit would be in round thousands on every deal and in our view this was indicative of the contrived nature of the deals. Mr Ashraf's failure to query such an unusual feature was, in our view, indicative of his knowledge that the deals were contrived.

5 ***Inspections***

254. We noted that although Report had requested that a 100% inspection check and a 10% IMEI check be carried out by N K Limited, the latter was only undertaken in deals 1001 and 1002. In our view, not only would any reasonable businessman query why the service paid for had not been received but, bearing in mind the value of the goods, we found it wholly unrealistic that a trader, having deemed such an inspection important enough to commission, would continue to trade without such information. In our view, Mr Ashraf's failure to query the absence of an IMEI check in a number of deals was indicative of his knowledge that the deals were contrived.

256. We noted that Mr Doyle clarified in his evidence that HMRC's Criminal Investigations Team had uplifted IMEI numbers from Report's premises, assumed to be those relating to the deals relevant to this appeal. In those circumstances we did not accept that there had been a failure by Report to provide the numbers requested and we could not conclude that this demonstrated any knowledge on the part of Report as to the issue of contrivance.

20 ***Specification***

257. Although we accepted that the sale of non UK specification phones may well, in certain circumstances, act as an indicator that the goods originated from abroad and may be part of a carousel or MTIC fraud scheme, we did not find the evidence in this case was sufficient for us to infer any knowledge as to contrivance on the part of Mr Ashraf on the basis that he traded in such phones.

Associations

258. We noted that despite Mr Ashraf's involvement as a director in a number of companies, he appeared to have no comprehension about his obligations as a director, nor did he understand the potential for a conflict of interest regarding diverting business opportunities from Butt to Report. We inferred from the evidence that either Mr Ashraf did not take his responsibilities as a director seriously, an attitude which in our view was not that of a reasonable and prudent businessman, or that he was merely acting as director in name only and therefore had no need to educate himself on issues such as fiduciary duties which would indicate his knowledge of the fact that Report was partaking in a scheme designed to facilitate fraud.

259. We found Mr Ashraf's evidence as to which Company (Butt or Report) conducted which deal was contradictory. Having stated that there were no such discussions between himself and Mr Dar, Mr Ashraf later went on to say that the pair would discuss it "*amongst ourselves and what we were going to do.*" In the absence of any explanation as to how such decisions were made and the reasoning behind them, and taken together with Mr Ashraf's clear lack of understanding as to how deals

worked, we inferred that this supported our conclusion that Mr Ashraf knew he was taking part in an orchestrated scheme which was dictated by another and facilitated through Report.

Legal Title

5 260. In reaching our conclusion on this issue, we took into account Mr Ashraf's
evidence in respect of the Uni-Brand invoice in deal 1001 which stated that: "the title
of goods is reserved until payment is made". Mr Ashraf could not explain what was
meant by the declaration despite the fact that a similar note was included on Report's
own documentation, for example an invoice to MK Digital: "All goods remain the
10 property of 1st 4 Report Ltd until full payment is received". Mr Ashraf was evasive in
evidence and refused to give a clear answer to Counsel's question as to what this
meant, saying: "*it means what is written on there*". In our view, Mr Ashraf also
minimised his responsibility by stating that the Company Secretary would have taken
responsibility for the wording on Report's documents. He later went on to say that the
15 declaration "*is like payment protection*" yet he could provide no further explanation.

261. It was clear from Mr Ashraf's evidence that he had no understanding, even when
put in simple terms, as to who had legal title to the goods. In our view, this issue was
crucial to Report's trade and the absence of any understanding on the part of Mr
Ashraf was indicative of the contrived nature of the deals whereby legal title would
20 never be in issue.

Payment Terms/Contracts

262. The unclear evidence that there was no commitment to buy or supply stock until
seemingly after payment was made lacked the commercial viability to be expected
from independent transactions in the normal course of business.

25 263. In our view, this manner of trading lacked any commercial reality and was such
as to put a reasonable businessman on notice that the trade was not legitimate. In a
trade where MTIC fraud is a well known danger, there was no explanation as to why
Report's customer would make payment to Report who, at the time of that payment,
does not hold title to the goods. Report's supplier was reliant on Report and thereafter
30 a purported unknown number of unknown traders to make payment down the chain.
This was a risk which a reasonable and independent businessman would not take and
we inferred from this evidence that it was an indication that the chain of transactions
were fraudulently manipulated. Not only did Report enter into this manner of trading
without hesitation, but Mr Ashraf also failed to question why the customers were also
35 content to enter into the transactions on such a seemingly relaxed basis. In our view,
this manner of trading was such as would have put Report on notice of the
orchestrated scheme of transactions, if he were not already aware of the fact.

Due Diligence

264. Mr Ashraf's emphasis throughout, in respect of the documents he did obtain, was
40 on satisfying HMRC rather than himself as to the veracity of his counterparties.

265. It was significant that the trade references obtained in respect of Olympic and Uni-Brand did not tally with the names of companies offered by Report's trading partners as referees and Mr Ashraf was unable to say why he had obtained such references in those circumstances.

5 266. In addition, the references obtained from Yoush Marketing Ltd and Digital World FZE were not independent bearing in mind that Mr Butt was a director of Yoush Marketing Ltd and the contact name at Digital World FZE was the director of M K Digital.

10 267. All of the due diligence, such as it was, carried out by Report lacked any substance and that Report failed to look beyond the limited documents he had obtained which were inadequate for the purpose of ensuring that the companies with which he traded were legitimate or were obtained so shortly before the deal was conducted that there was insufficient time to address any concerns that may have been raised. Report took no real precautions to guard against the connection to fraudulent
15 evasion of VAT or ensure that the transaction in which Report was involved were legitimate.

268. HMRC invited us to conclude that a document apparently faxed to Artis Systems Ltd on 8 September 2006 was an attempt by Report to mislead HMRC by providing a due diligence document which had not been obtained prior to the relevant transaction.
20 Mr Ashraf was unable to explain why the document in question had on it a fax header dated 8 September 2006 although it may be that the date may be incorrect. It was submitted on behalf of Report that such an inept attempt to mislead was not plausible.

269. We could not be satisfied that the fax header alone could lead us to the conclusion invited by HMRC but we certainly queried why the document would
25 contain a date so far after the relevant deal. It may be that the date was simply incorrect, and giving Report the benefit of doubt that this was the case we concluded that this was indicative of a lack of care taken by Report to keep proper and accurate records. We inferred from this that the reason was either because he was reckless in his approach to business or the due diligence was not an important feature of Report's
30 business as Mr Ashraf was aware that the deals were contrived. As regards the former scenario we would not expect, given the substantial value of goods involved, a prudent person in business to act in this manner and we concluded that the only reasonable explanation was that Report was aware that the transactions were connected with fraud.

35 ***Freight Forwarders***

270. The only due diligence carried out on the freight forwarders was a site visit by Mr Ashraf. Given that the freight forwarders bore so much responsibility, namely transporting the goods, passing title, organising inspections and insuring the goods, we found that the site visit was wholly inadequate to satisfy Report of the veracity of
40 the company and we concluded that the only reasonable explanation for this was that Report was aware of the contrived nature of the deals, thus making the necessity to conduct further due diligence redundant.

Movement of Goods

271. We found it surprising that Mr Ashraf appeared to have no knowledge of where the goods he purchased were held yet he was prepared to pay a fee, perhaps in excess of that necessary, in order to ship the goods to the UK prior to their movement to the ultimate destination. Had this been the only unusual feature of the case, we would not have found it sufficient to reach a conclusion as to Report's knowledge of the fraud, however when taken together with the other features indicative of knowledge, we accepted HMRC's submission that the only purpose of the goods entering the UK was to facilitate the fraud and that Report either knew or should have known of this fact.

10 ***Insurance***

272. Mr Ashraf did not appear to understand the terms of his insurance of the goods. He appeared to distinguish between a risk of non payment/receipt of the goods (which he said did not exist) and a risk to the goods during transport. This distinction was particularly surprising given the limited due diligence Mr Ashraf chose to carry out on the freight forwarders who were responsible for the transportation of the goods.

273. Mr Ashraf attempted to minimise his responsibility for the insurance by stating that the Company Secretary had checked the terms of the insurance and he could not recall whether a copy of the terms and conditions was sent to Report prior to carrying out the deals.

20 274. We found the evidence unconvincing; on one view Mr Ashraf confirmed that he deemed insurance important although we noted that he was unable to give a clear explanation as to the reason he held this view, and on another view he had no understanding of the terms of the insurance: "*whatever the rules and regulations there were that's what we had to do*".

25 275. We concluded that this was another example of Report having tried to satisfy HMRC with documents which, when looked at more closely, could have provided Report with little or no comfort in the event that the goods were lost/damaged. The only reasonable explanation was that insurance was not important to Report because Mr Ashraf knew that the deals were contrived.

30 ***Mark Ups/Profit***

276. There was no evidence of any negotiations carried out in any of the deals and we found that there was no explanation as to why, if negotiations had taken a number of days, documentation relating to due diligence and the deals themselves was often obtained on day of the transactions.

35 277. There was no evidence before us of any significant negotiation to account for the consistent profits achieved by Report. Taken together with Mr Ashraf's knowledge of fraud within the market and risk involved, we took the view that he either knew, or should have known that the transactions were fraudulently manipulated.

278. Mr Ashraf was unable to explain as to how he reached the price at which he sold the goods. Taken together with his clear lack of knowledge about the specific goods traded: “*knowledge is that we used to parcel the phones, not trade. We weren’t retailing. We didn’t have a repair shop*”, we inferred that this was another indication
5 that someone other than Mr Ashraf was dictating the sale, and therefore the price, of the goods in an orchestrated and fraudulent scheme.

FCIB

279. We were satisfied by the unchallenged evidence that as a result of the broker detail, and payments made by Olympic to MK Digital, that the payments are circular.

10 280. Report’s account details provided by Mrs Fyfe reveal the various receipts from Olympic and M K Digital and the onward payments to Uni-Brand. As the receipts were net of tax and the payments included VAT there would appear have to be a short fall of £1,880,000. We were given no explanation or evidence as to how that was funded and, if funded, how it has been repaid.

15 281. We were told that the payments can be traced through the EB numbers. A separate number is given sequentially for every individual transaction for all the account holders as they occurred across the whole bank. We note, by way of example, that the entry, in Report’s FCIB account for one of the £822,500 payments in deal 1002, bears the number EB00000954541. The same EB number can be traced into the
20 narrative in Uni-Brand’s FCIB account. We have checked the EB numbers for 1001 and 1002 from Mrs Fyfe’ exhibits and we note that were 1798 bank entries in the entire bank between EBR 954369 and EBR 956167. In deal 1007 the numbers are between EBR 954298 and EBR 955055 a sequence of 757 transactions. We have been told by Mr Ashraf that his customers would advise him by phone when a payment
25 was to be made and he would do the same for his supplier. Given the countries involved were England, Dubai, Cyprus, The Netherlands, and Slovakia it is extraordinary how the payments have been made so quickly. The evidence did not show that the Appellant was aware of the circular nature of the payments, but we questioned how the payment flow had come about and whether this could have been
30 achieved without raising Mr Ashraf’s suspicions.

282. We did not consider the evidence relating to IP addresses which was not relied upon by HMRC, however as a result of Mr Ashraf’s very limited knowledge about the way the transactions were carried out, his apparent lack of knowledge as to how he paid for the VAT, and the speed with which the transactions occurred, we were forced
35 to conclude that someone else must have been manipulating Report, including its account.

283. This could not have occurred without Mr Ashraf knowing and allowing it to happen. We accepted that he would not know how the money passed through the other traders’ accounts but we found as a fact that he must have known that Report’s
40 account was being manipulated.

Credibility of witnesses

284. We found Mr Doyle to be a credible and reliable witness. We did not accept that his reliance on HMRC's internal guidance regarding indicators of MTIC fraud undermined his credibility and we found that he had properly and fairly highlighted risk factors about which he sought explanations from Report.

5 285. We did not find Mr Doyle's evidence undermined by his lack of knowledge as to the specific level of MTIC fraud during the relevant period; he was clearly aware that such fraud was a significant problem and the Tribunal was referred to the agreed evidence of Mr Stone for a more in depth analysis as to the extent of the fraud. We have not taken any note of Mr Doyle's opinion as to the way in which MTIC frauds are structured other than in support of his own reasons for refusing the repayment.
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286. We did not accept that HMRC had a blanket policy from April 2006 to refuse repayments, as implied on behalf of Report, but rather that from that time HMRC adopted the course of "extended verifications" which allowed a greater period in which to verify repayment claims made; indeed this was confirmed by Mr Lam's evidence which we also accepted as credible and reliable.
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287. We found Mr Ashraf to be vague, evasive, defensive and at times uncooperative, as demonstrated by the extracts of the transcript included in this decision.

289. We did not accept that Mr Ashraf's evidence was hindered by language difficulties, to the contrary after hearing HMRC's case the Tribunal organised an interpreter at the request of Counsel for Report to ensure that he was afforded assistance in his oral evidence. The Tribunal has significant experience of hearing involving interpreters and it was clear to us that Mr Ashraf's hesitancy, vagueness and lack of understanding about the trade sector was not due to any language barrier.
20

290. There was no medical evidence to support the contention that Mr Ashraf's diabetes would affect his ability to give evidence and we noted that he had the benefit of witness statements prepared in advance of the hearing to assist. The Tribunal ensured that Mr Ashraf was aware that he could have breaks if he required, and indeed regular breaks were taken in any event for the stenographers. We do not accept that fatigue arising from his diabetes impacted on Mr Ashraf's evidence.
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291. We did not accept Mr Ashraf's assertion that the lapse of time affected his recollection; it was clear to us that, even when presented with Report's own documentation with which we would have expected him to be familiar, he struggled to explain how he had conducted deals.
30

Conclusion

35 292. We were satisfied HMRC had established fraudulent tax losses and that there was an orchestrated scheme for the fraudulent evasion of VAT connected with each of the transactions which form the subject of this appeal.

293. We were careful not to focus unduly on the issue of due diligence, and we took into account all of the surrounding circumstances in reaching our decision that Report knew that each of its transactions were part of an artificial scheme. In doing so, the
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only conclusion we could reach was that Report, through Mr Ashraf, had actual knowledge that the transactions were connected to fraud for the reasons set out above

5 294. We found that some reasons carried more weight than others and we did not base our decision solely on one reason but rather the cumulative effect of our findings viewed in totality.

295. We concluded that in respect of the period under appeal Report knew that, by its purchases, it was taking part in transactions connected with the fraudulent evasion of VAT or that the factors identified above, from which we inferred Report's actual knowledge, would at the very least support a finding of means of knowledge.

10 296. HMRC has proved that Report's knowledge was such that the transactions fell outside the scope of the right to deduct input tax. Accordingly we found that the decision of HMRC to deny Report's input tax in respect of purchases of mobile phones reflected in its VAT returns for the period 05/06 was correct and is upheld.

297. The appeal is dismissed.

15 **Costs**

298. It is ordered that Report does pay HMRC's costs as agreed by the parties and set out in the Direction released by the Tribunal following the case management hearing on 26 April 2012.

20 299. 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)"
25 which accompanies and forms part of this decision notice.

30 **J BLEWITT**
TRIBUNAL JUDGE

RELEASE DATE: 20 September 2012