TC01945

Appeal number: MAN/08/0650

VALUE ADDED TAX- – MTIC-sale of mobile phones and CPUs - appellant's repayment claim of £3,039,723.75 refused on grounds that the appellant knew or ought to have known that the transactions were part of an MTIC fraud -appellant knew that the deals were part of a VAT fraud –appeal dismissed

FIRST-TIER TRIBUNAL
TAX

SOUND SOLUTIONS (EUROPE) LIMITED **Appellant**

- and -

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

TRIBUNAL: DAVID S PORTER (Judge)
BEVERLEY TANNER (Member)

Sitting in public in Manchester on 16,17,18,19 and 20 January 2012

Mr Richard Paul Hopkinson, a director, appeared for the Appellant.
Mr Philip Moser, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

1. Richard Paul Hopkinson (Mr Hopkinson), Managing Director, of the Appellant Sound Solutions (Europe) Limited (SSE) appeals on behalf of SSE against the decisions of the Respondents (HMRC) contained in their letter dated 27 July 2007 denying SSE entitlement to a repayment of input tax of £3,039,723.75 in respect of the period 05/06 arising from the export of mobile phones. Mr Hopkinson says that SSE, through him, neither knew nor ought to have known that the transactions were connected with fraud. HMRC say that Mr Hopkinson carried out little due diligence and any reasonable businessman would have known that the transactions were connected with fraud.

2. Philip Moser (Mr Moser) appeared on behalf of HMRC and produced a skeleton argument and 47 agreed bundles for the Tribunal, consisting principally of the working papers of HMRC's witnesses. He called the following witnesses who gave evidence under oath:

Helen Claire Wilkinson, who gave evidence with regard to SSE's transactions
Thomas Burns, who gave evidence with regard to the transactions of Sound Solutions (GB) Limited (SSGB) and SSE.
Russell Martin Hall, who gave evidence with regard to the transactions through the First Curacao International Bank **(**FCIB)

The following witness statements were accepted as evidence- in-chief by the tribunal:

Roderick Guy Stone, who gave evidence as to MTIC fraud.
Andrew Letherby, a member of the International Information System Security certification Consortium, who gave evidence as an expert witness as to the recovery of digital evidence from the FCIB servers.
Evidence was also available and unchallenged, with regard to the transactions in the defaulting chains. SSE has accepted those defaults and the loss of VAT so that we have not considered that evidence further.

3. Mr Hopkinson provided a written statement and appeared to give evidence on behalf of SSE of the deals the subject of this appeal. He had been represented by Ashtons, solicitors, up to 2007 but they became bankrupt. A solicitor, who had worked with Ashtons, went to work for Jeffrey Green Russell, Solicitors in London and he took the SSE and Sound Solutions GB Limited (SSGB) cases with him. Unfortunately Mr Hopkinson was unable to pay those solicitors, so that he has not had a solicitor since November 2008. His solicitors had had all the documentation and it appears that Mr Hopkinson has had the opportunity to read it, but we suspect not all of it in any detail. He has been given the opportunity on the second day of this appeal, as have the Tribunal, to read the principal witness statements of Mrs Wilkinson Mr Burns and Mr Hall. He has, of course, been intimately involved in all of the transactions affecting SSGB and SSE.

4. We were referred to the following cases:

House of Lords and Supreme Court

Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500

In Re B [2009] 1AC 11

S-B Children [2010] 1 AC 678
Mobilx v HMRC, SC permission decision by letter 28 June 2011

Court of Appeal

Red 12 Trading Ltd v HMRC [2010] EWHC Civ 402
Moblix Ltd (in administration); and others v HMRC [2010] STC 1436

High Court

Calltel Telecom Ltd; and another v HMRC [2007] UK VAT 20266

Mobilx Ltd v HMRC [2008] UK VAT 20867

Regent Commodities Ltd v HMRC [2010] UKFTT 68 (TC)

Eyedial Ltd [2011] UKFTT 47 (TC)

Greystone International Limited v HMRC [2011] UKFTT 321 (TC)

POWA (Jersey) Ltd v HMRC [2009] UKFTT

Hawkeye Communications v HMRC [2010] UKFTT 636 (TC)

The Commissioners for Her Majesty's Revenue and Customs v Brayfal Limited FTC/53/2010
Ixes (UK) Limited [2011] UKFTT 586 (TC)

J P Commodities Ltd [2011] UKFTT 622 (TC)

European Court of Justice

Axel Kittel and another v Belgium [2006] ECR 1-6161

Text Book

Gore-Browne on Companies, 45th edition [September 2011 update.Chapter 7A paras [1] to[6]

Preliminary issue.

5. We have before us a copy of the directions issued on 7 January 2009 by which the cases of SSGB and SSE were joined together. We have been advised by Mr Hopkinson that SSGB has been liquidated and that he had insufficient funds to apply to the commercial court to have the company re-instated. He was concerned that HMRC would be relying on facts affecting that company, and its suggested involvement with fraud, in circumstances where no evidence as to SSGB's dealings would be properly submitted. Mr Moser submitted that evidence with regard to the dealings with SSGB, so far as they impinged on the SSE transactions, would be relevant because Mr Hopkinson was the principle director of both companies and some of the deals have become intermixed. Judge Porter indicated that he would allow evidence with regard to the SSGB's transactions but, as Mr Hopkinson was unrepresented, he would take a view of its admissibility as and when it was raised.

6. Most readers of this decision will be familiar with the way in which Missing Trader Fraud operates. In his skeleton argument Mr Moser has referred to the helpful introduction of Christopher Clarke J to the "classic way" that MTIC fraud works in *Red 12 Trading Limited v HMRC* at paragraph 2:-

> "2… Trader A imports goods, commonly computer chips and mobile phones, into the United Kingdom from the European Union (EU). Such importation does not require the importer to pay VAT on the goods. A then sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for which A is bound to account to HMRC. There is then a series of sales from B to C to E (to more). These sales are accounted for in the ordinary way. Thus C will pay B an amount which includes VAT. B will account to HMRC for the VAT it has recovered from C, but will claim to deduct (as an input tax) the output tax that A has charged B. The same will happen, mutatis mutandis, as between C and D. The company at the end of the chain E will then export the goods to a purchaser in the EU. Exports are zero rated for tax purposes, so that trader E will receive no VAT. He will have paid input tax but because the goods have been exported he is entitled to claim it back from HMRC. The chain in question might be quite long. The deals giving rise to them may be affected within a single day. Often none of the traders themselves take delivery of the goods which are held by a freight forwarders.
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> [----]
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> 5. A jargon has developed to describe the participants in the fraud. The importer is known as "the defaulter". The intermediate traders between the defaulter and the exporter are known as "buffers" because they serve to hide the link between the importer and exporter, and are often numbered buffer1, buffer 2 etc. The company which exports the goods is known as "the broker".

As to the common variant of contra-trading, this is summarised in paragraph 7 as follows:-

> "7… Goods are sold in a chain ("the dirty chain") through one or more buffer companies to (in the end) the Broker ("Broker 1") which exports them, thus generating a claim for repayment. Broker 1 then acquires (actually or purportedly) goods, not necessarily of the same type, but of equivalent value from an EU trader and sells them, usually through one or more buffer companies, to Broker 2 in the United Kingdom for a mark up. The effect is that Broker 1 has no claim for repayment of input VAT on the sale to it in the dirty chain, because any such claim is matched by the VAT accountable to HMRC in respect of the sale to Broker 2. On the contrary a small sum may be due from Broker 1 to HMRC. The suspicions of HMRC are, by this means, hopefully not aroused. Broker 2 then exports the goods and claims back the total VAT. The overall effect is the same as in the classic version of the fraud; but the exercise has the effect that the party claiming the repayment is not Broker 1 but Broker 2, who is, apparently, part of a chain without a missing trader ("the clean chain") broker 2 is party to the fraud."

7. The case law, as now developed in *Moblix Ltd (in administration); and others*, provides that an exporter will not be innocent if he knew or ought to have known that his transaction was connected with the fraudulent avoidance of tax.

8. Mr Stone has confirmed in his witness statement that carousel fraud was rife from 2003 up to 2007, when the reverse charge was introduced. Any loss to the exchequer only occurs when the input tax is refunded on a repayment claim. HMRC had been repaying substantial sums of money, in many cases well in excess of £10,000,000. The total loss to HMRC during those years amounted to in excess of £15 billion. It appears that many of the frauds have been financed by third parties outside of the various transaction chains.

9. We think it would be helpful to set out how the money flows in such schemes. Mr Stone states at paragraph 6 of his witness statement that there are two forms of MTIC fraud, namely 'acquisition' fraud and 'carousel' fraud. An MTIC acquisition fraud, as described above by Judge Christopher Clarke, is a commodity based fraud. MTIC 'carousel' fraud, which is sometimes referred to as 'MTIC export fraud', is a financial fraud and is an abuse of the VAT system that results in the fraudulent extraction of revenue from the United Kingdom Treasury. The fraud predominantly involved computer chips and mobile phones. The finance for the deals is provided from an outside source and is introduced to the chain when the Broker is paid by his European customer. It then cascades down the chains, each trader withdrawing their agreed profit and paying their appropriate amount of VAT. That VAT is often very small (apart from the Brokers repayment claim) because the intermediate Buffers can set off their input tax against their output tax. The money is then returned to the original funder.

10. The participants in the chain are all seen to make a small profit. Mr Stone has indicated that this amounts to 3% of the sale price for the intermediary Buffers and 6% of the sale price for the Brokers, who take the risk of not receiving a repayment. Apart from the defaulter (who ostensibly purchases the goods from Europe) each of the traders thereafter makes appropriate VAT payments to the Revenue. However, they do not necessarily pay each other the correct amounts, either under the apparent contracts, or of VAT. The participants are required, if the transactions are fraudulent, to make an initial contribution to the scheme. In the example below only half the VAT liability due to their supplier has been paid, so that the participants carry some of the risk and thereby reduce the risk of the fraudsters not receiving the VAT. When the repayment is obtained by the Broker, he will have sufficient money to repay the VAT he was required to introduce, receive his profit and to pay his outstanding VAT liability to his supplier or in the alternative the loan he has taken to pay the VAT. That supplier will then be in a position to pay his outstanding VAT to the defaulter, who will then receive all the VAT he should have paid to HMRC, but which he intends to keep, less the contribution to the profits and VAT down the chain. A variation on the theme is for the VAT to be introduced as a loan in addition to the initial money being provided. The vast majority of these transactions were handled by the FCIB in sterling although the participants were, in part, European. The transactions are dealt with in sterling because the United Kingdom VAT repayments are made to the Brokers in sterling. It appears from the unique numbering of each transaction in the FCIB that the cash transfers are affected in a very short time. The shortness of the time suggests that the payments are orchestrated by the fraudsters, as it is unlikely that the several traders in a chain would be available at their computer consoles to make the payments in the time scales suggested. The outsider, who financed the transaction from the beginning, is presumably repaid his original investment and the loan (if any) plus any agreed interest.

11. **Example**

The participants are "E" the customer in Europe

"D" the broker, who will seek the repayment from HMRC and who sells the goods to "E"

"C" a buffer who sells the goods to "D" having purchased them from "B" and who pays the net VAT to HMRC

"B" the defaulter, who purchases the goods from Europe and charges VAT on the sale to "C", but does not account for the VAT to HMRC.

"A" the trader in Europe sells the goods to "B" in the United Kingdom (the defaulter) and receives the money back from "B" which he or the fraudsters introduced into the chain in the first place.

12. Many of these transactions took place through the FCIB in the Dutch Antilles, which appears to have been the bank of preference, and has since been closed down by the Dutch Authorities and the directors arrested. All the money in this example appears to take a significantly little time to pass through the account, so that the initial payment, in the example £1,124,544 is only at risk for a short period. It would appear that the account may well be manipulated by one person as all the accounts appear to be internet accounts prefaced by the number 801. The example below indicates the way in which the fraud is constructed and does not represent any of the deals in the chains the subject of this appeal.

- A (in the EU) sell the goods to B (the Defaulter) for £1,000,000
- B sells the goods to C (the Buffer) with a profit of 3 % for £1,030,000 (£30,000) B charges VAT of £180,250 at 17.5 %
- C pays the full price for the goods and half the VAT of £90,125 to B and sells the goods to D (the Broker) with a profit of 3 % (£30,900) for £1,060,900

  (C charges VAT of £185,657.50 at 17.5% to D)

  (C pays VAT to HMRC of £5407.50 the difference between the £180,250 and £185,657.50)
- D pays the full price for the goods but only pays half his VAT liability of £92,828.75 by way of payment of the VAT to C and sells the goods to E (in the EU) with a profit of 6% (£63,654) for £1,124,554
- E pays D the full price for the goods and no VAT £1,124,554

  leaving D to recoup his VAT liability due to C from the repayment.
- D applies to HMRC for a repayment of VAT of £185,657.50 (being 17.5 % of £1,060,900 [his purchase price] and assuming, for the sake of this example, there is no other VAT).
- D obtains a repayment from HMRC of £185,657.50

As a result the participants receive the following:

D received from E the full price which he pays to C	£1,124.544.00
and pays to C the balance of ½ of the VAT due to C of	£ 29,184.75
Total paid to C before repayment	£1,153,728,75
Balance VAT due to C	£ 92,828.75
Purchase price plus VAT due to C	£1,246,557.50
When repaid he pays the other half of the VAT and keeps the balance	£ 92,828.75
Out of which he refunds the VAT he had to find	£ 29,184.75
and takes the rest as his profit of	£ **63,654.00**

C received from D			£1,153,728.75
and out of the repayment the balance of the VAT of			£ 92,828.75
Total purchase price plus VAT			£1,246,557.50
and pays to B purchase price of		£1,030,000.00	
and the VAT amounting to		£ 180,250.00	£1,210,250.00
and retains			£ 36,307.50
being his profit of			£ **30,900.00**
and the VAT he paid of			£ 5,407.50
B receives from C			£1,210,250.00
and introduced the original cash of			£1,124,544.00
and receives from the fraud			£ **85,706.00**
after allowing the two profits of	£30,600.00		
	£63,654.00		
and VAT paid by C	£ 5,407.50		£ 99,661.50
VAT repaid by HMRC			£ 185,367.50

13. There are a substantial number of deals in each of the trades often exceeding 7 traders and amounting to deals valuing £10,000,000 or more so that the profit, using the above example to the fraudsters might be of the order of £8,570,060. At no point are the fraudsters at risk. The money passes through the FCIB very quickly, often in ½ hour and appears to be orchestrated by the fraudsters. The money they had to introduce, in this example £1,124,554, is returned to them in that time scale together with £92,828.75 the VAT paid to C by D. None of the participants take out their profit until the repayment as they pay down the line the amount they receive from their customers. As a result of the transaction does not proceed the Fraudsters retain half the VAT funded by the others in the deal. Mr Stone has indicated that the fraudsters expect all the parties to the scheme to introduce some of their own funds. In this way the fraudsters can be sure that the Broker will rigorously pursue the repayment. If HMRC makes the repayment then each of the traders takes out their profit and a refund of the VAT they have introduced.

14. The money introduced by the third party can take various forms. They can fund the entire transactions, so that all the VAT to be reclaimed is included in the first payment by the European Buyer, even though no VAT is payable by that Buyer. Some or all of the necessary funds can be lent to the Broker, selling to the buyer in Europe, by one of the traders in the deal chains or a third party involved in the scheme. When the repayment is made the broker repays the loan, which represents the VAT needed to make the deals look commercial. It must be that the VAT introduced as a loan is returned to the fraudsters as in most of theses cases the lenders do not insist on the repayment of their loans. This must be because they have already had the money back. Much of the original monies in a carousel fraud are introduced by a third party. So long as that party is a party to the fraud, in one way or another, it does not matter how the money is introduced because the introducer will be paid back all his money as the trading occurs. The repayment represents all or a proportion of the VAT, which the defaulter intends to keep. As Mr Stone identified it is not until the repayment is made that the fraud is completed that HMRC lose the VAT. As these are financial frauds, once the financial shape of the deals has been worked out, it is simple to make the payments, as often is the case, in a random fashion as the totals are all known.

15. HMRC indentified a counter measure introduced by the fraudsters in July 2005 as a result HMRC introduced a more robust verification system. In a contra-trade the fraudsters, instead of making repayment claims in excess of £10,000,000, inserted another chain (an apparent 'clean chain'), and the Broker appears in the new chain as well as the dirty chain. In that way the Broker was able to set off its VAT liability as described by Judge Clarke above. This case relates to SSE's 10 transactions in the apparent clean chain linked to contra-trading and to the 6 straight chains linked to a defaulter. SSE has conceded that there are tax losses arising from all the transactions and accept that those losses were fraudulent. For that reason, we have not considered any of the defaulter chains other than to satisfy ourselves that the losses have arisen as agreed by the parties.

The Legislation.

16. In view of the decision in *Moblix Ltd (in administration)* we think it would be helpful, before considering the evidence, to identify the law as we understand it. The right to deduct is contained in sections 24 -29 of the Value Added Tax Act 1994 (the Act). Section 25 requires such a person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is allowable under s 26: see s 25(2). Section 26 gives effect to what is now Article 168 of EC Council Directive 2006/112 (the VAT Directive) and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by the taxable person in the course or furtherance of his business: see s 26(2).

17. These 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. He is required to hold evidence to support his claim (see article 18 of the Sixth Directive and regulation 29(2) of the Value Added Tax Regulations 1995 (SI 1995/2518). As a result the right to deduct or the right to a repayment is absolute, and no element of discretion is conferred on the tax authority, save that the authority may accept less evidence than normally required; it has no right to demand more evidence than that prescribed by article 18. The right is also immediate, that is it may be exercised "when the deductible tax becomes chargeable". The only limitation is the practical one that, although deductibility is determined on a transaction by transaction basis, the mechanical process of deduction or repayment is affected by reference to prescribed accounting periods.

The Case law

18. The case law has developed from *Optigen Ltd* where it was decided that a repayment must be made to a trader, who is innocent of the fraud, even though the transaction did not amount to an economic activity, through *Axel Kittel and another* which extended the concept of knowledge to include a trader, who ought to have known that there was a fraud, to *Moblix Ltd (in administration)*, which refers to the various cases and has refined the concept of knowledge and the evidence required to prove it. In the light of that decision, we do not think it is necessary to trace the development of the concept through all of the cases we have been referred to, but rather to refer to Lord Justice Moses' observations in the Court of Appeal. Moses LJ stated;

"…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 those objective criteria are essential to achieve:- (see *Kittel* para 42, citing *BLP Group* [1995] ECRI/983 para 24) 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." [Paragraph 24]

"In Kittel after §55 the Court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT… It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. Kittel did represent a development of the law, because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct…"[paragraph 41]

"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 which determine the scope of the right to deduct"; [paragraph 43].

19. The European Court of Justice in *Optigen Ltd* has made it clear that a trader can recover his output tax even though the transaction is outside the VAT scheme. Both *Kittel* and *Moblix* confirm that where a trader meets the objective criteria for compliance with the VAT regime, it is not open to the Authorities to withhold any tax repayment. If, however, a trader does not comply with the objective criteria, because there is a fraud, that trader cannot recover any tax. Moses LJ at paragraph 30 states:

"The Court (The European Court of Justice when considering *Optigen*) rejected the United Kingdom's argument that unlawful transactions fell outside the scope of VAT. Fiscal neutrality prohibits the distinction between lawful and unlawful transactions; such a distinction must be restricted to transactions concerning products which by their very nature may not be marketed, such as narcotic drugs and counterfeit currency (see paragraphs 49 and the Advocate General's Opinion paragraph 40). By its rejection of the United Kingdom argument, the Court made it clear that the reason why the 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."

And at paragraph 52:

"If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises";

20. As the Advocate General stated at paragraph 40:

"As becomes clear from the Commissioners own description of what they consider to constitute carousel fraud, its characteristic is that it makes use of lawful economic channels in order to facilitate the retention of money paid as VAT"

At paragraph 59 "The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known **that the only reasonable explanation** (our emphasis) for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in Kittel";

At paragraph 61 "A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct";

21. Moses LJ also expressed concern that HMRC have in the past placed too much importance on a traders' failure to carry out due diligence and not enough on the circumstantial evidence available. At paragraph 75 he stated.

" 75 The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT…..

22. We have decided that the legal test is that a trader will not be entitled to a repayment if he knew or ought to have known that his transactions **were** connected with fraud on the basis that the only

reasonable explanation for the circumstances in which the transactions took place was that they were connected with such fraudulent evasion. In contra-trading cases HMRC's ability to establish a connection between the actual tax losses in the contra-trade to the specific repayment claim in the clean chain is extremely difficult. This is not least because of the timing of the payments, where the Broker, in the clean chain, will be on monthly returns, and the transactions to which that repayment relates, will be some two or three months later, dependent on the accounting dates in the dirty chain. In *Livewire Telecom Ltd* Mr Justice Lewison stated:

> Paragraph 102: "In my judgement in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself a dishonest conspirator, there are two potential frauds:
>
> i) The dishonest failure to account for VAT by the defaulter or missing trader in the dirty chain; and
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> ii) The dishonest cover-up of that fraud by the contra-trader.
>
> Thus it must be established that the taxable person knew or should have known of a connection between his own transaction and at least one of these frauds. I do not consider it is necessary that he knew or should have known of a connection between his own transaction and both of those frauds. If he knows or should have known that the contra-trader is engaging in fraudulent conduct and deals with him, he takes the risk of participating in a fraud, the precise details of which he does not and cannot know."

23. In *Blue Sphere Global Ltd* at paragraph 44 the Chancellor held that:

> "44. There is force in the argument of Counsel for BSG but I do not accept it. The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transactions in which there is a common party whether or nor the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in *Optigen* and *Kittel* because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.
>
> 45. Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with the fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C (Infinity) in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E (BSG) in the clean chain. Such a transfer is apt, for the reasons given by the Tribunal in *Olympia* to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B.

46. Not all persons involved in either chain, although connected, should be liable for any tax loss. The control mechanism lies in the need for either direct participation in the fraud or sufficient knowledge of it."

The Chancellor concluded at paragraph 55.

"55 .In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is a party to both the clean chain with E and the dirty chain A constitutes a sufficient connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could have known, nor was the occurrence of such a dirty chain inevitable in the sense of being pre-planned."

24. We have also been referred to Christopher Clarke J's comments at paragraph 109 of *Red 12 Trading Ltd* as authority for the proposition that the Tribunal may consider compelling similarities between one transaction and another and that it is not precluded from drawing inferences where appropriate, from a pattern of transactions of which the individual transaction in question forms part. Christopher Clarke J also highlighted the following as important factors in assessing the knowledge or means of knowledge of a trader:

(a) "compelling similarities between one transaction and another".

(b) "pattern[s] of transactions".

(c) "transactions all of which have identical percentage mark ups…".

(d) "…made by a trader who has practically no capital…".

(e) "…as part of a huge and unexplained turnover…".

(f) "… with no left over stock".

(g) " A tribunal could legitimately think it unlikely that the fact that all 46 transaction in issue can be traced to tax losses to HMRC is a result of innocent coincidence".

We refer to this case later in this decision.

25. Briggs J in *Megtian V HMRC* [2010] EWHC 20 (CH) stated as follows:-

"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.

- 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 transactions were connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspect of a sophisticated multifaceted fraud he would have discovered, had he made reasonable enquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of

law, to being carved up onto self-contained boxes even though, on the facts of particular cases, including *Livewire* that may be an appropriate basis for analysis."

26. It is worth bearing in mind the observation by Judge Colin Bishopp's in C*alltell TelecomLtd & Another –v- Revenue and Customs* [207] UKVAT V2066 in the First – tier Tribunal:

> "Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating conspicuously generous profit for no evident reason. A trader receiving 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 out in paragraph 51 in the judgement of *Kittel*."

We have concluded that HMRC must establish either that SSE, through Mr Hopkinson, knew that the 16 transactions were connected with fraud or that it ought to have known.

Burden of proof

27. In Mobilx Ltd (In Administration), Moses LJ considered where the burden of proof lies and observed (at paragraphs 81 and 82) that;

> "..It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary.

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

Standard of Proof

28. These are civil proceedings and, as such, the standard of proof is the ordinary civil standard i.e. on the balance of probabilities. The case of *Reventhi Shah (Administratrix of the Estate of Naresh Shah Deceased) v Kelly Anne Gale; Kelly Anne Gale v Jason Grant, Mark Young, Paul Hilton, Samantha Easton* [2005] EWHC 1087 (QB) (concerning a civil action for unlawful killing) made it quite clear that there is a single civil standard of proof (i.e. on the balance of probabilities) applicable in all civil proceedings regardless of the allegations levied. Lewison J (as he then was) stated:

> "In my judgment, it would be wrong to approach this case on any basis other than the balance of probability with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation and the inherent improbability that this 22 year old young lady of good character should involve herself in such conduct as that alleged. I simply do not accept that it is appropriate, as a matter of law, to require a higher standard of proof simply because of the nature of the allegation. If murder, why not allegations of rape or the most serious fraud."

The Facts

29. Evidence has been deduced of the defaulter traders and the loss of tax arising there from. Mr Hopkinson, on behalf of SSE and on advice from his solicitors, has conceded those tax losses and that those losses have arisen from fraud. It appears that in excess of £200,000,000 of VAT has not been paid. HMRC have provided a Supplemental Statement of Case as a result of the decision in *Mobilx*. It remains HMRC's case that SSE, through Mr Hopkinson, had actual knowledge of fraud. There is an alternative case that SSE, through Mr Hopkinson, ought to have known that its relevant dealings were connected with fraud. In the Supplemental Statement of Case HMRC state:

> "Thus, the application of *Kittel* turns upon all the circumstances surrounding the transactions in question, certainly including the immediate sellers and the immediate EU buyers, but by no means limits these.
>
> A trader cannot protect himself merely by making enquiries; the enquires, and the answers he receives, merely form part of the whole circumstances of his business he must consider before deciding whether or not to enter into any individual transactions.
>
> It is not necessary for HMRC to demonstrate that the trader had knowledge of the antecedent dealings in the goods, the identities of the traders, the nature of the fraud or other matters of that kind. The standard of proof is the usual civil standard, which is the balance of probabilities".

30. Mrs Wilkinson gave evidence as to the transaction by SSE and she was cross-examined by Mr Hopkinson. SSE was incorporated on 9 November 2000 and registered for VAT on the same day. The application form advised that its business activity would be the distribution of motor vehicle sound equipment. The company operated from Unit 3 C, Buckley Road Industrial Estate, Buckley Road, Rochdale, Lancashire, OL12 9EF. Its registered office has always been at its accountants T Freeman & Co. Mr Hopkinson told us that the company dealt in sound systems for vehicles using a design based on roofing-felt. He also confirmed that during that period the company also dealt in the export of toothpaste, scooters and razor blades. There had been two pre-credibility audits by HMRC during 2004 in which both the officers involved had been satisfied with regard to the company's business procedures.. There had been several visits thereafter from HMRC advising as to MTIC fraud.

31. Mr Hopkinson appeared to have a substantial business empire elsewhere than in the United Kingdom. No evidence was given as to his other businesses other than what he told us. It became clear that he operated from America, as he lived at 2266 Pepperwood Drive, Sandy, Utah, being a devout Mormon. He appears to have been able to interrogate the documentation in relation to all the deals carried out in Rochdale, referred to below at paragraph 37, via the internet or email. Mr

Hopkinson confirmed that he was the managing director of both SSE and SSGB. It appears that Timothy Martin Cook had been a director of both up to 14 May 2006. Laura Hindley was the company secretary for SSE and the bookkeeper for SSGB. Raymond Hopkinson had been a director and the company secretary of SSE but appears to have resigned on 30 March 2006. Mr Hopkinson told us that he had fallen out with his father and that his father had had very little to do with the company. Mr Moser produced to the Tribunal a copy of Raymond Hopkinson's PAYE details provided to HMRC from the company for the period to May 2006. It was clear from that, and the fact that Raymond Hopkinson signed several of the more important documents provided by SSE to its customers and traders, that Raymond Hopkinson was intrinsically involved in the running of SSE. Mr Moser said that HMRC considered that the knowledge of the principal employees and owners of SSGB was also the knowledge of SSE.

32. SSE had opened and account with the FCIB on 26 October 2005. The primary contact in the company was given as Laura Hindley. The e-mail address was 'rick@soundsolutionsgb.com'. Mr Hopkinson advised that this was the address for the email in Rochdale available to Laura Hindley. There was also and email address for the European business. He told us that HMRC had sent a warning letter to SSE's bank in the United Kingdom warning the bank of MTIC fraud. It appears that SSE's United Kingdom bank had contacted SSE's manager, Ryan Benson, at Morgan Chase in the United States, and passed on the same information. As a result SSE's accounts in America were closed, along with the accounts of his family members. Mr Hopkinson said that that was why SSE opened an account with the FCIB. Mr Hopkinson was, however, unable to advise the Tribunal of the date when the account was closed. Mr Moser suggested that Laura Hindley opened the FCIB account to accommodate the trade in SSE so that SSGB could reduce its repayment claim. We did not believe Mr Hopkinson's explanation. Nor do we believe that the manager at the English Bank would contact Mr Benson at the American Bank, as suggested, without at least advising either Mr Hopkinson or SSE first.

33. HMRC visited SSE on 8 February 2006 when Laura Hindley, the financial manager, and Joseph Hoyle, the sales manager, two of the personnel, were present. Mt Hopkinson was not present. Mr Hopkinson told us that Mr Hoyle had been brought into the business to expand its general trade. At that meeting the officers noted that there were no back to back MTIC deals identified for the periods 10/05 and 01/06. Although he had not attended the meetings, Mr Hopkinson confirmed that he was aware of the difficulties of MTIC fraud and that the company did receive letters from HMRC from time to time advising of traders, who had either been de-registered and/or had been connected with VAT defaults. The officers also noted that the 2003 company accounts had not been finalised. On 15 February 2006 SSE requested a change to its stagger to end the last day of May rather than April. It would still be on quarterly returns but Mr Moser suggested that the reason the stagger was changed was because Mr Hopkinson did not want the VAT returns coming in at the same time for SSGB and SSE. Mr Moser suggested that the stagger was changed to alter the repayment claims between each business. Mr Hopkinson said that if he had wished to be dishonest in that way he would have formed 10 companies. We are satisfied that the stagger was arranged to accommodate the VAT repayment. On 20 February 2006 SSE wrote to HMRC to advise that there was an error on its VAT certificate and that it should read "Telecommunications and car radios".

34. Mr Hopkinson was also the managing director of Sound Solutions GB Limited (SSGB) which he incorporated to carry on the business his father had been running before he sold out. SSGB was incorporated on 2 October 1997 and traded as "Wood by Design Ltd" dealing in children's novelty wood items, later car soundproofing and car audio systems installations, and from 25 May 1999 in mobile phones and CPU's. On 1 October 2002 Simon Hoyle, on behalf of the company, faxed a

request to HMRC for the trade description to be changed to telecommunications from "other products in wood". Mr Hopkinson told us that a friend had suggested that he should buy mobile phones. As a result he had purchased 53,000 'pay as you go' mobile phones from Cordwell Communications. As a result of the 'pay as you go' contracts SSGB had been able to remove the SIM cards. Mr Hopkinson subsequently discovered that he could sell the SIM cards separately and as a result SSGB received £453,000. The money had been received in instalments and he had hidden the money under the floor boards at his home. He said that he had subsequently attended one of the Mormon services and he had been told by a Mormon official that Mormons paid their taxes. As a result, he voluntarily disclosed the payments to HMRC. We were shown the report of the meeting on 6 June 2003, at which his accountants Deloitte & Touche, of Leeds, presented the facts on his behalf to HMRC. The interview had taken place under the "Hansard" rules, which meant that no prosecution would follow any disclosures, so long as Mr Hopkinson was truthful. Mr Hopkinson suggested that he had acted honourably in voluntarily disclosing the situation to HMRC. It appears that he did not disclose the payments for VAT purposes. On 14 June 2004 a VAT assessment was raised for output tax due on the sale of the SIM cards amounting to £76,382, with an additional interest charge of £20,926 and a civil evasion penalty fee of £15,276 amounting to £112,584 in total. We do not consider that the hiding of the money under his floor boards was the actions of an honest man. Nor do we accept that by his disclosure to HMRC, he demonstrated that he was honest over this matter as the penalty and interest charges reveal.

35. There had been several visits by HMRC to SSGB, including correspondence, warning SSGB about fraud in the mobile phone industry. On 29 September 2005 Anthony Rooney, who had been appointed the company secretary and also worked for SSE and Laura Hindley were given notice 726 with regard to joint and several liability. It appears that the operatives in SSGB were the same people as those operating in SSE. On 26 July 2007 SSGB were advised that their repayment claim for 04/06 amounting to £3,870,672.75 was disallowed. On 12 September 2008 a further sum for the period 07/06 amounting to £1,165,330.25 was also disallowed. SSGB had started proceedings in the Tribunal to recover the repayments but the company had been struck off the companies register on 23 June 2009. On 17 December 2009 the Tribunal directed that " Unless by 25 February 2010 either party notified the tribunal in writing that an application has been made further to sections 1024 or 1029 of the Companies Act 2006 - for the appellant company - (SSGB) to be reinstated to the Register of Companies the appeal be struck out without further order". Mr Hopkinson has told us that he had insufficient money to be able to have the company re-instated and that he had, therefore, had to abandon its appeal. SSGB had been de-registered from 31 August 2007.

36. We propose going through the individual deals, the subject of this appeal. SSE dealt with four suppliers in the United Kingdom namely; Epinex Limited (Epinex); S & R International Limited (S&R); Trade Smart (UK) Limited (Trade Smart); and Selectafone Limited (Selectafone). SSE supplied 6 customers in Europe; Elandour Developpment SARL (Elandour); Fremont Europe Associates SL (Fremont); Sigma (Sixty) Limited (Sigma); Compagnie International De Paris (Compagnie); Opal 53 GmbH (Opal); and Raddacom Trade SL (Raddacom). They all banked with the FCIB. Mr Hopkinson must have been aware of this fact, but he does not appear to have thought it was peculiar. All the transactions that connect with the 05/06 period were back to back. That is they all occurred on the same day and SSE's suppliers would only be paid when SSE was paid by its customers. All the goods were consistently sourced and resold in the same quantities and there were no returns, stock retained or deficits of stock. The first 8 deals were contra-trades and the remaining 8 deals led to United Kingdom tax losses. We have tabulated all the deals from the documentation provided by Mrs Wilkinson at paragraph 37 below. Column 1 names the suppliers and customers and the date of the transactions. Column 2 identifies the type of mobile phone and the date that the goods

were released from the freight forwarders. Column 3 reveals when the goods for each transaction were inspected and the date they were paid for. Column 4 shows the price per unit on the purchase by SSE and its subsequent sale. The difference is expressed as a percentage. It will be noted that the percentages are in a similar range throughout at approximately 4% on the contra-trades and 6.5% on the straight trades. Column 5 is the invoice price on the purchase and sale. Column 6 is the VAT payable by SSE. Column 7 is the total paid by SSE including the VAT. Column 8 is the amount SSE actually paid towards the VAT as it included the entirety of the monies it had received on its sale and therefore its profit. It is unclear why it would include its profit save that it reduced the amount it needed to borrow to pay the VAT. The entirety of the VAT after the payment from the customers has been borrowed. SSE has effectively put none of its own money into the transactions. This meant that it relied on the repayment for both its profit and to cover any of its costs.

37 **CONTRA TRADES**

VAT (1) period	**05/06 (2)**	**(3)**	**(4)**	**(5)**	(6)	(7)	(8)
Supplier and Date	**Goods and date sent**	**Inspect and date paid**	**Price per unit**	**Invoice and Purchase order £**	**Vat £**	**Total £**	**Monies Introduced By SSE**
(1) Epinx Ltd 8/5/06	3850 Nokia	13/5 9/6/06	£191	£735,350	£128,686.25	£864,036.	£98,848.
Elandour 8/5/06 14711	3850 Nokia Sent 15/5/6	Paid 9/6/06	£198.75 4.05%[1]	£765,187.50			
			Profit	£29,837.5			
(2) Epinex Ltd 8/5/06	3200 Nokia	8/5/06 Paid 9/6/06	£359	£1,148,800	£201,040	£1,349,840	£154,640
Elandour 8/5/06 14712	3200 Nokia sent 8/5/6	Paid 9/6/06	£373.50 4.03%	£1,195,200			
			Profit	£46.400			
(3) Epinx Ltd 8/5/06	1800 Nokia	8/5/06 Paid 9/6/06	£185	£333,000	£58,275	£391,275	£44,775
Elandour 8/5/06 1413	1800 Nokia 8/5/6	Paid 9/6/06	£192.50 4.05%	£346,500			
			Profit	£13,500			
(4) S & R	5000 Nokia	13/5/06 Paid	£185	£925,000	£161,875	£1,086,875	£124,375

[1] The profit percentage represents the difference between the purchase price by SSE and its subsequent sale price.

8/5/6		9/6/09					
Fremont Associates 14714	5000 Nokia 14/5/6	Paid 9/6/06[2]	£192.50 4.05%	£962,500			
			Profit	£37,500			
VAT (1) period	**05/06 (2)**	**(3)**	**(4)**	**(5)**	(6)	(7)	(8)
Supplier and Date	**Goods and date sent**	**Inspect and date paid**	**Price per unit**	**Invoice and Purchase order £**	**Vat £**	**Total £**	**Monies Introduced By SSE**
(5)Epinx 11/5/06	2300 Nokia	11/5/06 Paid 9/6/06	£185	£425,500	£74,462	£499,962.5	£57,212.5
Fremont Associates 14715 10/5 5/8/06[3]	2300 Nokia 2100 12/5/06	Paid 9/6/06[4]	£192.5 4.05%	£442,750			
			Profit	£17,250			
(6)Epinx 11/5/06	2100 Nokia	Inspect 11.5.6 Paid 9/6/.6	£147	£308,700	£54,022.50	£362,722,5	£41,422.50
Fremont 14716 5/8/06	2100 Nokia 11/5/6	Paid 9/6/06	£153 4.08%	£321,300			
			Profit	£12,600			
(7)S & R 11/5/6	5600 Nokia	Inspected 14/5/06 Paid 9/6/6	£294	£1,626,400	£288,1120	£1,934,520	£222,320
Fremont 14717 11/5/6	5600 Nokia Sent 11/5/6	Paid 9/6/6	305.75 3.99%	£1,712,200			
			Profit	£85,800			
(8)S & R 16/5/6	4600 Nokia	Inspected 14.5.6 Paid 9/6/6	£191	£878,600	£153,755	£1,032,355	£118,105

[2] This amount was paid to SSGB in error and apparently paid back by Mrs Hindley.

[3] The payment appears to have been £766,315 which is £2315 too much

[4] There are 2 purchase notes 1 for 10/5/06 the other for 5/8/06 invoice dated 11/5/06

Elandour 14729 16/5/06	4600 Nokia 19/5/6	Paid 9/6/6	198.75 4.05%	£914.250			
			Profit	£35,650			
(9)Trade Smart 17/5/6	5000 Nokia 19/5/6	Inspected 17.5.6 Paid 19.6.6	£333	£1,665,000 Paid in 3 different instalment	£291,375	£1,956,.375	£183,875
Sigma 60 14718 17/5/6	5000 Nokia 17.5.6	Paid 19.6.6	£354.5 6.45%	£1,772,500 Paid in 3 instalments			
			Profit	£107,500			
VAT (1) period	**05/06 (2)**	**(3)**	**(4)**	**(5)**	(6)	(7)	(8)
Supplier and Date	**Goods and date sent**	**Inspect and date paid**	**Price per unit**	**Invoice and Purchase order £**	**Vat £**	**Total £**	**Monies Introduced By SSE**
(10)Trade Smart 17/5/6	5000 Nokia 17.5.6	Inspected 17/5/6 Paid 25/5/6	379.	£1,895,000	£331,625	£2,226,625	£209,125
Sigma 60 14719 17/5/6		Paid 25/5/6	403.50 6.46%	£2,017,500			
			Profit	£122,500			

STRAIGHT TRADES

VAT (1) period	**05/06 (2)**	**(3)**	**(4)**	**(5)**	(6)	(7)	(8)
Supplier and Date (1)	**Goods And date sent (2)**	**Inspect and date paid (3)**	**Price per unit (4)**	**Invoice and Purchase order (5) £**	**Vat £ (6)**	**Total £ (7)**	**Monies Introduced by SSE (8)**
(11) Trade Smart 26 /5/6	4000 Nokia	Inspect 26/5/6 Paid 19/6/6	£335	£1,340,000	£234,500	£1,574,500	£146,500
Opal 53 26/5/6 14720	4000 Nokia 27/5/6	Paid 19/6/6	£357 6.55 %	£1,428,000			
			Profit	£88,000			
(12) Trade Smart 26/5/6	4000 Nokia	Inspect 26/5/6 Paid 19/6/6	£336	£1,344,000	£235,200	£1,579,200	£147200
Opal 53 26/5/6 14721	4000 Nokia 27/5/6	Paid 19/6/6	£358 6.54 %	£1,432,000			

			Profit	£88,000			
(13) Selecta Fone 30/5/6	5000 3000 Nokia	Inspect 30/5/6 Paid 14.6.6	£332	£1,660,000	£290,500	£1,950,500	£183,000
Compag 30/5/6 14722	5000 3000 Nokia 30/5/6	Paid 14.6.6	£353 .50 6.32 %	£1,767,500			
			Profit	£107,500			
VAT (1) period	**05/06 (2)**	**(3)**	**(4)**	**(5)**	(6)	(7)	(8)
Supplier and Date (1)	**Goods And date sent (2)**	**Inspect and date paid (3)**	**Price per unit (4)**	**Invoice and Purchase order (5) £**	**Vat £ (6)**	**Total £ (7)**	**Monies Introduced by SSE (8)**
(14) Selecta Fone 30/5/6	5000 Nokia	Inspect 30/5/6 Paid 19/6/6	£285	£1,425,000	£249.375	£1,674,375	£156,875
Opal 53 30/5/6 14723	5000 Nokia 30/5/6	Paid 19/6/6	£303. 50 6.5 %	£1,517,500			
			Profit	£92,500			
(15) Trade Smart 30/5/6	3500 Nokia	Inspect ed 30/5/6 Paid 14.6.6	£195	£682,500	£119,437	£801,937	£75,687
	3500 Nokia	Paid 14.6.6	£207. 50 6.4%	£726,250			
			Profit	£43,750			
(16) Selecta 31/5/6	3000 Nokia	Inspect ed 31.5.6 Paid 19/6/6	£319	£957,000	£167,475	£1,124,475	£104,475
Roddac 31/5/6 14725	3000 Nokia	Paid 19/6/6	£340	£1,020,000			
			Profit	£63,000	Total		

			VAT	Repayment	£3,039.723.75	Total Purchases[5]	£20,409,623.75
		Money	Paid	By SSE	£2,068,486.25	Total Sales	£18,341,137.50
				Difference	£971,237.50	Paid by SSE	£2,068,486.25
				Profit	£991,287.50		
				Loans o/s	£2,465,000		

38. The following documentation has been produced by HMRC and SSE in relation to each of the deals. We were told that KMPG, accountants, had designed the original documentation. There appears to have been a questionnaire prepared by KMPG but it was not being used during these transactions. There is a details sheet at the start of most of the packs identifying the details of each deal and the profit percentage made. Mr Hopkinson told us that he was operating from Utah in the United States throughout all the transactions but, in spite of the time differences, he knew all about all the deals, because he was advised by email or through the internet in Utah. It will also be noted below that Mr Hopkinson flew to Dubai on 15 May 2006 to sign for one of the loans from Hariff General Trading (Hariff), the day before the eighth deal was concluded. Presumably he was still in Dubai or on the plane returning to America at that time. He must have known of the deal on 16 May 2006 as SSE needed the loan to pay for the deals.

39. The packs for each of the deals consist of the following documents:-

- A purchase order from the customer addressed to SSE.
- A Pro-forma invoice addressed to the customer from SSE.
- A Purchase order from SSE addresses to its supplier
- An invoice from the Supplier to SSE
- A supplier declaration addressed to SSE's supplier confirming the transaction and that the supplier was dealing in bona fide goods; has complied with its VAT obligations: and carried out due diligence on its seller.
- A standard Redhill enquiry for confirmation of the VAT and the customers. Transaction details in the FCIB for SSE, its supplier and customer.
- SSE's release instruction addressed to the Freight Forwarder asking for the goods to be inspected and confirming their release to the Freight forwarder for the customer. There is no provision for the goods to be "shipped on hold" so that they could only be released by the subsequent freight forwarder on SSE's instructions when the goods had been paid for. Mr Hopkinson insisted that there was a shipping document that released the goods and that it was understood from the release instructions that the goods were to be held to SSE's order until payment. He appeared to indicate that that document preceded the release note in the pack. That cannot be correct because the next document in the pack is the inspection report requested in the release request. Once the goods had been released, before SSE had been paid, there was a considerable risk that SSE might have to recover the goods from Europe at considerable cost.
- The inspection reports varied from freight forwarder to freight forwarder. Mr Hopkinson explained that the IMEI numbers were checked against the bar code on each box and did not take very long to do. Surprisingly there are no details with the packs of any list of IMEI numbers, which we understood could be down-loaded from the hand-held machine through

[5] The addition in the table at page 192 of Mrs Wilkinson's statement is incorrect as £22,614,543.75

a computer. Mr Hopkinson eventually conceded that it could take 2 ½ to 3 hours to carry out each inspection. In several instances the Freight forwarders were checking 2 or 3 transactions. In those cases, and using Mr Hopkinson's timing of 2 ½ hours, the inspections would have taken 5 or 7 ½ hours. After the inspection the goods had to be delivered from the freight forwarders to the south coast on the same day. According to Mr Hopkinson's timings it would not have been possible for the goods to have been loaded on the Seafrance ferry or Euerotunnel train at the stated times.

- CMRs as evidence of transfer. All of these are inadequately completed.
- A Eurotunnel or SeaFrance ticket detail

40. The packs also include details of the transactions either side of SSE'sthe suppliers and customers for SSE. SSE would not, on the face of it, have known this information at the time of its transactions. We have therefore not considered those documents. We have examined all the packs so far as they relate to the transactions carried out by SSE and we highlight below the matters causing us concern. All the packs have the Redhill letters in them, although Redhill did not reply to the letters until after all the transactions, the subject of this appeal, had been completed. Some of the packs have enquiries of Europa as to the validity of a VAT number. All the packs have the KMPG note at the front of each transaction showing the purchase and sale price, the parties, profit and percentage margins, but SSE do not appear to have used the questionnaire. There are one or two stock offers relating to the deals but they do not appear in the majority of the packs. The individual chains are made up as follows:-

The contra-trades

1. 14711. The chain consists of sales from FAF International SRL (FAF) > Epinx > SSE > Elandour . The deal took place on the 8 May 2006. MSG Freight Ltd in Birmingham was the freight forwarder in the United Kingdom and it was asked to inspect the goods on 8 May 2006 and to release the goods to MDL Sarl, the freight forwarder, in France. The goods were not to be held to SSE's order. MSG did not provide the inspections report until 13/5/06 after the purchase by SSE. SSE did not therefore have the goods examined properly. The CMR sending the goods is dated 14 May 2006 and the goods went through the Eurotunnel on 15 May 2006 at 18.55 pm. The goods were paid for, at the same time as all the goods in the first eight transactions, on 9 June 2006. This means that the goods were at the freight forwarder MDL Sarl in France, out of SSE's control and before the goods had been paid for.

2. 14712. the chain consists of Sales from FAF > Epinx >SSE >Elandour. The deal took place on the 8 May 2006. SSE's release note and inspection requirement are dated 8 /5/06. Surprisingly, on the 9 May 2006, the release note from Epinx to Loghistics (Kent) Ltd (Ontime) required the goods to be allocated to SSGB not SSE. It is unclear how SSE could ask for them to be inspected and have them inspected the day before their supplier Epinx had even received the goods. Epinx release note is also after SSE had released the goods to MDL Sarl in France. Ontime have also requested that the goods be sent to SSGB. The Seafrance ticket shows that the goods were embarked on 8 May 2006 returning on 9 May 2006. Ontime has also been asked, by SSE, to inspect the phones in deal 3 at the same time. It would appear that the inspection of both sets of phones would have taken 5 hours using Mr Hopkinson's suggested time scale. The phones still had to be delivered from Ontime in Kent to Dover to catch the ferry at 05.00 on 8 May 2006 which would not have been possible. There appears to be no commercial reason for the goods to be moved so quickly. The payment for the goods did not occur until 9 June 2006

3. 14713. The chain consist of sales from FAF > Epinx > SSE > Elandour. The deal took place on 8 May 2006. SSE made enquires of Redhill by letter on 8/5/06 but did not receive a reply until 9/06/06 well after the transaction had been concluded. The goods were at Ontime and 100% inspection was made, as for deal 2, on 8/5/06. The goods boarded the SeaFrance at 05.00 8/5/06 and the same problem arises as in deal 2. These goods were also allocated to SSGB by Ontime.

4. 14714. The chain consist of sales from Firma Hennar SA > S & R International Ltd > SSE > Fremont Europe Associates SL > Regent SP Z.O.O. The deal took place on 8 May 2006. The purchase order from Fremont, for the correct quantity of goods and price, is dated 5 March 2006 although the invoice is dated 8 May 2006. This may be a typing error or a different transaction in March. The supplier declaration signed by S & R is dated 14/5/06, six days after the transaction took place. It may be that S& R were dilatory in returning the form. The inspection was requested by SSE on 8 May 2006 but the result was not made available from MSG until 13/5/06 five days after the transaction had been completed and the day before the goods were sent to France. MSG is based in Birmingham and, assuming that the goods were inspected first thing in the morning, the inspection could have been completed by midday so that the delivery could have been made to Eurotunnel by 23.20 pm. Again it is odd that there needed to be such haste, as the deal had been completed and payment was not made until 9 June 2006. Further that payment was initially paid to SSGB in error. We refer to this when considering the nature of the FCIB payments at paragraph 71 below

5.14715. The chain consist of sales from Kirara Trading International SARL > Epinx > SSE > Fremont > Regent. The deal took place on 11 May 2006. There are Europa reports for S&R and Fremont but dated 22/5/06, ten days after the transaction. The inspection report from Ontime to SSE is dated 11 May 2006 as is the same report to Epinx. The Epinx report number is after that of SSE. We would have expected them to be the other way round. Further, the goods appear to have travel by Seafrance 05.00am on 12/05/06 although the goods have not been released to SSE by Epinx until 9 June 2006 when payment was made. Ontime no longer had the goods at that time

6.14716. The chain consist of sales from Kiara > Epinx > SSE > Fremont > Regent Z,O.O. The deal is dated 11 May 2006. Fremont's purchase note is dated 8/5/06 and the invoice the 11/5/06.The release instructions from Epinx to Ontime are dated 9/6/6 but requiring the release to SSGB. The goods had already been released and sent to France as a result of the release instructions sent by SSE to Ontime on 11/5/06.

7.14717. The chain consist of sales from Firma Hennar SA > S & R International Ltd > SSE > Freemont Europe > Regent. The deal is dated 11 May 2006. Available stock list from S&R is dated 1May 2006 and is for 5600 Nokia only. The purchase order from Fremont to SSE is date 5 June 2006 although the invoice is dated 11 May 2006 for the same goods. This might be another typing error or relate to a different transaction. The goods have been inspected by MSG at SSE's request on 14 May 2006 although the transaction had already taken place. SSE had requested that the goods be released to MSG in Belgium on 11 May 2006 although it appears that the goods were only received by MSG on 12 May 2006. The S & R's release note to MSG releasing the goods to SSE is dated 15 May 2006, 4 days after SSE had requested the

release to Belgium. Although SSE would not have been aware, it appears from the Eurotunnel tickets that the goods were only imported from Dunkirk to presumably MSG for S&R on 12 May 2006 the day after the deal had been done. Furthermore, there is a freight instruction of the same date from S&R to MSG asking that the goods be delivered to SSE in Rochdale. The request specifically asked for the details of the driver to be provided. S & R had agreed to sell the goods to SSE before they had even been delivered to the United Kingdom. MSG appears in any event to have re-delivered the goods to Eurotunnel on 17 May 2006 at 07.59.

8. 14729. The chain consist of sales from Firma Hennar SA > S & R International Ltd > SSE > Elandour. The deal took place on the 16 May 2006. A Stock allocation is dated 14 May 2006 but it is not clear to whom it was sent but the stock was allocated to S&R. There is a Europa request from SSE in relation to Elandour dated 18 April 2006, which appears to have been confirmed by telephone. SSE request that the goods be released, utilising their standard release and inspection note, to Entrepots Surete in France on 16 May 2006, having asked Ontime to inspect them at the same time. The pack contains a faxed letter (draft) signed by Ray Hopkinson introducing the company with a trading pack attached for customer to complete and return. The letter had attached to it the Certificate of VAT registration for SSE, as amended on 14 March 2006. There is also a certificate of the change of name from Sound Solutions (Global) Limited to SSE as at 24 October 2005.SSE bank details with FCIB identifying the FCIB's intermediary bank at Rabobank in the Netherlands at Utrecht The information also includes details of SSE's bank account with the Natwest at Rochdale. There are included a passport photograph and details for both Raymond and Richard Hopkinson. These further confirm that Raymond Hopkinson was involved in the running of SSE. There are no passport details for Laura Hindley or Anthony Rooney.

The straight trades to Europe

9. 14718. The chain consist of sales from Stock Mart Ltd > AARO Ltd > Trade Smart (UK) Ltd > SSE > Sigma Sixty BV > Leriant Trading Ltd. The deal took place on 17 May 2006. SSE made a Europa enquiry in relation to Sigma 60 on 17 May 2006. There is a Stock Offer addressed to SSE from Trade Smart dated 17 May 2006 for 5000 Nokia N 80s at £333 per unit. SSE sold them on to Sigma 60 at £354.50 per unit. The goods are at Humber freight and SSE request an inspection and release in the same form as all the others on 17 May 2006. The Humber report of the same date states that they are satisfied that the goods are "genuine and do not appear to have been tampered with. All cartons had original seals and no seals were found to be broken". The report is somewhat imprecise for an order worth £1,965,375. Trade Smart released the goods to SSE on 17 May 2006 with no requirement that they should be held to their order. The goods passed through the Eurotunnel at Folkstone on the same day at 9.48 pm. The vehicle had come in the day before at 12.55 and presumably driven up to Hull that afternoon. The goods had to be unloaded, inspected and reloaded and then returned to Folkstone by 9.48pm. We think that that was unlikely. In fact one wonders why the goods did not remain in Europe. Trade Smart was not paid until 19 June 2006.

10. 14719. The chain consist of sales from Stock Mart Ltd > AARO Ltd > Trade Smart (UK) Ltd > SSE > Sigma Sixty B.V > European Communication Warsaw. The deal took place on 17 May 2006. There is a Europa enquiry dated 17 May 2006 confirming a valid VAT number

for Sigma 60. The supplier declaration provided by SSE and to be signed by Trade Smart was returned by Trade Smart by fax at 5.26pm on 18 May 2006 after the deal had been finalised. Sigma's purchase order is dated 17 May 2006. The note provided by KMPG originally indicated the invoice was numbered 1363 but this had been crossed out in manuscript and amended to 14719. The stock offer from Trade Smart is dated 17 May 2006. The release instructions and inspection request were sent to Humber in Hull on the same day. The goods passed through the Eurotunnel at Folkstone on the same vehicle as deal 9. Payment was made on 25 May 2006.

11.14720. The chain consist of sales from 3D Animations Ltd > STYLEZ Ltd > Trade Smart (UK) Ltd > SSE > Opal 53 GMBH > Senbetel Telecommunications Ltd. The deal took place on 26 May 2006. There is a Stock offer from Trade Smart to SSE dated 26 May 2006, the same date as purchase order and invoice to Opal 53. The Redhill letter was sent on 26 May 2006 with regard to Opal 53 and Trade Smart. Redhill responded on 31 May 2006 (4 days after the transaction) that Trade Smart was registered, but that German enquiry connection was down for Opal 53. They confirmed the registration of Opal 53 on 6 June 2006. SSE had already had confirmation through Europa on 18 April 2006 for Opal 53. The release note and inspection addressed to Point of Logistcs Ltd, Teddington requested that the goods be delivered to Interaction Logistic in the Netherlands. Point of Logistics instructed A1 Inspections of Greenford Middlesex, who provided a detailed report. IMEI numbers were not inspected. But the inspection related to deals 11 and 12 and 8000 mobiles. As indicated above the inspection could have taken at least 5 hours. The CMR indicates, in manuscript, that the vehicle number transporting the goods was RX 05 DWV. We suspect this was a mistake as the E-Ticket confirmation identifies the vehicle as HX 05 DWV. The goods travelled from Folkstone to Calais no time is given on the E-ticket but details have been faxed, presumably to Point of Logistics on 30 May 2006. On the CMR dated the same day, SSE has indicated to Interaction Logistics that the goods should be "On hold do not release without written confirmation". There is no further release note than the one date 26 May 2006 when Point of Logistics were asked to release the goods to Interaction Logistics. The goods were paid for on 19 June 2006.

12. 14721. The chain consist of sales from 3D Animations Ltd > STYLEZ Ltd > Trade Smart (UK) Ltd > SSE > Opal 53 GMBH > Senbetel Telecommunications Ltd. The deal took place on 26 May 2006. A stock offer was faxed from Trade Smart to SSE on 26 May 2006 at 3.42 pm. Mr Hopkinson has told us that SSE sent Stock Offers to its customers when securing a deal. Opal 53 sent their purchase order on the same day and presumably slightly later than 3.42 pm, although they had to secure their order with Senbetel before they could confirm the order placed with SSE. A release and inspection instructions was sent to Point of Logistics which reported the same day and again A1 Inspections inspected the goods. The CMR identifies the correct vehicle X 489 AJH and that it passed through the Eurotunnel on 27 May 2006 at 04.47am. There is a declaration signed by Trade Smart to STYLEZ on the same date but timed on the FAX at 15.32. We think that it is unlikely that these goods could have been made available for delivery at that time, when the deals were not struck until at least 16.00 on the day before. Why would it be necessary to send the goods to arrive at 4 in the morning when they could have been transaported the next day?

13. 14722. The chain consist of sales from 3D Animations Ltd > Mobile Memory Ltd > Selectafone Ltd > SSE > Compagnie International De Paris. The deal took place on 30 May 2006. The Supplier Declaration from Compagnie to SSE was signed by Anthony Rooney on the same day. Release and inspection request sent to Point of Logistics on the same day in respect of 5000 Nokia N80s. Inspection carried out by AI but the report refers to 4900 phones, which is 100 short. 100 phones at £332 per unit amount to £33200. We would have expected SSE to have raised some enquiry as to that issue. The goods passed through the Eurotunnel on 31 May 2006 at 01.06 am. The phones were paid for on 14 June 2006.

14. 14723. The chain consist of sales from 3D Animations Ltd > Mobile Memory Ltd > Selectafone Ltd > SSE > Opal 53 GMBH > Senbetel Telecommunications SL. The deal took place on 30 May 2006. The release and inspection instruction were sent to Point of Logistics at Teddington, Middlesex on the same day with the same request for the goods to be delivered to the Netherlands. Inspection carried out by A1 as before. The goods appear to go through the Eurotunnel on 31May 2006 at 00.59 am. There is a stock allocation note in the pack addressed to Interaction Logistics in the Netherlands from Opal 53 requesting Interaction Logistics in the Netherlands to release the goods to Senbetel, its purchasers at the end of the chain. The allocation from Opal 53 is dated 30 May 2006 but the goods had not left the United Kingdom until 31 May 2006. The goods were paid for on 19 June 2006

15. 14724. The chain consist of sales from 3D Animations Ltd > STYLEZ Ltd > Trade Smart (UK) Ltd > SSE > Compagnie International De Paris. The deal took place on 30 May 2006. A Stock offer for 3500 Nokia N70 was faxed by Trade Smart to SSE at 11.20 am on 31 May 2006 the day after the deal went through. In spite of that SSE requested an inspection and confirmed the release of the goods to R Ganeau in France on the 30 May 2006. Point of Logistics instructed A1 to carry out the inspection. Significantly AI carried out inspection for the goods in deals 13, 14 and 15 on the same day. Mr Hopkinson has suggested that the inspections would take at least 2 ½ hours each making a total of 7 ½ hours. The CMR identifies the vehicle as X489 AJH and is dated 30 May 2006. The carrier was Advanced Transport and the vehicle reached the Eurotunnel at 01.06 on 31 May 2006. The goods would have been with Point of Logistics in the morning. It is unlikely that all the goods could have been examined and loaded by the end of the day in time for them to be transported to the Eurotunnel by 1.00am the next morning. Again we fail to see why they needed to be as payment was not made until 14 June 2006.

16. 14725. The chain consist of sales from Leriant Trading Ltd > 3D Animations Ltd > Mobile Memory Ltd > Selectafone Ltd > SSE > Roddacom Trade SL. The deal took place on 31 May 2006. The release and inspection report were sent on the same day. A1 inspected the goods and they travelled in vehicle R625 BUH to the Eurotunnel on the 1 June 2006 and went on board at 02.22 am. The lorry appears to have arrived at 1.57 am also identified as the check in time.

Freight Forwarders

40. There are four freight forwarders involved in the 16 deals. It appears that SSE has relied on the freight forwarders insurance arrangements to cover SSE's risk with regard to the goods. SSE appears to have made no enquiry as to exactly what that cover was. In fact it appears that there was

no adequate insurance for the goods within the terms of the freight forwarders cover. The goods in deals 1 – 8 are moved by MSG Freight Limited (MSG)**.** That company was registered for VAT on 16 October 2003. SSE has provided no details of any enquiries made in respect of MSG. SSE took up no trade references in relation to MSG and MSG was de-registered from VAT with effect from 3 August 2006 owing £705,675 assessed for the periods 06/05, 09/05 and 12/05.

41. SSE made the following enquiries with regard to Ontime Logistics (Kent) Ltd (Logistics) of Unit M, Deacon Trading Estate, Morley Road, Tonbridge, Kent :-

- Undated letter from Logistics to SSE indicating that it wished to provide its import/export services to SSE.
- Logistics certificate of registration for VAT effective from 1 December 2003 and issued on 18 January 2004. Trade description "other storage and warehouse". We have been told that Logistics had provided nil returns for the periods 02/04 to 02/05 and as a result had been deregistered from June 2005. It was re-registered in March 2006.
- Certificate of incorporation date 9 July 2003
- Price structure as at 01/02/06 including an IMEI check at 20p per number.
- Transport overseas appears to have been through Seafreight. The contact for this service appears to have been Ontime Logistics Speditions GmbH
- Undated letter of introduction from Logistics
- Its bank details in the United Kingdom.
- Photo copy Driving licence K P West
- Letter indicting that SSE had visited Logistics. It is unclear when the visit took place but the letter refers to the "visit to-day" and the response is dated 28 June 2006. We therefore assume that the visit must have been proximate to the date of the response sometime towards the end of June. In that event it occurred after the deals, the subject of this appeal.

42. SSE made the following enquiries, none of which are dated, with regard to Points of Logistics (Points) of 102 -104 Church Road, Teddington, Middlesex. :-

- Letter of introduction undated from Points.
- Description of business activities
- Mission statement
- Bank details with Nat West in Luton indicating that they needed a payment of £1000 to activate SSE's account. No evidence has been seen as to that payment having been made.
- VAT certificate dated 13 May 2003 trade sector "other transport Agencies.
- Certificate of change of the company's name dated 10 November 2004
- Contact details and search age from a trader internet directory.

43. SSGB made the following enquiries with regard to Humber Freight Limited (Humber) of Hawthorn Avenue, Hull. Mr Hopkinson indicated that as he had made enquiries on behalf of SSGB he had used the same answers for SSE :-

- SSGB form signed by the proposed authorised signatories.

- Trade application form submitted by SSGB for Humber to complete in which Humber confirm compliance with VAT requirements. The form is dated 18 August 2006 after the deals the subject of theses transactions.
- Certificate of incorporation dated 27 January 1995
- VAT Certificate dated 1 January 1995 indicting a trade sector of "other transport agencies".
- Bank details dated 18 August 2006 naming Savenska Handlesbanken AB PUL in Hessel, Hull. The information is ostensibly a fax transmission but there is no fax legend as to date and time.
- Proof of address and photocopy of passport of D A Darley.
- Trade references which were not taken up as no evidence of any responses.
- Due diligence questionnaire also dated 8 August 2006
- Confirmation of a site visit by SSE representative 18 August 2006
- Information from IPT website for Humber.
- Information from Humber's own website.

Other Due diligence

44. SSE provided details of the due diligence requested by HMRC on 16 August 2008. They confirmed that they carried out the following checks:-

- Telephone verification.
- Online VAT verification.
- Written VAT verification (Redhill).
- Supplier declaration forms.
- Risk disk assessments, and
- Site visits.

They also enclosed 2 check lists. One which appears to be a list of items and documentary evidence and the other a grid that covers four areas; company induction; 3rd party checks, site visits and references with boxes to complete the dates and comments with regard thereto ; an update box to be completed every 3 months. The letter also confirmed that they also contacted the freight forwarder to ensure that the stock is physical and secure on their premises. They also requested 100% physical inspection report. Web and retail outlets were checked for launch dates and that the models are in circulation within the market. SSE provided the due diligence packs for all their customers and suppliers.

45. The details for Trade Smart, based at Canada Square, London, were obtained by SSGB and they appear to have been provided in July 2006 subsequent to all the transactions in this appeal. Trade Smart's detail contained on the Risk Disk advises "new Company- tread carefully in our view this company is a high credit risk". The report is dated 18 August 2006 three months after the deals were completed. It is likely that the report would have been the same if SSGB had enquired earlier, as this was before any extended verification had been carried out.. The Certificate of Incorporation is dated 4 May 2005. The VAT certificate indicates Trade Smarts classification to be "other wholesale". There is no mention of mobile phones, and the effective registration date was 5 August 2005 eight months before SSE started to trade with them. Trade Smart has also revealed that this was its new VAT certificate. Given the level of trade that SSE entered into with Trade Smart amounting to £5,380,325 including VAT, SSGB would have been on notice that it was unlikely that

Trade Smart could generate that amount of sales in such a short time. This is further confirmed by the Company House details which revealed, again in August, that no accounts had been filed and that the next return due on 1 June 2006 was overdue. The other enquiries appear to be substantial but do not stand too close a scrutiny. There are two Europa enquiries dated 3 April 2006 and 14 July 2006 respectively confirming that Trade Smart had a valid VAT number. There is also a Redhill enquiry dated 7 October 2005 and a handwritten note on the Europa enquiry of 14 July 2006 to the effect that the Redhill enquiry had been verified by telephone, presumably on that date. If so it is unusual that the earlier Redhill enquiry in October 2005 had not been responded to before July 2006. We note that there is a passport detail for Mr Nubarak. The first copy identifies the passport number as 094579332 and the date of issue as 1 November 2005 expiring on 1 August 2016. The second passport copy, which at first glance appears the same but is different. The number is 094474072 and the issue date is 25 February 2005 expiring on 25 November 2015. This should have alerted SSGB to the fact that there was something seriously wrong with both Trade Smart and more particularly Mr Nubarak. Trade Smart also provided two trade references, which do not appear to have been taken up. There is no point in making enquiries if one does not bother to examine them. As SSGB made no further enquiries serious doubt is caste on the commerciality of Trade Smart.

46. Mr Moser referred the Tribunal to a letter dated 10 July 2006 addressed to SSGB, which advised the company that in respect of that company's VAT claim for the period ending 30/04/06 HMRC knew that of the 41 transactions so far verified, 17 commenced with defaulting traders resulting in the loss of revenue exceeding £1,800,000. The letter went on to suggest that SSGB would be able to discover who supplied the goods in those invoices by checking its records. It transpired, from the evidence, that Trade Smart had been the supplier in all the cases. Mr Hopkinson suggested that he would have spoken to Trade Smart, which he knew well, and he would have been reassured that there was nothing to worry about. In fact SSGB had continued to trade with Trade Smart thereafter.

47. There are similar documents provided by way of due diligence by SSGB for Epinx Ltd, which was based in Newton Heath, Manchester. There is a Redhill enquiry' dated 18 April 2006 responded to on 21 April 2006, confirming Epinx Ltd's VAT registration. There is also a Europa enquiry. There is an undated letter of introduction from Epinx signed by Paula White, the Managing Director, which makes direct reference to the joint and several liability. She confirms that Epinx works closely with HMRC to authenticate any of Epinx' traders, which is contradictory as the company appears not to have been trading between November 2005 and July 2006. Epinx VAT certificate was effective from 10 April 2005 and identified its trade classification as other wholesale. The company changed its name on 20 December 2004 from Templemead Consultants Limited. Epinx has provided a trade reference, which does not appear to have been taken up. Epinx apparently started trading in April 2005 and by November 2005 it incurred a telephone bill of £6.25, which is hardly evidence of an extensive business activity and it should have put SSE on enquiry. There is a detail, undated, apparently from Companies House identifying Epinx business as "wholesale computers, computer peripheral equipment and software". It also indicates that Epinx was dormant up to March 2005. The Risk Disk printed in July 2006, after all the deals, indicates that the company was not trading and its credit rating had been suspended. For the four days 8 to 11 May SSE 2006 transacted £3,467,836 of business with Epinx. If it had reviewed the enquires made by SSGB it would have realised that Epinx was not in a position to trade at that level with SSE. There is an indistinct photograph of Paula White's office. It may be that the original is clearer.

What is clear is that there seems to be a single room, which creates doubt as to the company's ability to generated huge volumes of trade. Presumably SSGB, and through them SSE, both understood that Epinx was carrying out trades other than with them, The letter of introduction indicates that Epinx had a specialist division handling wholesale distribution within the United Kingdom. SSE should also have been put on enquiry as to how it had achieved a specialist division in such a short time, the more so as Epinx appears to have been in the consulting business up to its change of name in December 2004. The information provided appears to be no more than window dressing since no commercial organisation would have entertained entering into a trading relationship with Epinx.

48. There are a lesser number of documents provided by way of due diligence by SSGB for S&R International Ltd, which operated from Temple Fortune, London. The letter of introduction from S&R is dated 11 April 2006 and indicates that their business was in electronics and that textiles were also a major part of their business. The company had traded for over 20 years. The VAT certificate was effective from 1 June 1984 and indicated its business to be textiles wholesale. The company changed its name from S&R Leathers Ltd on 24 May 1991. A Europa report on 12 April 2006 confirmed S&R's VAT number. There was also a Redhill enquiry on 13 April 2006 which was responded to on 21 April 2006 confirming the VAT number. The undated Companies House enquiry reveals accounts made up to 30 September 2005 and that the company was a wholesaler, which included textiles. A Risk Disk printed on 12 April 2006 reveals a turnover of £14,070,000 to September 2004 and provides a credit rating of £114,000 and considered that it was able to pay its debts. Trade references have been provided, but do not appear to have been taken up. SSE agreed three deals with S&R amounting to £4,053,750 over three days. This represented just less than a third of S&R's business for the whole of the previous year. This was also a company that appeared to deal in electronics and textiles. There is no mention of mobile phones. Any reasonable businessman would have been put on enquiry that there was something wrong.

49. There has been no documentation provided with regard to Selectafone. HMRC have produced a limited 'Gold Report' dated 15 June 2009, which reveals that the company operated from Salford. It also revealed that no accounts had been filed for the year to 31 July 2006. It is unclear what the report would have said if it had been carried out at the time of the deals. Either way, no such report was sought. Significantly all the suppliers have FCIB accounts.

50. Due diligence has also been supplied with regard to SSE's customers in Europe; Elandour, Sigma (sixty) B, Compagnie Internationale de Paris, Fremont Europe Associates SL and Roddacom Trade SL (Spain).

- Elandour in France. There is an undated letter from Elandour addressed to SSGB requesting a long list of details they required for compliance purposes. There is, presumably in response, an undated letter from Elandour advising of their activities and enclosing their legal documentation some of it written in French. There is a photograph of a male and female but it is unclear who they are. There are two Europa confirmations of Elandour's VAT number dated 7 March 2006 and 18 April respectively. Elandour completed SSGB's trade application details and provided two trade references, which do not appear to have been taken up. The only successful enquiries that SSGB appears to have made are in relation to confirmation of the VAT registration for Elandour. SSE carried out 4 transactions on two days with Elandour amounting to £3,221,137.50. SSE has relied entirely on the enquiries

raised by SSGB, which in our opinion were insufficient, and, we suspect, made no enquiries of their own. The company banks with the FCIB.

- Fremont Europe Associates SL in Spain, SSGB carried out a Europa search on 18 April 2006 which confirmed Fremont's VAT number. There is also a response from Redhill confirming the same in relation to Trade Smart Ltd, Epinx Ltd and Fremont dated 31 May 2006. Although the request to Redhill may have been made during or even before the deals were carried out with these traders, the result was received after the transactions had been completed. There is a partially completed SSGB Trade Application form dated 12 April 2006. It does not have sufficient detail in it to have been of much assistance to SSGB. An undated letter to Ray Hopkinson indicates that the managing director, J A M Martin, of Fremont did not speak English fluently and that he would prefer to speak in French or Spanish. Mr Richard Hopkinson told us that he only spoke English and that all his traders could speak English therefore language was not a problem. In spite of the managing director's comments there is a lengthy letter, again undated, from Fremont explaining in English what the company does and a response from him, in English, to SSGB's enquiries in March 2006, with regard to compliance with the English VAT system. SSE carried out 4 transactions with Fremont amounting to £3,401,250 over four days on the basis of this information. The company banks with the FCIB.
- Sigma (sixty) B.V in Rotterdam. There is an undated company profile from Sigma signed by Kenneth Clevernon Thorne, the managing director, indicating an in-depth knowledge of the telecommunications business. The business lease with Regus dated 20 January 2006 identifies the contact as Chris Thorne. There is a further service agreement dated 9 March 2006. There is undated information enclosed with the letter confirming that the company was registered with the Chamber of Commerce and employed two people. There is a translated extract from the trade reference of the Chamber of Commerce and Industry for Rotterdam in which Mr Thorne is shown to have been born in Cardiff and there is reference to a further address in Dubai although it is unclear where this is. Mr Thorne appears to have a United Kingdom passport. It is unclear whether Chris is Mr Thorne's son who worked with him, as Sigma indicated that it only had two employees and the photograph in the pack shows two women. The business premises appear to be let on a monthly basis. In spite of the fact that SSE appears to have had very little information about Sigma they were still prepared to carry out £3,790,000 of business with this company on 17 May 2006. This company also banks with the FCIB.
- Opal 53 GmbH in Germany. There is confirmation addressed to SSGB from Redhill and dated 28 April 2006 confirming Opal 53's VAT registration in response to a request from Anthony Rooney dated 13 April 2006. There is also a Europa response to the same effect dated 18 April 2006. Opal 53 sent a letter, undated, confirming the details of the company which specialised in the wholesale trading in mobile phones. The company appears to have been incorporated on 12 January 2004 and its managing director, David James Mills, is a British citizen having a United Kingdom passport. There is a trade application from Opal 53 partially completed by SSGB. There is also a SSGB trade application form completed by Opal 53 and dated 26 May 2006 after the deals were carried out by SSE. The rest of the information is in German. In spite of this, and the fact that Opal had only been in business for 6 months, SSE were prepared to carry out three deals amounting to £4,377,500 with them on 26 May and 30 May 2006. Opal 53 banked with the FCIB.
- Roddacom Trade S.L in Spain. There is a response to SSE for a Redhill enquiry dated 1 June 2006 confirming that Roddacom was registered for VAT. The company details

which appear in the pack are in Spanish. There is a Bank statement dated 9 August 2006 showing dealings by the company for the period 26 July to 29 July 2006 with a balance of 8,032,19, presumably Euros. There is a fax message dated 26 April 2006 detailing the company's mobile phone trade in Europe and advising that it had changed its bank account to the FCIB. The message does not carry a fax legend as to the date and time. SSE carried out one deal with this company on 31 May 2006 worth £1,020,000.

- There has been no due diligence information produced for Compagnie Internationale de Paris. Mrs Wilkinson in her witness statement states that the company was registered for VAT on 7 April 2004 and its stated business was that of a "retail shop dealing in other consumer goods- wholesale". The ownership of the business changed and the company was dealing in mobile phones from February 2006. The company had an account with the FCIB.

51. Mr Moser noted that SSGB had carried out £64,325,015 deals in April 2006 and had sought a repayment of £3,850,559.29, which had been refused and was the subject of the discontinued appeal referred to earlier. Mr Hopkinson pointed out that the company had dealt in similar amounts in earlier years. Mr Hopkinson did not accept that this represented a spike in SSGB's trading. Mr Moser pointed out that the earlier spike in January 2003 occurred as the ECJ was working through the cases in relation to MTIC fraud, which were then coming before the court. He also suggested that Mr Hopkinson arranged for SSGB to change its trading pattern, to trade through SSE, so that its next repayment claim of approximately £71,000 would not arouse suspicion. Mr Moser referred the Tribunal to the schedule produced by Mr Burns showing that for the period 14/7/06 to 24/07/06 SSGB bought mobile phone from Trade Smart in the United Kingdom and sold them to Senbetel and Compagnie International de Paris. In the same period SSGB purchased mobile phones from Sentebel in Europe and sold them to Clear PLC in the United Kingdom. The total output tax charged on the deals with Clear PLC amounted to £1,085,551.20, which was off-set against the input tax on the purchases from Trade Smart amounting to £1,159,588.40. Mr Hopkinson suggested that where trading opportunities arose for SSGB, he was prepared to act upon them. We consider that the transactions were contrived by Mr Hopkinson on behalf of SSGB to reduce the amount of VAT SSGB would need to reclaim.

52. Mr Moser referred the Tribunal to the schedule prepared by Mrs Wilkinson, which showed a considerable spike in the trading patterns of SSGB and SSE in April and May of 2006. The figures appeared as follows:-

Period	Net outputs declared by SSE	Net outputs declared by SSGB
11/04 - 10/05	£1,337,341.00	£73,935.333
11/05 – 11/06	£20,248,010	£141,222,670
12/06 - final	£11,524.00	£22,293.00

Mr Hopkinson pointed out that the small returns for the period 12/06 was because HMRC had failed to repay the VAT due to both companies for the earlier period. Mr Moser submitted that the trade had been transferred to SSE to prevent the trade for SSGB exceeding £160,000,000 and thereby seeking a £6 million repayment. SSE had asked for its stagger to be changed to May to avoid SSGB and SSE making reclaims in the same period. Mr Hopkinson did not accept that explanation. We consider, on the balance of probabilities that Mr Hopkinson, on behalf of both of the companies, must have been aware of the advantage of trading in this way.

Loans and FCIB account

53. SSE obtained several loans to assist with the purchases in the deal transactions. Euro Trading Assets Ltd, a company registered in Tortola, in the British Virgin Islands, was in fact based in Geneva, Switzerland. The telephone number on the letter of introduction is 0141 561 824, which is a Glasgow number. SSE entered in to a loan agreement with the company on 30 January 2006 to secure £60,000 with interest at 27%. Repayment of the loan was to be made by SSE via the FCIB account number 04-801-20223-01 belonging to Carlway Holdings Ltd, which share the same address as Global Financial Services in Hong Kong. The agreement was signed by Shabir Basher for Euro Trading and witnessed by Mr N Arshad of 40 Berkley Street, Glasgow. The agreement itself was faxed on 30 January 2006 to SSE by Mr Basher from Innovations UK (Europe) Ltd, a company of which he was the director and of which Mr Arshad was the company secretary. That company had been deregistered for VAT purposes on 30 June 2003 as it no longer made any taxable supplies. Both of Mr Basher and Mr Arshad appear to have been involved with several companies dealing in mobile phones ultimately deregistered owing VAT to HMRC.

54. SSE also procured a loan of £1,500,000 from Hariff, a company based in Dubai. The loan agreement was dated 15 May 2006 and £1,499,978.22 was paid into SSE's account on 24 May 2006 being the loan less bank charges arising from the transfer of the funds. The sum was repayable in 3 months and interest was fixed at 4% per month making a simple interest rate of 48% for one year. This would amount to £1972 per day or £180,000 for the 3 months if it was repaid then. The law governing the arrangement was the law of the United Arab Emirates. Mr Hopkinson told us that he flew from America to Dubai to secure the loan. Mr Hopkinson told us that SSE was well known in the trade and that he had had many offers from companies wanting to lend SSE money. He thought that he probably spoke to a representative of Hariff 5 or 6 days before his trip. Surprisingly SSE had entered into transactions 1 to 10 on the deal table before it had secured any finance at all. It was only when it obtained the funding from Dubai and (mentioned below) that it could afford to pay for the transactions. No commercial businessman could take the risk of securing his funding after completing the transactions unless he was certain that he had the funds in place. Mr Hopkinson must have known that he would obtain the finance at the time he carried out the transactions.

55. SSE also obtained a loan of £890,000 from Global on 3 May 2006 although it appeared to have asked for £1,500,000, only £890,000 was paid into its account in time to make the first payments for the initial 8 transactions. Mr Hopkinson said that he suspected that Global were not prepared to lend the full £1,500,000. It appears, however, that they did so because a further sum of £1,450,000 was paid into SSGB's account on 15 May 2006 being an unsecured loan from Global for which there appears to be no documentation. We accept that these transactions took place some 6 years ago but Mr Hopkinson appeared confused as to the sums borrowed and the companies involved. We understand that the loans have not been repaid. We would have expected that Mr Hopkinson would be aware of SSE's current liabilities. It would appear that SSE borrowed £1,500,000 from Hariff and £890,000 from Global amounting in total to £2,465,000 if the charges are included. We have not taken the other £1,500,000 into account as this was not paid to SSE and is a debt due from SSGB.

56. We have not considered the trades of SSGB but it is relevant to consider its turnover over during the period from 2001 to the deals. Mr Burns has produced evidence of SSGB's net sales

trading (at page 151 of bundle 5) as under :-

		Profit		
From 31/10/2001 to 31/7/2002	£ 24,725,114 at 3%	=	£ 841,753.42
From 31/10/2002 to 31/7/2003	£162,857,112 at 3%	=	£4,885,713.36
From 31/10/2003 to 31/7/2004	£ 28,820,667 at 3%	=	£ 864,620.01
From 31/10/2004 to 31/7/2005	£ 49,759,893 at 3%	=	£1,492,796.79
From 31/10/2005 to 31/7/2006	£170,942,662 at 3%	=	£5,128,279.86
Total	£437,105,448 at 3%	=	£13,113,163.44

The figures are enormous. Mr Hopkinson has told us that SSE was looking for a margin between 4% and 8% , We imagine that SSGB was achieving much the same, but even using a gross margin of 3% .the company would have grossed £13,113,163.44 by way of profit over the period. Given the SSE business and that of SSGB appear to be interconnected, we do not understand why SSE needed to borrow any money when SSGB, according to the figures above, should have been able to assist with the finances.

FCIB

57. We did not hear oral evidence from Andrew Letherby, but we have treated him as an expert witness and his witness statement as his evidence-in-chief. Mr Letherby has conceded that he is employed by HMRC but accepted that as an expert witness he needed to:

a. Understand his duty to the court;
b. Compile his report in accordance with that duty, and
c. Continue throughout his statement to comply with that duty.

Mr Letherby was employed by HMRC to interrogate both the Netherland's and Paris servers. As he has used the Paris server for his flow charts in this appeal, we only need to consider his evidence with regard to the Paris server. Mr Letherby was responsible for transferring the data in the different formats within Bankmaster, DataStore and the Paris E-Banking Server to 'Customer Packs'. The aim was to produce a consolidated output of the information held within each application, without recourse to the commercial software associated with it. The benefit of such an approach was that upon completion, HMRC would hold a single consolidated 'customer pack' for each customer containing a comprehensive extraction of data associated with that customer. As a result, the new information can be interrogated by individual offices with appropriate training. Mr Letherby considered the Paris E-banking Server to be both forensically sound and to have an explicit transmission record (chain of evidence) that can, in his opinion, be relied upon as an accurate record of the banking system at the FCIB. We are satisfied from his statement that information downloaded from the Paris E-banking Server is accurate.

58. The Bankmaster statement contains the account details with an account number for each customer in the format xxxxx/123456/xx where 123456 represent the customer number, followed by transaction type and currency exchange rate. There is also an EB field for every entry. For example, on deal 1 SSE paid Epinx £864,036.25 under transaction number 01053817 to the Epinx account 04-801-201737-01. In the Epinx account the sum of £864,036.25 appears with the same EB number 0153817. In this way it is possible for the officer interrogating the account to be certain that he has the right payment, for the right transaction, in the correct account. Mr Letharby states that it is important to note that the E-Banking transaction number appears to be issued sequentially by

transaction on the server as apposed to the Bankmaster transaction number, which is sequential by customer account.

59. Mr Letherby noted that some EB reference numbers appear in Bankmaster statements apparently out of sequence from the references surrounding them. His investigations led him to believe that this was caused by the Paris server's apparent ability to accept transaction requests in advance, In these instances an authorised user can request that a given transaction is requested and authorised in advance. The transaction will then be assigned the next sequential EB reference number on the Paris server. However, the transaction will not appear on the ledger until the date of application to the account, and as such the EB reference may appear 'out of sequence' with other surrounding EB references.

60. The Paris E-bank server keeps records of user names and a hash value for the password used by that user. When a user inputs a password into the system, the system applies a mathematical function to the password, which is non-reversible, but which creates an output hash value. This value is then stored by the system and compared with the user password input at the time of log on, to establish authenticity. The FCIB appears to have been operating a system of single sign on authorisation within the Paris E-Banking system. Users could be authorised to two different levels, as signatories or clerks. Clerks are able to prepare transaction requests, but cannot authorise the transaction to be executed. Signatories can prepare and authorise transactions. It appears that within this system a signatory or clerk could be given delegated authority by an account holder over their account. For example customer X can authorise customer Y as a signatory for X's account. To do this X does not need to change its password or log in credentials. Instead, authority is simply added to Y's existing log on credentials. When Y signs into the server, it then has authority against account X and account Y without need to further sign on.

61. Mr Letherby has also explained the workings of an Internet Protocol (IP) address. It will be noted from some of the examples below that a common IP address appears to have been used by the traders although not necessarily the same IP address on each occasion. He explains that an IP address is a numerical label used by a networked computer system to locate other computers for communications purposes. It is similar in concept to a telephone number in that its various parts point to ownership, region and location. A given location H has a router connected to a broadband connection, then to a broadband provider. The broadband provider will have a pool of IP addresses allocated to it and will assign one of these to the router at location H say 80.74.59.94. When the user at location H is connected through the router to the internet, any communications will include details of the IP address then being used (i.e.) 80.74.59.94. The connection will not necessarily be through the same IP address each time it depends which I P address can accommodate the traffic.

62, In Deal 1 six of the seven traders appear to have been connected to the same IP address namely 88.9.108.191 in Spain. Epinx had a separate connection to 81.139.67.252. In the other deals about half of the traders appear to have been connected to the same IP address. It can be seen from the detail of the chains below that traders appear in Slovakia, France, United Kingdom, Italy, Estonia, Hong Kong, Dubai, Spain, Panama, Belgium and Holland. Mr Letherby has suggested several reasons why this might occur, the most likely of which is the remote connecting to a 'shared' computer. The use of a shared computer to connect to the internet is a common practice in modern business. This is because it allows mobile workers to connect to a central company system and resource such as a corporate server. In this scenario, a mobile user would connect to a central

server. That server then forwards requests to the internet as if it originated from the server. Multiple users could simultaneously connect in this manner.

63. Mr Letherby considered it very unusual for two customers in a 'Customer and Vendor' relationship to share such a service as it would compromise business confidentiality and security practice. At paragraph 9 (f) (ii) and (iv) of his statement he states:

> " (i) It is highly unlikely that separate users in multiple locations could coincidentally achieve the same IP address……(ii) due to the frequency of this event it is not possible for this to be a reasonable explanation for the presence of the same IP across multiple accounts, across consecutive or near consecutive transactions".

It is, however, possible that regardless of this risk, two or more companies might so arrange their businesses by sharing the same computer. He was of the opinion that such an arrangement would require a co-operative relationship over and above that usually seen in business.

64. Russell Martin Hall, an officer working for the Coventry MTIC team at the time of these transactions, gave evidence under oath and confirmed his three statements. He was asked by Officer Helen Wilkinson to analyse the transactions of SSE and SSGB at the FCIB. He examined the movement of the funds in 6 SSE deals. Mr Hopkinson suggested that the sample was not large enough for the 16 transactions and expressed surprise, in view of the amount of money ostensibly outstanding, that Mr Hall had not interrogated all of the accounts. Mr Hall said he had been unable to do more because of the time constraint. We consider that six non-sequential deals are sufficient to establish the system of payments. Mr Hall has obtained all the information from the Digital Forensic Group.

65. Mr Hall has also provided evidence of the dates on which the majority of the traders have joined the FCIB. It is significant that the majority of the applications are within a short time of each other as under:-

Global	27/1/05	Regent	6/09/05
Epinx	21/3/05	S & R	16/09/05
Campagnie	9/5/05	**SSE**	**26/10/05**
Roddacom	13/5/05	Opal 53	15/11/05
FAF	20/6/05	Elandour	15/11/05
SSGB	18/7/05	Fremont	24/11/05
Trade Smart	19/8/05	Senbetel	6/3/06

Significantly Opal 53, Elandour, and Fremont, all register within 29 days of SSE and Senbetel 12 days later. The traders would have to register with FCIB before any deals could be carried out. It is more than a coincidence that traders, who apparently were unaware of each other, would register in such a short period of time.

66. The documents provided by Mr Hall from the Bankmaster system provided information as to :-

- Print out of each trader
- A transaction enquiry report showing the money passing through the accounts.
    - The account numbers. The first 2 digits indicate the currency, which was sterling in all the trades.
    - The next 3 digits show the type of account. In this appeal, all the accounts were in reference 801 which is an "Intra Bank Account" allowing electronic management of the account.

- The next 6 digits the customers account in that currency.

- The transaction enquiry report shows the date of posting in the first column and then from left to right:-
  - A consecutive number for each transaction. For example, in Deal 1, SSE paid Epinx from SSE's account 04-801-23781-01 the sum of £864,036.25 on 9 June 2006 under transaction number 01033817. That payment of £864,036.25 appears in Epinx account number 04-801-201737-01 under the same sequence number 01033817. It is therefore possible to trace payments through the various accounts
  - The amount in sterling – black received/red paid out
  - The balance after each posting
  - The accrued interest (if any). It is nil on all the entries he examined.
  - The value date, which is the same as the posting date.
  - The reference and type of transaction. In these deals an electronic debit or credit.
  - Narrative identifying the parties.

67. He has been able to trace the payments by identifying the invoices provided by Officer Helen Wilkinson and then following the payments consecutively. He has examined 6 of SSE's transactions utilising the Paris server. We are only considering the following 4 transactions:

- 14711. (Deal 1). Paid 9 June 2006 . SSE sold 3850 Nokia N70's to Elandour for £765.187.50 (See Deal I in Contra-deals at paragraph 37 above). Elandour paid for the goods in full on 9 June 2006 , The chain appeared as follows:

  In Hong Kong Global Started the payments by paying £767,305 to
  In Slovakia Zorba which paid £766,150 (keeping £1155) to
  In France Elandour which paid £765,187.50 (keeping £962.50) to
  In UK SSE which paid £864,036.25 (introducing £98,848,75 VAT) to
  In UK Epinx which paid £729,575 (keeping £1155 profit and the VAT from SSE) to
  In Italy FAF which paid £728,420 (keeping £1155) to
  In Estonia Regent which paid £727,265 (keeping £1155) to
  Global again

Total money retained by fraudsters		£98.848.75
	Less £1155 x 4	£ 4,620.00
		£94,228.75

  It is significant that the individual traders, apart from Elandour, have kept £1155 each. This could not occur in a normal commercial transaction.

- 14714. (Deal 4). Paid 14 May 2006.

  In Hong Kong Global, which paid £965,500 to
  In Estonia Regent, which paid £964,000 (keeping £1500) to
  In Spain Fremont, (which initially paid £962,500 to SSGB but which SSE refunded to Fremont) which then paid £962,500 (keeping £1500) to
  In UK SSE which paid £1,086,875 (introducing £124,375 the VAT) to

In UK S & R which paid £918,750 (keeping £ 1500 profit and the VAT from SSE)
In Panama Hennar which paid £917,250 (keeping £1500) to
In Estonia Avoset which paid £ 916,000 (keeping £1250) to
In Hong Kong

Total money retained by fraudsters		£124,375
Less £1500 x 4	£6000	
	£1250	£ 7,250
		£117,125

Again there is consistency of the retentions between the buffers.

- 14721. (Deal 12). Paid 19 June 2006.

In UK SSE , which paid £1,579,200 to
In UK Trade Smart, which paid £1,576,850 (keeping £2350) to
In UK 3 D Animations, which paid £550,000 and £966,427 to
In UK Leriant, which paid £446,000 and £990,000 (keeping £80,427) to
In Belgium Senbetel, which paid £989,000 and £445,000 (keeping £2000) to
In Dubai Opal 53, which paid £932,000 and £500,000 (keeping £2000) to SSE

Total money retained by fraudsters		£80,427
Less £2000 x 2	£4000	
	£2350	£ 6,350
		£74,077

Again there is consistency of the profits between the buffers.

- 14725 (Deal 16), Paid 19 June 2006.

In UK SSE, which paid £550,000 + £574,575 (introducing VAT of £104,575) to
In UK Selectafone, which paid £ 550,000 + £572,712.50 (keeping £1862.50) to
In UK Mobile, which paid £ 550,000 + £572,007 (keeping £705.50) to
In UK 3 D Animations, which paid £850,000 + £742,962.5 (introducing £470,955.5) to
In UK Leriant which paid £1,023,000 (keeping £569,962.5) to
In Holland Sigma 60, which paid £1,021,500 (keeping £1500) to
In Spain Raddicom, which paid £1,020,000 (keeping £1500) to SSE

Total money retained by Fraudsters		£575,553.50
Less	£1,862.50	
	£ 705.50	
	£1,500	
	£1,500	£ 5,568.00
		£569,962.50

Again there is consistency of the retentions between the buffers.

68. Leriant has retained the VAT paid by SSE of £104,575 and 3 D Animations of £470,995.50, totalling £575,530.5 less £5568.50. The amounts retained down the chain are identical in most instances. This could only be achieved if the transactions are contrived. This pattern is repeated across all four of the examples. Mr Hopkinson has submitted that the small sample is not acceptable, particularly as Mr Hall had confirmed to him, under cross-examination, that it took some 2 to 3 hours to prepare each flow chart and Mr Hall ought, therefore, have checked all the deals. We are satisfied, given the way in which all of the deals have been constructed, that the cross-section examined by Mr Hall is sufficient to establish that all the other payments followed the same pattern. Significantly, SSE has introduced no money of its own in to any of the transactions. It has used the money from its customers, which appears to have been introduced into the deals by the fraudsters, so that the funds could pass to all the disparate parties FCIB accounts and return to the initiators, less the costs incurred, but inclusive of the VAT. SSE has financed the VAT from the loans, from Hariff and Global. Mr Hall has produced details of the Global account during the period of the deals. The account reveals numerous payments in and out to many of the traders involved in the scheme. It also reveals payments to and from Hariff, which indicate that there was a connection between the two companies. On that basis it is not unreasonable to assume that the loans from Global and Hariff were interconnected, so that there was no likelihood of either party not receiving the loans back through the VAT payments made by SSE. This is the more likely given that neither Global nor Hariff have made any attempt to recover their loans.

69. Mr Hall had also examined the deals for SSGB, as that case is no longer the subject of an appeal we have not considered those payments. Mr Hall has examined the timings of some of the payments for SSE. It is unclear into which time zone the timings fall. It is, however, clear that the timings are sequential. We understand that the timings are either for France, through the Paris server; or Berg en Dal in the Netherlands in Europe; or the Dutch Antilles in the Caribbean. The former are one hour ahead of the United Kingdom and the latter is 4 hours ahead. As the IPCs appear to be in Europe, we have assumed that the timings are one hour in advance of United Kingdom times. The United States, where Mr Hopkinson was based at the time of the transactions, are 6 Hours in advance of the United Kingdom. Mr Hopkinson said that he recalled a couple of instances when Miss Hindley made payments from her home in the evening probably around 8/9 pm. On that basis he would have received the calls in Utah at 2.00 am in the morning, which we consider to be unlikely.

70. As a result of Mr Hall's interrogation of the Paris server he has revealed the following timings for the payments to and from SSE:-

Deal 1.
£765,187.50 was received from Elandour at 3.39 pm. £864,036 .25 was paid out by SSE to Epinx at 6.57 pm. Miss Hindley apparently addressed the IPC at 3.53 pm and logged off at 7.02 pm. The money was paid into the account 14 minutes before she logged on to her computer. Mr Hopinson told us that Elandour would have telephoned Miss Hindley to advise that the payment was being made. He also suggested that Mrs Hindley would have telephoned Epinx as to the payment she had made. It appears that the entire transactions through seven traders, including SSE's 16 payments, on 9 June 2006 took 4 hours to be transacted.

Deal 4
£962,500 was paid to the SSGB account by Fremont at 2.33pm but repaid by Miss Hindley to

Fremont at 3.09 pm. The same amount was correctly paid by Fremont to SSE at 3.15pm. If Miss Hindley had been dealing with the payments, she would not have needed to send the payment back. It is clear from some of the transactions, and the loan arrangements, that SSE and SSGB worked in tandem. All she needed to do was to transfer the payment to SSE. Why would she have repaid the amount to have it paid back again 6 minutes later? SSE paid S&R £1,086,875 at 3.36 pm. Miss Hindley appears to have addressed the IPC at 1.07 pm and logged off at 3.30 pm to accommodate the repayment to Fremont. She addressed the IPC again at 2.34 pm and logged off at 4.45pm. The money has taken 2 hours to pass through the seven traders

Deal 10

£1,217,500 and £800,000, totalling £2,017,500 was paid by Sigma 60 to SSE at 8.18 pm and 8.42 pm respectively. SSE made 3 payments; £726,625 at 2.27pm; £700,000 at 5.21 pm; and £800,000 at 7.00 pm all of which appear to have been paid before SSE received payment from Sigma 60. The £700,000 and £800,000 were the loan payments from Hariff. It is unclear how SSE was able to pay the balance of £726,625 at 2.27 when it had received no money from Sigma 60 until 6 hours later. Miss Hindley addressed the IPC from 2.16 pm until 2.45 pm. She addressed it again at 5.05 pm and 5.21 pm and made the final payment at 7.04 pm. Given the time difference between the United Kingdom and Spain she must have made these payments from her home. SSE did not receive any payments from Sigma 60 until an hour later. The payments from Sigma 60 enabled SSE to make the next payments due to Trade Smart of £ 1,274,500. The money has taken 35 minutes to pass through the seven traders.

Deal 12

Opal 53 made two payments of £500,000 and £932,000 making a total of £1,432,000 at 4.39 pm and 5.09 pm. SSE paid £1,579,200 to Trade Smart at 8.30 pm. Miss Hindley addressed the IPC at 8.07 pm and logged off at 8.45pm. The money took on average 19 minutes to pass round the seven traders.

Deal 15

Campagnie International De Paris paid £726,250 to SSE at 7.42 pm. SSE paid Trade Smart £801,937 at 7.51 pm. Miss Hindley addressed the IPC at 7.09 pm and logged off at 8.15 pm. The money took on average 33 minutes to pass round the seven traders.

Deal 16

Roddacom Trade S.L. paid SSE £1,020,000 at 6.36 pm. SSE paid Selectafone Limited two payments one for £550,000 at 3.51 pm and the other for £572,712.50 at 4.29 pm. Miss Hindley addressed the IPC at 3.43 pm and logged off at 4.45 pm. The money took on average 23 minutes to pass round the seven traders. Payment by Roddacom was not made until almost 2 hours later.

Submissions by Mr Moser for HMRC

71. Mr Moser referred us to his view of the law as set out in his skeleton argument. This follows the tribunal's review of the law set out at the beginning of this decision. He reiterated Lord Justice Moses' words in *Mobilx* to the effect that the question for the Tribunal is simple and ought not to be over-refined and is whether the trader SSE either knew or ought to have known that by its transactions in May 2006 it was connected with the fraudulent evasion of VAT'. To discover that the Tribunal must consider all the surrounding circumstances and can make inferences from the evidence before it. Mr Hopkinson has suggested that he understands that the decision in *Mobilx* is to

be appealed. HMRC have no evidence of that and as far as this case is concerned he submits that *Mobilx* represents the current state of the law.

72. Mr Hopkinson has represented himself at the Tribunal and is SSE's principal witness. The Tribunal must, however, consider Mr Hopkinson's credibility. There are two categories of credibility; the first, dishonest behaviour, shown in the evidence itself in past conduct; the second is dishonesty or unreliability of evidence by the content and the manner in which the evidence has been given. The Tribunal has heard of Mr Hopkinson's past behaviour in relation to the non-payment of taxes arising from the £453,000 that he placed under the floorboards. The explanation that Mr Hopkinson did not know he had to pay tax on that sum is not credible. There was also scant regard shown by Mr Hopkinson for the tax law generally in relation to the £540,083 tax and £169,0117 penalties and interest due from SSGB for the periods 31/10/2001 to 2003.

73. Mr Moser submitted that Mr Hopkinson's evidence is not to be believed, not least because his evidence was ridden with contradictions and demonstrable untruths. From the very outset, when the Tribunal asked him to give his address, he was evasive. Evasive even about whether or not he has an address or what country that might be in. There was a repeated and dogged refusal to acknowledge facts even when they were given in the documents before him. There was confusion as to whether Mr Ray Hopkinson worked for SSGB or SSE or both and after the initial complete denial by Mr Hopkinson that his father worked with him, he changed his evidence as each new proposition was put to him. Mr Hopkinson was also able to rearrange the facts, when they became unpalatable, to suit his own ends. This was particularly so when there was a lack of documentation on due diligence, or the suspicious nature of the timing of the FCIB transactions. Mr Hopkinson claimed that there had been other documents or evidence that would somehow show the opposite of what appeared from the evidence on the pages in front of him.

74. By way of example, the release instructions also asked the freight forwarder to inspect the goods. The document is immediately followed by the inspection report and shipping documents. Mr Hopkinson denied that the document was what, on the face of it, it purported to be. Either the document is not what it purports to be, in which case SSE has been producing documents which have no meaning, or the document is what it purports to be and Mr Hopkinson's evidence is incorrect and untrue. Mr Moser submits that the Tribunal may conclude from Mr Hopkinson's demeanour and the manner and content of his evidence that he is not a reliable witness and that he is to be disbelieved when he maintains that did not know and could not have known that the transactions were connected with fraud.

75. Mr Moser submits that there is now no difference as to the identity of interest between SSGB and SSE. There is an identity of activity, of location, of personnel and of knowledge, as Mr Hopkinson has confirmed that he was the managing director of both companies. Mr Hopkinson has confirmed that he was aware of the problems in the mobile phone industry through letters, meetings and advice given to both companies prior to the deals, the subject of this appeal. The companies appear to have sought advice from KMPG and although the documents prepared byKMPG have been presented to the Tribunal they do not appear to have been used. Anthony Rooney and Laura Hindley are employed by both SSE and SSGB, and the trading knowledge they have gained in both companies is available as the knowledge of both the companies. Mr Hopkinson has confirmed that he himself was instrumental in each and every one of the 16 deals and that Mr Rooney directed

them on the ground. The due diligence, such as it was, was done by SSGB and relied on by SSE. Laura Hindley dealt with the financial payments for both companies.

76. HMRC take the view that one company is the other. Mr Hopkinson has confirmed that the £20,000,000 of business conducted by SSE was business that SSGB would otherwise have carried out during the same period. Mr Moser submits that SSE was deliberately groomed from late 2005, when the FCIB account was opened and the VAT stagger was changed through the deals in April and July 2006. SSGB had carried out equivalent trades, with essentially the same traders, in April and SSE took them over. In May, June and July SSGB engaged in contra trading. Mr Moser submits that SSGB had been contra trading and trading in mobile phones for a long time. The knowledge gained by the participants during that period enabled SSE to start trading substantially in mobile phones in May 2006.

77. Mr Moser referred us to the correspondence from HMRC with SSGB on 10 July 2006 as evidence of Mr Hopkinson's lack of concern as to the companies with which his companies were dealing. He submitted that as the letter related to a deal in April 2006 it was indicative of Mr Hopkinson's trading philosophy in that he did not view the letter as an invitation to stop doing lucrative trade with Trade Smart.

78. SSE anticipated that it would receive a net profit of £971,287.50 from the 16 deals carried out over 9 days in May 2006. He referred to Judge Colin Bishopp in C*alltell TelecomLtd & Another –v- Revenue and Customs* [207] UKVAT V2066 in the First – tier Tribunal:

> "Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating conspicuously generous profit for no evident reason. A trader receiving 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 out in paragraph 51 in the judgement of *Kittel*."

Mr Hopkinson had said that this was not "too good to be true" - this was trading at a level that he was used to. Mr Moser suggests that that is not believable.

79. In fact the "too good to be true" reasoning also applied to the ease with which SSE could obtain unsecured loans that have never been repaid. Mr Hopkinson had been unable to remember the circumstances in which the loans had been obtained and indeed whether they were specifically for SSE or SSGB. It is clear that without the loans the first 8 transactions could not have been financed. All the payments for the contra trading were made on 9 June 2006. Almost invariably the receipts and payments are made on the same day. Mr Moser asked the Tribunal to find that the nature of the patterns, detected in the 6 examples produced by Mr Hall, are typical of the way the payments have been made in all the deals. Every single example showed the same circular pattern. SSE always knew exactly when its representatives had to be online to receive a payment and to make an onward payment.

80. Mr Moser submitted that SSE and SSGB were at the core of a network of fraud and that they were knowingly at that core. The prominent way in which Global features in the contra-trade and money transactions, when the personnel at Global were well known to Mr Hopkinson, as his flight to Hong Kong established, endorses that proposition. As a result of Mr Letherby's evidence with regard to the IP addresses, Mr Moser asks the Tribunal to find, on the balance of probabilities, that

the connection to the same IP is more than a simple coincidence and not explicable by anything other than a cooperative relationship over and above that usually seen in business.

81. Mr Moser referred the Tribunal to the important factors identified by Mr Justice Christopher Clark in *Red 12* (see paragraph 23 above) this case ticks every box:

i. Compelling similarities between one transaction and another.
i. Patterns of transactions.
ii. Identical percentage mark-ups
iii. SSE has practically no capital.
iv. A huge turnover in a vey short period of time.
v. No stock left over.
vi. All the transactions can be traced to tax losses.

If the repayment is made SSE stands to make a profit of £971,287.50 over a very short period of time.

82. Mr Moser referred us to the bundle of authorities and specifically to *Regent,* a decision of Judge Demack's, which went to the Upper Tribunal by way of appeal. Mr Justice Newey upheld Judge Demack's decision in a case which shows a striking similarity with the present appeal. Global provided the loans, that started the payments moving, and some of the trades involved S&R and Epinx. Mr Justice Newey referred to the factors which the Tribunal had considered indicated that Regent knew of the fraud:

1. The fact that the suppliers were prepared to extend substantial credit to Regent, as with SSE, without any appropriate enquiry being made as to Regent's ability to repay.
2. The ease with which Regent obtained loans from Global, as SSE and Mr Hopkinson have.
3. The speed with which the transactions were carried out, a speed consistent with pre-planning and orchestration.
4. The delivery of the goods to the freight forwarder on the day it received its purchase order and before payment had been made, and the fixed margins.
5. Customers were suppliers one day and customers the next, as was the sequence for SSE with Sentebel.

The Tribunal found as a matter of fact in *Regent* :-

> "(xi) The fact that a broker such as Regent is a 'crucial player'. The tribunal took the view that "the only reason for the inclusion of Regent in the chain of transactions was to ensure that an input tax repayment claim could be made"

83. Mr Moser did not propose to go through all the evidence but referred us specifically to the evidence of the trading by SSE as provided by Mrs Wilkinson. He submitted that Mr Hopkinson had not been able to give any satisfactory answers to any of the questions addressed to him in cross-examination. *Moblix* commented on the importance of due diligence. The ultimate question is not whether the trader exercised due diligence, but rather whether he should have known that the only reasonable explanation for the circumstances in which his transactions took place was that it was connected with fraud and that the Tribunal should not unduly focus on whether the trader had acted with due diligence. SSE's due diligence was wholly unsatisfactory. All the Redhill requests were

responded to after the deals had been concluded. In three of the cases there was no due diligence at all.

84. Those running SSE were experienced in this area of trade. Their history, their method of trading, their lack of precautions and their participation in what were contrived transactions, point to the conclusion that they must have known of their participation in a fraudulent scheme. Alternatively SSE ought to have known that there was no reasonable possibility other than that its purchases were connected with fraud and the Tribunal should find accordingly.

85. Mr Moser also requested that HMRC costs, both with regard to half of the costs of the preparation of the bundles, and the costs of the case, should be paid by SSE in the event that the appeal is dismissed. We deal with that application in our decision.

Submissions by Mr Hopkinson for SSE

86. Mr Hopkinson had responded to HMRC's statement of case and addressed the Tribunal at the end of the hearing. It is to be appreciated that, as Mr Hopkinson represented himself, his ability to produce a cogent response by way of submission is limited. We have therefore incorporated his comments on the stated case in his final submissions. Mr Hopkinson has accepted that the earlier traders in his chains were fraudulent and that there has been a loss of tax arising from their fraud. He has pointed out that he could not have known of those facts at the time of the transactions. He, and SSE, could only know of the traders with which they dealt. A supplier to SSE would not have disclosed the trader from which it obtained the goods.

87. He confirmed that he had taken over his father's business and changed the name to SSGB. That company had traded in audio equipment for motor cars and subsequently dealt in mobile phones. The company had not notified HMRC of the change of trade either from wood working to sound suppliers, and then mobile phones, as it had not considered than it was necessary. HMRC had not made two repayments to SSGB and as a result it had run out of money and it had been put into liquidation. Mr Hopkinson had insufficient funds to be able to have the company re-instated. Mr Hopkinson submitted that his various companies had substantial trading experience in the United Kingdom, Dubai, Africa and Asia. His companies even had a refurbishing plant in South Africa. As a result in setting up SSE he was not essentially setting up a new business. He had asked KPMG to provide the necessary information for their due diligence and he had arranged for them to inspect the same on a regular basis.

88. Mr Hopkinson stated that when dealing in other products than mobile phones the due diligence he was required to take was substantially less than that required for the mobile phones. SSGB had been trading since 1999 and he accepted that he was aware of the problems with the mobile phone trade as he had been told about that by HMRC when they visited both SSGB and SSE. He had been in receipt of repayments from HMRC for both companies prior to the deals, the subject of this appeal. He accepted that in relation to the letter SSGB had received after the transactions that SSGB would have known that Trade Smart were its suppliers. HMRC had not indicated that he should cease trading with any of the traders. If they had done so he would have ceased to trade with them. He also said that he did not need to carry out any due diligence on his suppliers as he arranged for them to sign a declaration supplied by SSE to the effect that they were compliant with the VAT regime.

89. He was surprised at the contents of the various deal bundles. The matter had started some 6 years previously and he was certain that there was more documentation than that provided in the bundles by HMRC. In any event HMRC had inspected the documentation from time to time and up to the appeal transactions had made appropriate repayments of the VAT due to SSE. It was only when HMRC introduced extended verification that the losses became evident in the defaulting trades. He submitted that if HMRC did not know of the schemes, with all the evidence available to them, how could SSE have been expected to know? HMRC had, from time to time, indicated the names of traders with which SSE should not deal and in those circumstances it had not done so. Mr Hopkinson had been dealing in the market for some time and he had got to know the traders personally. As a result, he took a business decision, based on that knowledge and the fact that he had visited the traders, to enable SSE to deal with its suppliers and customers.

90. As far as the loans were concerned he and SSE were well known in the market and he was regularly approached by individuals prepared to lend the company substantial amounts of money without security. He saw nothing unusual in Global and Hariff's preparedness to lend SSE substantial sums. In fact he had flown out to see Global in Dubai as he was conducting other business in relation to his USA companies. Everybody in the trade was using the FCIB account as most of the joint stock banks were not prepared to deal in this market. As a result if SSE wanted to trade in the market it had to use a FCIB account.

91. It is not therefore surprising that the IP numbers were shared. He submitted that FCIB had many IP connections, but he thought that the European traders, including the United Kingdom, would use either the Spanish or Netherlands connection. He was absolutely certain that Mrs Hindley had logged onto the account either from the office or from her home. She would have been telephoned by the supplier as to the time of the payment and would have gone online at that time to enable her to make the onward transmission. He was satisfied, having had indentified that the payments were contrived, that it was a coincidence that Mrs Hindley's payments fitted into the pattern. Given that Mr Hopkinson lived in Utah, she would not have found it unusual to have been on her computer out of usual business hours.

92. Mr Hopkinson, through SSGB and SSE, had been in the telecoms business for many years dealing with good and honest people working in reputable companies and could safely rely on their proven business acumen to continue to trade with them. He had not considered that the increase in SSGB's turnover in this period was exceptional. The figures were in line with the turnover that he had achieved in his other companies and did not cause him to believe that there was something wrong with the transactions. SSE had always dealt with matters as requested by HMRC and there was no reason to believe that the traders, with which it was dealing, were other than honest. The companies had paid their corporation tax and Mr Hopkinson had voluntarily advised HMRC with regard to the dealings with the 53,000 Sim Cards. That notification was not evidence of a dishonest man. Having disclosed the matter and paid the appropriate amounts of tax due, it was not appropriate for HMRC to consider him to be dishonest.

93. In all the circumstances, neither Mr Hopkinson nor SSE could, at the time of the transactions, and given HMRC's acceptance of the earlier repayments, have had any cause to have been concerned that the transactions were other than genuine. As a result the Tribunal should allow the appeal and HMRC should be required to make the appropriate repayment.

The decision.

94. We have considered the law and the evidence and we dismiss the appeal. We have decided that Mr Hopkinson, on behalf of SSE, knew that SSE was participating in fraudulent transactions. We have not taken into account the evidence produced by Mr Moser on behalf of HMRC in relation to the connection between SSE and Steven Bell and Adam Thompson, former employees who went to work for Moblix. We consider that such evidence as was produced was insufficient to materially affect the outcome of this appeal. We accept that the Tribunal must view the facts from those that were known or ought to have been known by SSE at the time of the transactions in May 2006. Mr Stone has indicated that 'carousel frauds' are financial frauds. As a result we propose first to consider the financial position through the FCIB. Mr Hopkinson says that he was unaware that SSE was involved in fraudulent transactions. He must have thought it was an unusual occurrence that all his suppliers and all his customers banked with the FCIB, not least because several of his customers were in Europe, and therefore unaffected by the United Kingdom's banks' position. He ought also to have considered it unusual that everybody wanted to be paid in sterling. There was a delay from 8 May 2006, when the deals were carried out, until the 9 June 2006 when the first payments were made. The value of sterling to Euros might well have changed in that time scale. It transpires from the evidence that Trade Smart, S &R, Opal 53, Elandour and Fremont all registered with FCIB within 66 days of each other. In fact SSE, Opal 53, Elandour and Fremont registered within 28 days of each other. We accept that SSE may not have been aware of that information, but in view of the fact that all its suppliers and customers were registered with the FCIB it should have been put on enquiry. We consider, on the balance of probabilities, that there is an element of contrivance arising from the fact that many of the traders registered with FCIB at much the same time.

95. Mr Hopkinson has told us that Mr Benson, SSE's bank manager with Morgan Chase, had been contacted by SSE's bank in the United Kingdom and, as a result, Morgan Chase withdrew its support and that is why he opened an account with the FCIB. We have found his evidence to be evasive at best and untruthful at worst. We were surprised, even given the length of time since the incident occurred, that Mr Hopkinson did not remember when the account with Morgan Chase was closed. We are satisfied SSE changed to the FCIB because it was the only way that it could enter into the transactions, the subject of this appeal.

96. Mr Hopkinson has assured us that Miss Hindley had made all the payments to SSE's customers and suppliers. Mr Hopkinson stated that she sometimes worked from home. We do not know which time zone was involved, but giving SSE the benefit of the doubt, we consider it must have been European and one hour in advance of the United Kingdom. We doubt that Miss Hindley would have been working past 9.0 pm on any evening, when there would have been no need for her to do so. Many of the payments were, in any event, to be made between United Kingdom businesses in England. At page 192 of her first witness statement, Mrs Wilkinson has provided details of all the payments for all the deals. In all but five of the deals more than one payment has been made to and by SSE. This random method of payment could only be made by somebody who knew what the totals should be as suggested in the example at paragraph 13 above. How Miss Hindley was able to keep a check of the amounts paid and received, in the short time scale she had available, is unclear. Presumably the invoices would all have been at the office. On a regular basis the amounts due were split into a minimum of two separate payments rather than the amounts indentified on the invoices from both suppliers and customers. It is not normal commercial practice to make such

complicated payments and w have deduced that there must have been other less legitimate reasons for this method of payment.

97. Mr Hopkinson has told us that Miss Hindley would have been telephoned by the customer advising of the payments and she would have contacted the suppliers to confirm the payment would be made. Apart from the first two deals examined by Mr Letherby, all the others have been completed within 30 minutes. The transactions have passed through 7 traders in diverse countries. We do not believe, on the balance of probabilities, that each of them could have received and made the telephone calls in time to accommodate the payments, not least because, in several cases, there was only 3 minutes between transactions. We are satisfied that SSE must have given authority to an operative within the fraud to operate SSE's account. In that way the fraudsters could have made sure that the monies lent to SSE to pay the VAT would be repaid to them in that VAT payment. The ultimate repayment of the loan by SSE, out of the monies that SSE expected to receive pay way of a repayment from HMRC, would then have been retained by the fraudsters. The need for the money to be recovered by the party introducing it also explains why the payments are made so quickly. The fraudsters could not allow the cash flow to be interrupted and risk losing their money.

98. Mr Letherby has given evidence to the effect that an individual could be given authority to operate an account for a trader. As mentioned for deal 10 three payments have been made to SSE. As Mr Moser pointed out the loan payments paid on 25 May 2006 provided the cash to enable the first 8 deals to be paid for on 9 June 2006. None of the payments make commercial sense. We would have expected SSE to have received a single payment from each of its suppliers. Given that most of the payments appear to have been completed after usual business hours, we would have expected that SSE would have paid its suppliers the next day at the earliest. Most businessmen would have made the payments at the end of the month. SSE had received, including the loan of £1,500,000, in excess of £8,000,000. Interest at 4% would have generated £876 per day. SSE was required to pay 47% interest on its loans. If it had held the money until the end of June, some 21 days later, it would have netted £18,410 in interest towards that liability. It makes no commercial sense for the receipted funds to be immediately paid to a supplier.

99. The transactions in a carousel only make sense if the payments are handled by a single operator. If the payments do not follow the invoice amounts then it would be essential that somebody knew what all the amounts should be, so that they could be sure that the correct ultimate payments were made. Evidence of the manipulation in this case can be seen from the payment of £962,500 in deal 14714. The payment was initially made to SSGB in error. It was paid back to Fremont, apparently by Miss Hindley, within half an hour and returned to SSE 6 minutes later. This makes no sense at all. We have seen that some of the deals have involved SSGB and SSE. Having received £962,500 in those circumstances, no reasonable business in SSE's position would have returned the money they would merely have transferred it to the SSE account and advised their customer accordingly.

100. We are satisfied that the FCIB payments were contrived. The 801 number on all the customers' accounts signified that all the accounts were internet accounts. As all the accounts for all the traders carry this number, they are all linked as an E-Banking account. We believe on the balance of probabilities, and in the light of the extraordinary method, speed and amounts of the payments, that the accounts must have been manipulated by a third party. We have accepted that Mr Hopkinson may not have known of the other traders in the carousel, but he knew that the payments

through SSE's FCIB account were manipulated and that such payments could not have been legitimate. Having decided that the payments were contrived, it is easier to understand why the due diligence is unsatisfactory as it is window dressing to accommodate the payments.

101. All the due diligence has been supplied by SSGB. SSE has made no attempt to update the information. Much of it has occurred after the deals took affect. It is no answer for SSE to say that the Redhill report was satisfactory. SSE did not know either way and given the value of the deals it needed to be sure. Furthermore, if it had enquired of the individual traders, it would have found that they had not been trading for any length of time and could not reasonably have been expected to have been able to handle the volume of business they purported to be carrying out. Extraordinarily Mr Nubarak appears to have had two different passports. SSGB has not commented on that fact and ought to have been on enquiry. Epinx appears to have been involved in consultancy, as it changed its name from Templemead Consultants Ltd in December 2004. An account for telephone calls amounting to £6.25 in November 2005 from a company about to enter into a deal worth over £3,000,000 in May 2006 should have given rise for concern. It is also unclear why there was such haste in delivering the goods to individual traders. This is particularly so where SSE was content to trade in goods it had never seen and which appear to have been in the wrong place at the wrong time.

102. It can be seen from the evidence that many of the transactions lack commercial reality. In 5 deals the request for the goods to be inspected is made after the deal has taken place. In Deal 7 the purchase order from Fremont is dated in June although the invoice is dated 11 May 2006. SSE asked for the goods to be released to Belgium the day before the goods were received by MSG. S & R requested their release to SSE 4 days after they had left the United Kingdom even though the goods only reached MSG the day after the deal was completed. In deal 9 the goods could not have travelled from Folkstone to Hull and then back to Folkstone in the time scale suggested. No reasonable businessman would have allowed there to be a shortfall of £33,200 as occurred in deal 13 without querying it. In deal 14 the goods appear to have been in the wrong country to accommodate the proposed transaction. We do not believe that the transaction packs identify the transactions that they purport to do and we believe that they are merely window dressing.

103. As far as the freight forwarders are concerned, it appears that much of the information is either undated or has been provided, after the deals have been completed. It also appears that SSE had relied on the freight forwarders insurance to protect the transactions without making any serious enquiry as to what the terms of such insurance might be. It appears that the goods would not have been adequately covered. SSE should have arranged its own insurance given the value of the individual transactions. The VAT certificate for Logistics was incorrect as that registration had been cancelled and a fresh registration created in March 2006. SSE appears not to have made any further enquiries of HMRC as to the status of the VAT certificates provided. If it had done so it would have realised that Logistics had re-registered and it would have been put on notice to enquire the reason why. If it had enquired it would have discovered that Logistics was not a substantial company as it had only just started to trade over the VAT limit in March/ April 2006.

104. We have considered all the information provided by the suppliers within the deals and have concluded that none of the information would have assisted SSE in making a decision as to whether it should deal with any of the companies. We therefore consider the documentation to be no more

than an attempt to persuade HMRC that SSE was taking due care. We consider it to be window dressing.

105. We have considered all the deals in detail. SSE has used the money from it customers and the Loans from Hariff and Global to finance the transactions. Effectively it has put none of its own money into the transactions. It was even prepared to enter into the first seven transactions with its suppliers Epinx and S&R amounting to £6,489,280 without any means of paying for them in full. It presumably assumed that there would be no problem with their customers making an appropriate payment in due course. Customers of whom they had made no enquiry as to their ability to pay and, in most cases, as to whether they were registered for VAT. This was not a risk that a businessman in Mr Hopkinson position could afford to take.

106. If all its customers paid before there was a need for SSE to pay Epinx and S&R, SSE would only have received £4,033,437 from them and it would have had to find a further £2,455,843. It is indeed fortunate that Hariff and Global were able to provide £2,350,000 in time to cover the payments at the beginning of June. Mr Hopkinson told us that he had flown to Dubai to sign the loan agreement with Hariff. He has also told us that there were many companies prepared to lend him money. He has provided no evidence as to his other businesses. We note that SSE appears to have had offices in Miami and Salt Lake City, but no further detail has been supplied. He was unclear, under cross-examination, as to the reasons he flew to Dubai. He suggested that the visit was also necessary because he had other business to transact. We do not believe that any commercial lender would be disposed to lend this amount of money on such short notice to a bona fide commercial enterprise, which did not propose to inject any of its own money into the transactions. Furthermore, Global was a competitor in that it also dealt in mobile phones. The only basis that such loans would be made was on the basis that Global and Hariff knew that the loans would be repaid. We have seen from the FCIB evidence that the VAT introduced by SSE has been retained by one or more of the traders in the fraud.

107. The terms of the loans were penal and no commercial funder would have allowed the loans to be outstanding for six years with no interest paid. We believe that Hariff and Global have not attempted to recover their loans because they have already received the money back as the VAT payments. The loans are merely window dressing so that SSE could prove that it had paid the appropriate VAT on all the transactions. The loan documentation is essential so that SSE can have a justifiable reason to pay £2,465,000 to its funders out of the VAT repayment. Such a repayment will fund the fraud. As Mr Stone has stated the loss to HMRC only arises when the repayment is made. Significantly, if the VAT repayment is not made to SSE the fraudsters will have lost very little. The money injected for the payments appears to have gone around in a circle with a reduction of a small amount representing the profit paid to the buffers. The VAT paid from the loans has been retained. SSE has allowed the whole amount of its customers' payments to be utilised without taking any profit. It must have known that it would receive the repayment in light of the fact that it had done so in the past.

108. If the repayment is made the position will be as follows:

Anticipated repayment	£3,039,723.75
Less the loans (without any interest)	£2,465,000.00
Balance available to SSE	£ 574,723.75

It can been seen from the Deal table at paragraph 37 that SSE

Anticipated a profit of	£ 991,287.50
From the above figures its profit has been reduced by nearly 50% (£991,287.50 - £574,723.75)	£ 416,563.75

None of the above figures take into account any of the expenses that SSE has incurred from the freight forwarders, or the substantial interest due on the loans. SSE has carefully recorded its margins and anticipated profit at the start of all its deal packs, but the amounts bear no relationship to its actual profit. No businessman would not only pay all his profit into the deals, but also negotiate a profit of £991,287.5 to see it reduced by almost a half, even if the transactions were successful.

109. Mr Hopkinson was adamant that these transactions represented the way the mobile phone businesses are run. We suspect that from his point of view that may well be right, considering the volume and profits made in the SSGB in earlier deals. We can only conclude from all the evidence, and on the balance of probabilities that all the SSE transactions were contrived and that Mr Hopkinson, on behalf of SSE, knew that the transaction were connected with fraud. We therefore dismiss the appeal.

110. Mr Moser submitted that in the event of the appeal being dismissed HMRC requested that costs be awarded against SSE. We note that a similar request has been made in the statement of case at paragraph 114. We are unaware if there has been any other reference by either party as to costs. In normal circumstances SSE would not necessarily understand that it would be liable for costs in an appeal which commenced under the Value Added Tax Tribunal Rules 1986. If HMRC wish to pursue an application for costs they must apply for the same in writing to the Tribunal. In so doing they should take into account the Upper Tribunal decision of the Chamber President, the Hon Mr Justice Warren in *The Commissioners for her Majesty's Revenue and Customs v Atlantic Elecgtronics Limited* FTC/29/2011. HMRC have requested that SSE must pay half the costs related to the preparation of the bundles. The two applications will be heard together. Judge Porter indicated that a charge of 20 pence per sheet was acceptable so long as any element of the time of the operative compiling the bundles is not included in the hourly rate in such circumstances as there could be a double charge.

111. We direct that HMRC submit their application for costs, if they intend to do so, to the Tribunal and to SSE within 28 days from the release of the decision. SSE shall reply within 48 days and HMRC shall have the right to reply thereto within 28 days. The tribunal will decide the costs on the basis of written representations.

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

TRIBUNAL JUDGE

RELEASE DATE: 10 April 2012