[2020] UKFTT 0107 (TC)

TC07601

VAT – acquisition and export of luxury vehicles - denial of input tax credit on Kittel grounds – denial of zero rating on Mecsek grounds – whether defaulting traders fraudulent – yes - whether Appellant knew or should have known – held Appellant knew and should have known – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2015/06198

BETWEEN

M&M (CAMBRIDGE) LLP **Appellant**

-and-

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

TRIBUNAL: JUDGE JEANETTE ZAMAN
GILL HUNTER

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 8, 9, 10, 14, 15 and 18 October 2019

Mr Matthew Sherratt QC and Mr Ben Walker-Nolan, counsel, instructed by The Khan Partnership LLP, for the Appellant

Mr Christopher Foulkes and Mr Joshua Carey, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. HMRC have issued seven decisions against which M&M (Cambridge) LLP ("M&M") appeals. The first decision denies credit for input tax on the basis of the *Kittel* principle, and the remaining six decisions deny M&M's claim to zero rate transactions based on the *Mecsek* principle (each as explained further below). The VAT periods which are under appeal are 11/13 to 08/14.

2. The decisions are:

(1) decision dated 3 June 2015 denying repayment of £952,051.29 (and issued an assessment for £147,202) claimed in respect of 74 transactions for the periods 08/13, 11/13, 02/14, 05/14 and 08/14 on the basis that M&M knew or should have known that its transactions were connected with the fraudulent evasion of VAT. On 16 October 2017 this was reduced to the denial of £876,008.24 in respect of 66 transactions for the periods 11/13, 02/14, 05/14 and 08/14 (thus removing transactions in 08/13 from this appeal);

(2) decision dated 14 July 2015 denying M&M's claim to zero rate five transactions in 02/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £56,666 (reduced because of a calculation error from £62,703);

(3) decision dated 28 July 2015 denying M&M's claim to zero rate five transactions in 05/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £80,166 (reduced because of a calculation error from £86,437);

(4) decision dated 2 November 2015 denying M&M's claim to zero rate 25 transactions in 11/13 and 02/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £74,930.37;

(5) decision dated 31 December 2015 denying M&M's claim to zero rate ten transactions in 02/14 and 05/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £118,366;

(6) decision dated 25 February 2016 denying M&M's claim to zero rate three transactions in 02/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £26,666; and

(7) decision dated 5 September 2016 denying M&M's claim to zero rate six transactions in 02/14 on the basis that M&M knew or should have known that its transactions were connected with fraud committed by its customer, and that it did not

take every reasonable precaution to prevent its participation in that fraud. This resulted in an output tax liability of £91,035.

3. M&M has filed six Notices of Appeal (the second of which relates to two decisions, those dated 14 and 28 July 2018), which have been consolidated. The grounds of appeal challenged whether the transactions were connected with a fraudulent evasion of VAT and denied that M&M had knowledge or should have known of that connection, denying that the indicators relied upon by HMRC provided such evidence.

CHRONOLOGY

4. We find the following as facts on the basis of the evidence before us. In view of the volume of material before us we have not referred to all of the evidence. There were several meetings with HMRC during the period in question. Where we have described those meetings within this Chronology our findings are that these are what the notes of the visit (which were prepared by HMRC) record. Giving evidence at the hearing Mr Crickmore did challenge the accuracy or context of some aspects of these notes; we have dealt with this where relevant in the Discussion and sections headed "Whether evasion of VAT was fraudulent" and "Whether M&M knew or should have known and, in respect of the *Mecsek* decisions, failed to take all reasonable steps". Additional findings of fact are set out in those sections.

5. James Crickmore is a partner in M&M and had a central role in developing M&M's business. He was had been appointed director of M&M's predecessor business on 1 February 2011 and was one of the founding partners in M&M and was responsible for its day-to-day management and decision-making. He negotiated transactions and it was his contacts on which M&M relied.

6. Mr Crickmore had been involved in various of his father's businesses from a young age, which included businesses not just in the car industry but also in road construction and building. This involvement included:

(1) he was appointed director of Stable Car Sales Limited in 1998, which is involved in the sale of new and used cars, as well as renting and leasing cars. He remains a director of that company;

(2) he was appointed director of Crickmore Developments Limited in 2006. He remains a director and is a 50% shareholder. This company purchases land and builds new homes which are then sold. Mr Crickmore is no longer actively involved in this business; it is operated by his father, Colin Crickmore. (In this decision, references to "Mr Crickmore" are to James Crickmore. We refer to his father as Mr Colin Crickmore.);

(3) he established JRC Enterprise Limited in 2001 to operate in the car trading industry himself, and was initially successful but this company went into liquidation and was dissolved in 2006;

(4) he established JRC Investments Limited in 2003, is the sole shareholder and has been a director from the outset; and

(5) he was appointed director of Leisure Parks Real Estate Limited in 2007 (from its incorporation). The purpose of this company was to sell new park and holiday homes. Mr Crickmore is involved in the day-to-day running of all aspects of the business, in particular the finances of the company.

7. Some of the business ventures with which he has been involved are his own; others are family enterprises. The family's capital assets were built up through various ventures, often by acquiring underperforming, run down mobile home parks with a view to re-developing them and selling the pitches with new mobile homes on them. In more recent years they have expanded into the car trading industry.

8. Mr Crickmore's evidence was that he decided to re-concentrate his efforts onto the prestige car trading industry – he was familiar with the industry, had acquired various contacts in the industry and noted there was a demand in the market which he had the contacts and the means to be able to meet. He had capital to invest from his involvement with Crickmore Developments Limited and other ventures.

9. M and M Trading (Cambridge) Limited ("M&M Trading") was incorporated on 8 January 2010. The sole director was initially Mrs Kelly Marie Crickmore (Mr Crickmore's wife) and she was the sole shareholder. The application for VAT registration stated this was to be a "General Trading Company" carrying on a "non-specialised wholesale trade". Further information was requested by HMRC and the response included that this trading included selling motor vehicles and property development/construction. On 23 April 2010 Adrian Doggett of Anderson & Co sent HMRC various paperwork which included a 64-8 authorising Anderson & Co as agent.

10. M&M Trading was registered for VAT with an effective date of 1 February 2010 and its VAT registration number was 989 5937 25. (This VAT registration number was later transferred to M&M, as set out below.)

11. Mr Crickmore and Mr Colin Crickmore were appointed as directors of M&M Trading on 1 February 2011.

12. Turnover of the business grew rapidly. In the year to January 2012, M&M Trading's turnover was £9m, and in the 13 months from January 2012 to February 2013 it was £12m. In the first year of M&M conducting business (ie as an LLP) it was £13m.

13. In his witness statement Mr Crickmore described how he grew the business, and this included:

> (1) he initially began by ordering new cars from contacts he had made whilst working for his father, amongst whom was Ian Cockram, a car trader in Southampton, of IAC Cars Limited ("IAC Cars");
>
> (2) soon after he began trading he was contacted by Shiraz Jafferali of Classic Cars and Sajan Popat of Twin Star. He'd sold cars to both companies when working with his father and their showrooms were based in London. He stated that they told him that "a large number of the cars that I had been exporting to private individuals in the Far East were ending up in showrooms either in Malaysia or Thailand and that therefore, to increase my success and profit margins, it would be beneficial for me to export my vehicles directly via them. Additionally, large number of the cars that I was selling to dealers in the UK were also being purchased by Mr Jafferali and Mr Popat". Together they assisted Mr Crickmore in exporting vehicles and became his contacts for export.
>
> (3) M&M had steady growth but then the industry began to boom. Mr Crickmore was able to buy vehicles from his suppliers for competitive prices. Cars that were exported from the UK were attractive overseas as they were often luxury models and unavailable locally, or subject to very long waiting lists.

14. The above extract refers to "Sajan Popat" of Twin Star. He was sometimes alternatively cited in the papers before us and at the hearing (including by Mr Crickmore) as "Sarju Popat". It is common ground that this is the same individual. When citing from the papers before us, we have used the name which is used in that document; otherwise we use Sarju Popat in our discussion, for the sole reason that we consider this style was used most frequently at the hearing. Sarju Popat's brother, Simal Popat, is the shareholder of Autostyle Hong Kong, the involvement of which with M&M is referred to frequently throughout this decision. Simal Popat is always referred to as such.

15. On 10 October 2011 HMRC wrote to Mr Crickmore (at M&M Trading) to confirm an appointment for Officer Paul Smith to visit the company on 1 November 2011 to check the returns for the period 1 December 2010 to 31 August 2011.

16. Officer Smith prepared a report of that visit, which included that the meeting had lasted 4 hours and was attended by Mr Crickmore and the company's adviser, Mr Doggett. That report of Officer Smith referred to:

> (1) his having discussed the business with both Mr Crickmore and Mr Doggett, checked certain specific sales invoices to the output tax account and input tax claims for the purchases of these cars to supporting documentation;
>
> (2) he had queried a sales invoice as two appeared on file – Mr Doggett had followed up on this since the meeting providing an explanation which was agreed by Officer Smith; and
>
> (3) M&M Trading had applied for EORI recently to export cars to SE Asia. If sales were gained and the vehicles exported this may change to a repayment return and these may become the norm.

17. On 12 December 2011 Officer Matthew Eaton called Mr Doggett and the note of that call (made by Officer Eaton) includes:

> (1) he told Mr Doggett that he wanted to review all 09/11 records;
>
> (2) he was told that cars are paid for up front and are not released to the customer until payment has been received; and
>
> (3) diligence was said to be minimal if non existent (in Mr Doggett's words, "as is the case for most of our clients").

18. On 19 December 2011 Officers Eaton and Patricia Essex visited M&M Trading at Anderson & Co's offices. The first hour was attended just by Mr Doggett, with Mr Crickmore then joining them (the point at which he joined being recorded in the visit report). HMRC's note of that meeting includes:

> (1) Mr Doggett informed HMRC that cars are usually sent direct from the supplier to the customer. All sales are to other traders. There is no show room and cars are kept in a small yard at Mr Colin Crickmore's property.
>
> (2) Due diligence was "non existent" and deals were said to be all based on trust. Mr Doggett was advised that HMRC expected traders to undertake reasonable commercial checks, "particularly in the vehicle sector which was rife with fraud".
>
> (3) Mr Crickmore then joined, and he said that at the end of last year he heard that the vehicle export market was good and that he could make greater profits exporting rather

than selling to UK traders. It was noted that some of the exports detailed for 11/11 were to Autostyle, Hong Kong. Mr Crickmore advised that this trader had both a UK and Hong Kong operation but did not know any further details about the Hong Kong set up.

(4) Mr Crickmore said his main problem was obtaining suitable stock – UK dealers and manufacturers did not like it when their vehicles were exported. He did not currently deal with large main dealers but used a broker to make purchases on his behalf for a £200 fee.

(5) Mr Crickmore said that he used associated businesses to make purchases so that dealers did not realise that they were selling to him and realise that the vehicles were likely to be exported. The associated businesses were used as camouflage.

(6) In the context of discussing evidence of export, Mr Crickmore was advised that the acknowledgement received from DVLA in respect of his submission of the V5 form was further export evidence. Mr Crickmore stated that this had caused him problems in the past – when he sent the V5 to the DVLA, dealers could check the registration number and it would show that the vehicle had been exported.

(7) When he shipped vehicles they were "shipped on hold" so control was retained with M&M. If funds were not received from the customer then the vehicles were not released.

(8) The vehicles were insured while in the UK under his motor trader insurance policy. It was not known who insured the exported cars while they were in transit.

(9) In the context of due diligence the note records as follows:

> "JC was advised that HMRC expected traders to undertake reasonable commercial checks. JC stated that he would undertake any due diligence that he needed to do. JC was issued with Notice 726 and was advised that the notice listed a range of checks that could be undertaken in order to minimise the risk of becoming involved in tax loss deal chains. JC was advised that HMRC could not offer a prescriptive list of checks to undertake. JC was then issued with the "How to spot missing trader fraud" factsheet and was advised that the vehicle export sector was tainted with missing trader fraud.
>
> …
>
> JC was advised to validate traders vat numbers with HMRC before every deal."

(10) In "Conclusion/Credibility" it is stated that this is a high risk trader.

19. On 28 December 2011 Officer Eaton wrote to Mr Doggett about various matters, which included asking for an explanation of why there were numerous examples in the spreadsheet for 11/11 of the purchase date being after the sales date of the relevant vehicle.

20. On 10 January 2012 Officer Essex wrote to Mr Doggett informing him that the repayment return for 11/11 had been selected for a "full verification" and requesting various documentation. A (longer) letter was also sent that same date addressed to M&M Trading and, under the heading "Why your repayment claim has been selected for verification", explained that the judgement about whether or when to repay a credit has to be made in the context of the "continuing risk to the UK public revenue posed by Missing Trader Intra-Community (MTIC)

VAT fraud". HMRC undertakes a "risk-based programme targeted at those believed to be trading in transaction chains associated with MTIC fraud". That letter made it clear that HMRC would be verifying transaction chains.

21. On 18 January 2012 Mr Doggett wrote to Officer Eaton responding to questions raised by HMRC in their letter of 28 December 2011. (Mr Doggett's letter is dated 18 January 2011, but we find this was a typographical error.) Dealing with the question about dates of invoices, he explained that M&M Trading would often know in advance that a particular vehicle was on its way to them and if they held all relevant details (including registration number) they will in most cases already have a purchaser lined up. If the purchaser confirms they still want the vehicle the sales invoice will be raised, and this can ensure that payment is made promptly and sometimes potentially before the vehicle arrives so that when the vehicle is available it can be released to the purchaser. A letter from Officer Eaton dated 1 February 2012 responds "Thank you for your clarification" on this point.

22. On 20 March 2012 HMRC wrote to M&M Trading informing them that the return for 02/12 had been selected for verification (in similar terms to the letter of 10 January 2012).

23. On 3 April 2012 Officer Essex wrote to Mr Doggett. That letter refers to a letter from Mr Doggett of 21 March which was not before us. It does also refer to HMRC being aware that companies associated with M&M (referring to Executive Car Leasing, Crickmore Parks and Stable Cars) supplied vehicles to M&M Trading and that Executive Leasing served little commercial purpose other than to facilitate the purchase of vehicles on behalf of M&M Trading.

24. On 29 June 2012 HMRC wrote to M&M Trading informing them that the return for 05/12 had been selected for verification (in similar terms to the letter of 10 January 2012).

25. On 23 October 2012 during a call between Mr Doggett and Officer Eaton it was explained that it was likely that verification of 08/12 would be undertaken by a local compliance officer.

26. By November 2012 Mr Doggett was dealing with Officer Jim Bond in relation to the VAT returns. On 29 November 2012 Officer Bond asked Mr Doggett for the due diligence undertaken by M&M Trading in respect of the 08/12 period. Mr Doggett replied the following day that M&M Trading considers who they are trading with. If they are main dealers or people they have purchased vehicles from in the past they consider that should be no issue. If a new supplier they consider how the contact was made and if they have any reservations they will consider what checks to carry out. Where queries have been raised in the past they had looked at the "VEIS website".

27. On 7 December 2012 Officer Bond visited Mr Crickmore and Mr Doggett to verify the 08/12 return. HMRC's visit report includes:

> (1) The main business activity was described as the export of high value cars, almost all to Thailand.
>
> (2) Mr Crickmore buys direct from main dealers when he can, otherwise uses a buffer to disguise the fact that he is getting the cars for onward export. Mostly the buffers are his own companies; other non-associated company buffers seem to be arranged by Simon Curtis.

(3) Several areas of concern were noted – some invoices led to traders who had not completed their VAT returns, and there were some extremely dubious looking invoices where labels had been stuck on.

(4) Conclusion on credibility is recorded as "No difference in credibility to last period."

28. On 27 December 2012 Officer Bond wrote to Mr Crickmore, referring to their meeting on 18 December 2012. There is no visit report from such a meeting. That letter included:

> "1. Having looked at the invoices in the files – which you have described as being the originals – I am concerned that they may not be as described and accordingly take this opportunity to ask you for full disclosure regarding which and how many of the invoices have been manufactured and are not from the supplier.
>
> …
>
> 3. We discussed due diligence. You rely on two individuals to find "brokers" for the purpose of disguising the fact that the cars purchased are for export. The problem with this is that you do not carry out any checks on these "brokers" to ensure that they are appropriate people to do business with. Notice 726 was issued to you on 19 December 2011 and due diligence has been discussed on that occasion and on a previous occasion: 1 May 2012. It is your responsibility to check your suppliers.
>
> 4. You were asked to contact HMRC to validate traders' VAT numbers prior to all deals. I remind you that requests for verification of the VAT status of new Customers/Suppliers should be faxed to Wigan HMRC Office...If you wish to send your validation request by e-mail forward the attached authority template to validationrequestssi.hmrc@hmrc.gsi.gov.uk along with your validation request..."

29. On 9 January 2013 Mr Crickmore sent an email to Mr Bond, subject "vat repayment ending 31/8/2012":

> "I refer to your letter of 27 december…and our phone calls today. You suggested during our conversation that some of the paperwork/inioces have been tampered with. I can confirm that me or none of the company directors or staff employed by the company have done no such thing has asked on the telephone what paperwork/invoices you are refering to I will make every effort to satisfey you this is not the case"

30. On 23 January 2013, in the context of verification of the 08/12 return, Officer Bond wrote to Mr Crickmore informing him that "There are issues with due diligence that need to be addressed. I am taking advice and will write regarding this issue shortly."

31. Officer Bond visited Mr Crickmore and Mr Doggett on 6 and 11 February 2013 in relation to 11/12. That report, prepared by Officer Bond, included:

(1) Repetition of previous information as to the business involving export of cars and the use of buffer companies.

(2) Having set out the input tax claims, there is a comment that "Previous assurance checks have been all but fruitless, the exception being a couple of cars that were not, in the end, exported. Therefore, going forward, I will be examining the stock figures and seeing if all cars are accounted for in the last year or so."

(3) There had been a "minor problem" in relation to shipping invoices which he was going to mention to the assurance officer for Jenkar Shipping but this was "irritating as opposed to alarming". There were other minor errors.

(4) Under "Conclusions and comments on credibility" the full comment is "Large repayments in this trade sector need to be checked, but only minor discrepancies found with this trader to date."

32. On 26 February 2013 HMRC wrote to M&M Trading referring to a VAT 1 application which had been received by HMRC on 31 January 2013 and confirmed that the VAT registration number previously allocated to M&M Trading had been reallocated to M&M with effect from 1 February 2013. M&M had been incorporated as a limited liability partnership on 21 June 2012. There were two members of that partnership – Mr Crickmore and M&M Trading.

33. On 28 March 2013 Officer Bond wrote to M&M in respect of the check into the return for the period 11/12. HMRC concluded that there were inaccuracies in the return because the claim included purchase invoices which were dated after the end of the period. The result was that the net repayment claimed was adjusted from £408,286.28 to £398,869.60. No penalty was charged.

34. Officer Bond visited Mr Crickmore and Mr Doggett on 11 April 2013 in relation to 02/13. That same visit report notes that Officer Bond made a visit to the principal place of business on 22 April (from 14.00 to 15.00) and saw "Brian Crickmore".

(1) That report repeats previous information as to the business involving export of cars and the use of buffer companies.

(2) He went to the principal place of business on 22 April 2013 "and saw Brian Crickmore". Officer Bond was shown all of the cars save the Rolls Royce Ghost.

(3) Under "Conclusions and comments on credibility" the full comment is "Large repayments in this trade sector need to be checked, but only minor discrepancies found with this trader to date."

35. On 16 April 2013 Officer Bond wrote to M&M in respect of HMRC's check into the return for 08/12, concluding that there were inaccuracies. The net repayment claimed was adjusted from £430,563.93 to £419,168.11. No penalty was charged.

36. On 14 June 2013 HMRC wrote to M&M confirming that a repayment supplement of £20,958.40 was due for the period 08/12 as there had been a delay in authorising payment of a legitimate claim beyond the required time limits.

37. On 2 July 2013 Officer Bond visited Mr Crickmore and Mr Doggett. Officer Bond's report of that visit includes:

(1) He had received a workbook for the 05/13 period and "Due to exhaustive checks carried out on the mechanics of the spreadsheet previously, which led to the conclusion that it was sound", did not see the need to repeat such checks.

(2) He decided to get to grips with the private use of vehicles, which had been mentioned previously but never really actioned. Mr Crickmore said that he had stopped using the vehicles for private use six months ago.

(3) Noted that on one purchase the supplier, Club Billionaire, had not put in their VAT return. Spoke to Mr Crickmore about this and generally asked about due diligence done. He subsequently decided to write to M&M giving instructions about checking suppliers with Wigan prior to going ahead.

(4) "No change in credibility".

38. On 8 July 2013 Mr Crickmore emailed Officer Bond "as requested" with a copy of a "New vehicle order" for a Bentley from Bentley Sales, Belfast, with Club Billionaire Ltd named as the finance company (customer redacted), certificate of incorporation for Club Billionaire Ltd, a copy of the passport of Mr Ludhra and the VAT certificate for Club Billionaire (which states on its face that the trade classification is "Buying and selling of own real estate"). The following day Mr Doggett added a copy of a VIES VAT number validation check conducted on 8 July 2013, VIES being the VAT Information Exchange System database.

39. On 11 July 2013 Officer Bond wrote to Mr Crickmore (and "Mr B Crickmore") noting that there had been instances where they had "started using new suppliers and some tax losses have occurred" when these suppliers have failed to render VAT returns and pay the VAT due. He noted that this was an issue he had written to Mr Crickmore about before, specifically referring to his letter of 27 December 2012 and the request to contact HMRC to validate VAT numbers. He then added:

> "Here you were given clear instructions to validate numbers prior to all deals. This is especially important with new contacts and helps to ensure that you do not trader with people who are not paying their VAT…Please instruct all persons responsible for your commercial checks to use the above information for verification. Failure to do so may well open the possibility of HMRC not paying input tax relating to tax losses."

40. On 11 July 2013 Officer Bond emailed Mr Doggett, the subject of which was "Car sold to Southern Ireland", which included:

> "As input tax is recoverable and the car is supplied as an intra community movement of goods to The Republic of Ireland, provided the sales invoice shows the ROI customers VAT Registration Number and the business holds suitable evidence of removal to support the despatch, then the supply is zero rated. You will have to complete a VAT 101 EC sales list for the calendar quarter the supply was made..."

41. On 12 July 2013 Officer Bond wrote to Mr Crickmore in respect of the return for the period 05/13, stating the amount claimed was incorrect as no private use of vehicles had previously been declared. The net amount claimed was adjusted from £353,839.59 to £352,564.59. No penalty was charged.

42. On 16 August 2013 Mr Crickmore sent an email to Mr Doggett at 09.29 apparently forwarding another email (of which we did not have a copy) stating that this was a company that want him to export to them in the Republic of Ireland, "please check it out for me to see if they are ok to deal with". Mr Doggett replied at 09.53 stating that this was also coming up as invalid, asking him to recheck the number, and adding "Possibly we could get something via Jim Bond?"

43. On 16 August 2013 Mr Doggett sent an email to Mr Crickmore at 12.33 (referring to him as "Jimmy"), forwarding Officer Bond's email of 11 July 2013 informing Mr Crickmore that

for sales to Ireland he needed to put the Irish VAT number on the sales invoice and proof of export. He then stated:

> "See attached Due Diligence checklists which cover the type of information you can use to verify suppliers and customers. As much as this as you can cover will protect you.
>
> At the moment Vies does confirm the number and the trader (it looks as if he is a sole trader rather than a company). But if he is a company can you get a copy of the certificate of incorporation.
>
> Also a copy his certificate of VAT registration would be preferable.
>
> I would also suggest that you get confirmation that he is up to date with his VAT, although that is more relevant to suppliers in my view.
>
> If you can also confirm that you have met him and can confirm that he matched his passport details that would help.
>
> If you can get trade references as well?"

44. On 19 September 2013 Officer Bond emailed Mr Doggett stating that the latest return (for 08/13) needed to be verified. He asked for the "usual spreadsheet" and said that he would be looking to "clear it swiftly without a visit". Mr Doggett provided a copy of the working papers for the VAT return. There is no record of any visit having been undertaken, and a repayment of the full amount claimed was authorised by HMRC on 25 September 2013.

45. On 18 December 2013 Officer Bond visited Mr Crickmore and Mr Doggett in respect of the period 11/13. Officer Bond's notes include:

> (1) Officer Bond looked at all input tax entries where the VAT was over £15,000. This consisted of 11 invoices and just under £290,000 of the input tax claimed.
>
> (2) In the context of sales, Officer Bond examined around half of the invoices, in particular the export evidence for zero-rated sales. On the whole the evidence was satisfactory. He received those missing after the visit.
>
> (3) There was an inaccuracy in the return where deposits for two vehicles were paid, and the invoice received, but the deals never went through and the deposits were repaid. The VAT claimed was disallowed. Officer Bond noted there was no evidence this was deliberate, but there needs to be a procedure to ensure that any future similar instance is picked up in the correct period. He considered that the behaviour type was careless. In explaining this conclusion he recorded:
>
> > "No evidence of this being deliberate.
> >
> > No significant problems ever identified beforehand.
> >
> > Trader (despite his reputation) has always been compliant. There was good evidence that he genuinely attempted to get his office staff to follow procedures I had insisted on."

46. On 20 December 2013 HMRC emailed Crickmore Developments confirming that they were now registered to use HMRC's email validation service. The application for authorisation had included email addresses for four of the Crickmore businesses.

47. On 24 December 2013 Officer Bond wrote to M&M confirming the inaccuracy which had been identified in the VAT return for the period 11/13 as had been discussed during the

meeting earlier that month. £551,938.17 would be repaid to M&M rather than the original net repayment claimed of £625,826.17.

48. On 27 January 2014 Ms Roberts emailed Officer Bond stating that she was very worried that they seemed not be receiving replies back on the VAT validations within the 24-48 hours advised. Officer Bond said he would look into this.

49. On 3 April 2014 Officer Dean Witziers visited Mr Crickmore, Mr Doggett and David Wong (M&M's accountant) to check the return for the period 02/14. Officer Witziers' visit report includes:

> (1) Mr Crickmore explained the nature of the business, history as M&M Trading, bank account information, and its principal place of business.
>
> (2) Mr Crickmore stated that he often purchased and sold cars using "Autotrade Mail" as well as Autotrader. At present around 20% of all cars purchased were ordered using previous contacts, website searches and by auction. Most cars purchased this way were purchased based upon his understanding of which cars could be sold quickly but mostly to the orders of a potential buyer.
>
> (3) Mr Crickmore stated that most cars (80%) were originally ordered by an associate based in the Far East, who once ordered would inform M&M to complete the purchase of the vehicles in the UK and arrange for the onward export. This Malaysian associate was Mr Simal Popat, who traded as Autostyle Hong Kong Limited. Typically cars would be ordered by auction and M&M would complete all other actions as well as issue a sales invoice to Mr Popat around the date of shipment from the UK. Cars would typically take around five to six weeks to arrive in the Far East and Mr Crickmore would receive payment typically around the time of delivery at port. Mr Crickmore stated he acted as a "banker" in this arrangement, whereas Officer Witziers had stated that he was effectively giving Mr Popat five/six weeks of credit whilst the cars were at sea. Mr Crickmore stated that he only gave this type of credit to Mr Popat because he trusted him, and if necessary he could instruct the freight forwarder to withhold the car once it arrived if Mr Popat had failed to pay. So far that had not happened. Mr Crickmore's stated understanding was that Mr Popat held official permits to import around 700-800 cars per year and M&M was only one of other UK suppliers of cars. It was agreed with Mr Popat that M&M would make a profit of 6-7% on each car purchased for export.
>
> (4) Mr Crickmore confirmed that he did not complete the export declaration on the vehicle registration certificate, stating he wanted to avoid unwanted attention from the franchisees/manufacturers.

50. On 6 May 2014 Mr Crickmore sent a letter of complaint to the Local Compliance team at HMRC in respect of the compliance check on the return submitted for the period 02/14 on the grounds of unreasonable delay. That letter referred to Officer Bond having given advice on the books and records and procedures that must be kept and maintained in order to satisfy HMRC in the event of compliance checks. Mr Crickmore then noted that:

> "Our last return was submitted for 28/02/14 (a repayment claim of £788,401.80) and your compliance officer Mr Dean Witziers came along on a scheduled compliance visit on April 3rd, 2014. Mr Witziers confirmed he had not read our file and the voluminous notes and correspondence with Mr Bond and was not conversant with our business.

> Mr Witziers then proceeded to questioned how the business operated from the purchase to sale...
>
> Mr Witziers then departed from our offices mid afternoon, stating he would like to take the records with him to inspect at his offices. We asked for a time frame in which this would be dealt with. We agreed that it does take time, however, after numerous calls and emails, Mr Witziers stated that it was ongoing, yet after one month, we have received not one question or query in relation to this return.
>
> …
>
> We rely on cash flow in order to operate our business...we lacked the working capital tied up in this repayment claim."

51. On 24 July 2014 and 31 July 2014 Mark Fowler of Cartwright King Solicitors ("Cartwright King") wrote to HMRC on behalf of M&M in relation to the outstanding VAT reclaims.

52. On 24 July 2014, HMRC Special Investigations wrote to M&M explaining that the returns for the periods ending 02/14 and 05/14 had been selected for verification. The explanation as to why these repayment claims had been selected for verification was that HMRC's SI National MTIC teams are undertaking a risk-based programme targeted at those believed to be trading in transaction chains associated with MTIC fraud.

53. On 31 July 2014 Officer David Palmer of HMRC wrote to M&M to update them on the verification of the VAT return for the period 02/14. That letter, which is an example of a "Tax Loss Letter" states "we now know that 40 of the transactions (where the whole chain has been established) commenced with a defaulting trader, resulting in a loss to the public revenue that exceeds £375,000". The purchase invoices which had been traced in transaction chains commencing with a VAT loss are then listed. For all of them the supplier was Ikonic Solutions. That letter states that checks are still ongoing into the remaining deals in the period and states:

> "You should satisfy yourself that you have undertaken sufficient due diligence commensurate with the perceived risk to satisfy yourselves as to the integrity of your suppliers and customers, and of the underlying supply chains.
>
> It is your responsibility to determine which checks to carry out and whether to undertake transactions in light of the results of those checks…"

54. On 5 August 2014 Cartwright King responded to this letter, noting M&M's concern about Ikonic Solutions and the tax losses identified. They explained that M&M had recently been contacted by Mr Capper offering the supply of further vehicles and asking whether he was the defaulting trader in the chains or whether it was someone beyond him.

55. On 19 August HMRC sent another Tax Loss Letter to M&M in respect of the period 02/14, stating "we now know that a further 19 of the transactions commenced with a defaulting trader". The purchase invoices which had been traced in transaction chains commencing with a VAT loss are then listed, and the supplier in each case was JRS Sales & Service.

56. On 28 August 2014 Officer Palmer visited M&M with Officer Julia Danson, and they met with Mr Crickmore, Ms Roberts, Mr Fowler and Mr Wong. The notes include:

> (1) Mr Crickmore stated that he had not been aware of the need for due diligence whilst a payment trader, but after the first visit by Officer Essex he had become aware. The advice given by Mrs Essex had been reviewed by Officer Bond and further advice given

to Ms Roberts. Since then Ms Roberts had followed this advice and Officer Bond had been copied in to all verifications undertaken. No further queries had been raised until December 2013, but once again Officer Bond said he was satisfied and Mr Crickmore believed everything was being done correctly. There had been no advice to the contrary.

(2) Some customers – in particular Autostyle – sourced their own supplier and then asked Mr Crickmore to purchase on their behalf.

(3) Officer Palmer had requested clarity with regard to goods shipped to the Far East, apparently without insurance. Mr Crickmore stated that vehicles were not insured because of cost and Autostyle had never requested this. There was a gentleman's agreement with Autostyle and if any cars were lost or damaged then Autostyle are responsible. Officer Palmer queried the credibility of this given the value of the goods involved and Mr Crickmore said he would reconsider/revisit this.

(4) It takes four to five weeks for a car to be shipped to the Far East and when the cars leave the UK they belong to Mr Popat. However, the cars are not released until Mr Crickmore allows this. He is reliant on the shipping agent ensuring the vehicles are not released and he has a contractual arrangement in place with his shipping agent. Therefore if the goods are released without the authority of Mr Crickmore they will be accountable. The money from Mr Popat comes in on a rolling basis and Mr Crickmore is confident he will be paid.

(5) Mr Popat had put Mr Crickmore in touch with Ikonic at the start of the business relationship.

(6) Officer Palmer asked why Mr Popat didn't go directly to Ikonic and cut out the middle man. Mr Crickmore advised that Mr Popat put him in touch with lots of suppliers but he does this with a lot of other people too – Mr Popat uses this as a pool to source and fund vehicle purchases. Mr Popat is the main trader but main dealers will not export due to the franchise agreements in place in the Far East therefore intermediaries are introduced.

57. On 3 September 2014 Officer Palmer sent a Tax Loss Letter to M&M in respect of the period 02/14, this time identifying ten transactions that had commenced with a defaulting trader. The purchase invoices in those chains were from JMC Automobiles. On 25 September 2014 another Tax Loss Letter was sent for that period, in which one transaction was identified (the supplier being Club Billionaire) and another on 26 September 2014 (the supplier being Supply A Car). The transaction involving Club Billionaire was later removed as HMRC confirmed that this transaction was not linked to a tax loss.

58. On 29 September 2014 Officer Palmer sent a Tax Loss Letter to M&M in respect of the period 05/14, identifying five transactions that had commenced with a defaulting trader. The relevant suppliers to M&M were listed as Ikonic, Lakeview Motors, JMC Automobiles and Flexible (in respect of two transactions). On 29 September 2014 a further Tax Loss Letter was sent in respect of that period identifying another transaction which had commenced with a defaulting trader, the supplier being JMC Automobiles.

59. On 4 November 2014 Officer Palmer and Officer Danson had a meeting with Mr Crickmore, Mrs Roberts, Mr Wong and Mr Fowler. The note of that meeting included:

(1) Addressing supplies to Autostyle in 02/14 and 05/14, the payments could not be reconciled to the amounts invoiced, noting that Officer Palmer had not included Ikonic invoices 43 to 58 in his calculations as Mr Crickmore had said these deals did not take place. Mr Crickmore said that Autostyle had purchased the vehicles but that he didn't know who from. However, they had been shipped under the name of M&M who had paid the shipping costs which had subsequently been refunded. It was Mr Popat [Sarju] who advised which cars had been purchased and shipped. The vehicles referred to on Ikonic invoices 43 to 58 had not been purchased by M&M but they had been shipped by Mr Popat using M&M's account.

(2) Mr Crickmore stated that all due diligence was done by Ms Roberts, he doesn't get involved and doesn't meet the people involved or visit their sites. All he is concerned with is getting paid.

(3) Officer Palmer asked about due diligence and if any had been done in relation to Autostyle, Simal Popat or Sarju Popat. Mr Crickmore said no as he had dealt with them for years. He had continually asked to be told what to do and had followed advice. Ms Roberts said that she had often emailed her due diligence checks to Officer Bond and he had never queried them, challenged them or advised that they were inadequate.

(4) Officer Palmer suggested that Google checks could be done on non-EU customers.

(5) The last two deals in the 05/14 period that were done with Adapt 4 Work t/a Flexible showed a different VAT number on the invoice to that which had been sent to Wigan for verification. Ms Roberts said she doesn't do any checks on the documentation provided or check the details on invoices.

(6) Officer Palmer asked about the customers in the Republic of Ireland. Mr Crickmore said no site visits had been made. Officer Palmer asked why Mr Crickmore hadn't queried the trade classifications (B&W was registered as a furniture seller, John Burns in construction) and most of the addresses were residential. Mr Crickmore said that Officers Essex and Bond had never said that this should be done. Officer Palmer said that if proper due diligence had been done then concerns and questions would have been raised. Mr Crickmore accepted this but stated again that he wasn't aware of this until Officer Palmer had advised him. His main concern was taking litigation to retrieve outstanding monies.

(7) Officer Palmer reiterated that due diligence needs to be done and Mr Crickmore confirmed that this is being tightened up.

60. HMRC sent the following Tax Loss Letters to M&M for 08/14:

(1) On 14 November 2014 Officer Palmer stated that nine of the transactions where HMRC had established the whole chain commenced with a defaulting trader. The purchase invoices were listed, and these relate to three invoices from Adapt 4 Work, four from JMC and two from Supply A Car.

(2) On that same date Officer Palmer stated that an additional transaction had been identified as starting with a defaulting trader. The invoice was specified, and the supplier was Ikonic Solutions.

(3) On 15 December 2014 Officer Palmer stated that an additional transaction had been identified, the relevant supplier being OSD Cars.

61. On 27 November 2014 Officer Palmer sent another Tax Loss Letter for 02/14, identifying one transaction which had been traced back to a defaulting trader. The purchase invoice in question involved M&M's acquisition from DMD Vehicle Solutions. This was later reviewed and HMRC confirmed that transactions through DMD Vehicle Solutions were not linked to tax losses.

62. On 11 December 2014 HMRC informed M&M that the return for the period 11/14 had been selected for verification.

63. On 2 March 2015 Officer Palmer sent a Tax Loss Letter to M&M for 02/14, identifying another tax loss transaction. The supplier had been OSD Cars.

64. HMRC sent notices that VAT registrations had been cancelled as follows:

(1) on 7 February 2014, that the VAT registration number of James Quinn had been cancelled with effect from 24 January 2014. (We note that it had been verified by HMRC on 27 January 2014 in response to a request submitted on 20 January 2014.)

(2) on 6 August 2014, that the VAT registration number of Ikonic Solutions Ltd had been cancelled with effect from 24 July 2014;

(3) on 1 December 2014, that the VAT registration number of Lakeview had been cancelled with effect form 26 November 2014;

(4) on 5 December 2014, that the registration number of Supply A Car Limited had been cancelled with effect from 10 October 2014;

(5) on 15 January 2015 that the VAT registration number of Mr Colin O'Kelly had been deregistered with effect from 1 September 2014; and

(6) on 13 March 2015 that the VAT registration number of John Burns had been deregistered with effect from 13 October 2014.

65. The first letter notifying a decision which is under appeal was sent by HMRC on 3 June 2015. More followed, as set out at [2] above.

66. A Restraint Order was made on 7 August 2015 against Mr Crickmore, Mrs Kelly Crickmore and M&M under the Proceeds of Crime Act 2002, prohibiting them from disposing of, dealing with or diminishing the value of the assets of Mr Crickmore. The effect of this order was that the business became virtually non-existent. That order was varied on 7 February 2018 to remove M&M and any assets of M&M from the ambit of the Restraint Order. It was fully discharged on 18 September 2018. HMRC returned a large volume of documentation to Mr Crickmore on 16 October 2018, but confirmed at that time that there was additional material they had mistakenly failed to bring with them. That was delivered on or around 25 October 2018.

67. In January 2017 the case was allocated to Officer Danson. She explained that prior to this her involvement had been confined to attending visits with Officer Palmer as note-taker. She conducted a detailed review of the information on HMRC's system and that which she requested from The Khan Partnership (who by this time were acting for M&M). The total amount originally denied on the *Kittel* basis was reduced – some deals originally believed to have traced back to a fraudulent default did not actually do so, and the original denial had been based on input tax amounts shown on purchase invoices whereas M&M had (wrongly) used

the cash accounting scheme and in some cases had claimed a different input tax amount to that which was shown on the invoices.

RELEVANT LEGISLATION

Denial of input tax credit

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

> "**Article 167**
>
> A right of deduction shall arise at the time the deductible tax becomes chargeable…
>
> **Article 168**
>
> In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT, which he is liable to pay:
>
> (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person…"

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

70. The above provisions are reflected in UK domestic legislation by ss24 to 26 of the Value Added Tax Act 1994 ("VATA 1994"), which provide as follows:

> "**24 Input tax and output tax**
>
> (1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say-
>
> (a) VAT on the supply to him of any goods or services;…
>
> being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him…
>
> (2) Subject to the following provisions of this section, "output tax", in relation to a taxable person, means VAT on supplies which he makes…
>
> (6) Regulations may provide-
>
> (a) for VAT on the supply of goods or services to a taxable person… to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;…
>
> **25 Payment by reference to accounting periods and credit for input tax against output tax**
>
> (1) A taxable person shall-
>
> (a) in respect of supplies made by him…

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

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

26 Input tax allowable under section 25

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

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

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

71. The regulations to which reference is made above are The Value Added Tax Regulations 1995 (SI 1995/2518) (the "VAT Regulations").

72. Regulation 13 of the VAT Regulations provides:

"13 Obligation to provide a VAT invoice

(1) Save as otherwise provided in these Regulations, where a registered person—

(a) makes a taxable supply in the United Kingdom to a taxable person…

he shall provide such persons as are mentioned above with a VAT invoice."

73. Regulation 29 of the VAT Regulations provides:

"**29 Claims for input tax**

(1) …save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable…

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of-

(a) a supply from another taxable person, hold the document, which is required to be provided under regulation 13;…

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other documentary evidence of the charge to VAT as the Commissioners may direct."

Denial of zero rating

74. In relation to the dispatch of goods to another Member State, the relevant provisions of the 2006 Directive state:

"**Article 2**

1. The following transactions shall be subject to VAT:

…

(b) the intra-Community acquisition of goods for consideration within the territory of a Member State by:

(i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such…

Article 131

The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.

Article 138

1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began…"

75. Turning to the domestic legislation, so far as relevant s30 VATA 1994 provides:

"**30 Zero-rating**

(1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section-

(a) no VAT shall be charged on the supply: but

(b) it shall in all other respects be treated as a taxable supply;

and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

…

(8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where-

(a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both-

(i) the removal of the goods from the United Kingdom; and

(ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

(b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled.

…

(10) Where the supply of any goods has been zero-rated by virtue of subsection (6) above or in pursuance of regulations made under subsection (8), (8A) or (9) above and-

(a) the goods are found in the United Kingdom after the date on which they were alleged to have been or were to be exported or shipped or otherwise removed from the United Kingdom; or

(b) any condition specified in the relevant regulations under subsection (6), (8), (8A) or (9) above or imposed by the Commissioners is not complied with,

and the presence of the goods in the United Kingdom after that date or the non-observance of the condition has not been authorised for the purposes of this subsection by the Commissioners, the goods shall be liable to forfeiture under the Management Act and the VAT that would have been chargeable on the supply but for the zero-rating shall become payable forthwith by the person to whom the goods were supplied or by any person in whose possession the goods are found in the United Kingdom; but the Commissioners may, if they think fit, waive payment of the whole or part of that VAT."

76. Regulation 134 of the VAT Regulations provides:

"**134 Supplies to persons taxable in another member State**

Where the Commissioners are satisfied that-

(a) a supply of goods by a taxable person involves their removal from the United Kingdom,

(b) the supply is to a person in another member State,

(c) the goods have been removed to another member State, and

(d) the goods are not goods in relation to whose supply the taxable person has opted, pursuant to section 50A of the Act, for VAT to be charged by reference to the profit margin on the supply,

The supply, subject to such conditions as they may impose, shall be zero-rated."

CASE LAW

Denial of input tax credit – Kittel principle

77. The European Court of Justice (the "CJEU"), in its judgment dated 6 July 2006 in the joined cases of *Axel Kittel v Belgium and Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2008] STC 1537 ("*Kittel*"), confirmed that taxable persons who "knew or should have known" that the supplies in which input tax was incurred were connected with the fraudulent evasion of VAT would not be entitled to claim a credit in respect of that VAT input tax in the manner described above:

"44. The Court drew the conclusion, at paragraph 51 of *Optigen*, that transactions which are not themselves vitiated by VAT fraud constitute supplies of goods effected by a taxable person acting as such and an economic activity within the meaning of Article 2(1), Article 4 and Article 5(1) of the Sixth Directive where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or

subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge.

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

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

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

52. It follows that, where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void, by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller, causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud…

55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively … It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends…

56. In the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.

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

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

59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'.

> 60. It follows from the foregoing that the answer to the questions must be that where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void - by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller - causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.
>
> 61. By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."

78. In *Mahagében kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Foigazgatósága and Peter David v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Foigazgatósága* (C-80/11 and C-142/11) [2012] STC 1934 the CJEU gave additional guidance in its judgment which was dated 21 June 2012:

> "53 According to the Court's case-law, traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT (see *Kittel and Recolta Recycling*, paragraph 51).
>
> 54 On the other hand, it is not contrary to European Union law to require a trader to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion (see, to that effect, Case C-409/04 *Teleos and Others* [2007] ECR I-7797, paragraphs 65 and 68; *Netto Supermarkt*, paragraph 24; and Case C-499/10 *Vlaamse Oliemaatschappij* [2011] ECR I-0000, paragraph 25).
>
> 55 Moreover, in accordance with the first paragraph of Article 273 of Directive 2006/112, Member States may impose obligations, other than those provided for by that directive, if they consider such obligations necessary to ensure the correct levying and collection of VAT and to prevent evasion.
>
> 56 However, even though that provision gives the Member States a margin of discretion (see Case C-588/10 *Kraft Foods Polska* [2012] ECR I-0000, paragraph 23), that option may not be relied upon, according to the second paragraph of that article, in order to impose additional invoicing obligations over and above those laid down in Chapter 3, headed 'Invoicing', of Title XI, headed 'Obligations of taxable persons and certain non-taxable persons', of that directive and, in particular, Article 226 thereof.
>
> 57 Furthermore, the measures which the Member States may adopt under Article 273 of Directive 2006/112, in order to ensure the correct levying and collection of the tax and to prevent evasion, must not go further than is necessary to attain such objectives. Therefore, they cannot be used in such a

way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT, which is a fundamental principle of the common system of VAT (see, to that effect, inter alia, *Gabalfrisa and Others*, paragraph 52; *Halifax and Others*, paragraph 92; Case C-385/09 *Nidera Handelscompagnie* [2010] ECR I-0000, paragraph 49; and *Dankowski*, paragraph 37).

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

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

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

61 However, the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to deduct VAT, first, to ensure that the issuer of the invoice relating to the goods and services in respect of which the exercise of that right to deduct is sought has the capacity of a taxable person, that he was in possession of the goods at issue and was in a position to supply them and that he has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, second, to be in possession of documents in that regard.

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

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

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

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

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

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

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

> "55. If HMRC was right and it was sufficient to show that the trader should have known that he was running a risk that his purchase was connected with fraud, the principle of legal certainty would, in my view, be infringed. A trader who knows or could have known no more than that there was a risk of fraud will find it difficult to gauge the extent of the risk; nor will he be able to foresee whether the circumstances are such that it will be asserted against him that the risk of fraud was so great that he should not have entered into the transaction. In short, he will not be in a position to know before he enters into the transaction that, if he does so, he will not be entitled to deduct input VAT. The principle of legal certainty will be infringed.
>
> 56. It must be remembered that the approach of the court in *Kittel* was to enlarge the category of participants. A trader who should have known that he was running the risk that by his purchase he might be taking part in a transaction connected with fraudulent evasion of VAT, cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in *Kittel*, nor is it the language it used. In those circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase he was taking part in such a transaction, as the Chancellor concluded in his judgment in *BSG*:—
>
> "The relevant knowledge is that BSG ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough." (§ 52)
>
> 57. HMRC object that the principle should not be restricted to those cases where a trader has deliberately refrained from asking questions lest his suspicions should be confirmed. This has been described as a category of case which is so close to actual knowledge that the person is treated as having received the information which he deliberately sought to avoid (see Lord Scott in *Manifest Shipping Co Limited v Uni-Polaris Insurance Co Limited and Others* [2001] UKHL 1 and *White v White* [2001] 1 WLR 481 paragraphs 16 and 17, 486 E-G). HMRC seeks to rely upon the views of Lewison J in *Livewire and Olympia* [2009] EWHC 15 (Ch) (§ 85) and Burton J in *R (Just Fabulous) v HMRC* [2008] STC 2123 (§ 45) that:—
>
> "The principle of legal certainty must be trumped by the 'objective recognised and encouraged by the Sixth Directive'."

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

81. Moses LJ in *Mobilx* then provided the following guidance:

> "59. The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel*.
>
> 60. The true principle to be derived from *Kittel* does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion."

82. On questions of proof, Moses LJ stated:

> "81. HMRC raised in writing the question as to where the burden of proof lies. It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary.
>
> 82. But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. As I indicated in relation to the *BSG* appeal, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was."

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

> "109. Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature

> e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> 110. To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.
>
> 111. Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

84. In *Fonecomp Limited v HMRC* [2015] EWCA Civ 39 it was submitted that the words "should have known" (per Moses LJ in *Mobilx*) meant "has any means of knowing" (at [51]) and that the Appellant could not have found out about the fraud even if it made inquiries because the fraud did not relate to the chain of transactions with which it was concerned. Arden LJ in the Court of Appeal (with whom McFarlane and Burnett LJJ agreed) said, at [51]:

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

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

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

> "29…Moses LJ was clear that the test in Kittel was a simple one that should not be over refined. It is, to us, inconceivable that Moses LJ's example of an application of part of that test, the 'no other reasonable explanation', would lead to the test becoming more complicated and more difficult to apply in practice. That, in our view, would be the consequence of applying the interpretation urged upon us by Mr Brown. In effect, HMRC would be required to devote time and resources to considering what possible reasonable explanations, other than a connection with fraud, might be put forward by an appellant and then adduce evidence and argument to counter them even where the appellant has not sought to rely on such explanations. That would be an unreasonable and unjustified evidential burden on HMRC. Accordingly, we do not consider that HMRC are required to eliminate all possible reasonable explanations other than fraud before the FTT is entitled to conclude that the appellant should have known that the transactions were connected to fraud.
>
> 30. Of course, we accept (as, we understand, does HMRC) that where the appellant asserts that there is an explanation (or several explanations) for the circumstances of a transaction other than a connection with fraud then it may be necessary for HMRC to show that the only reasonable explanation was fraud. As is clear from Davis & Dann, the FTT's task in such a case is to have regard to all the circumstances, both individually and cumulatively, and then decide whether HMRC have proved that the appellant should have known of the connection with fraud. In assessing the overall picture, the FTT may consider whether the only reasonable conclusion was that the purchases were connected with fraud. Whether the circumstances of the transactions can reasonably be regarded as having an explanation other than a connection with fraud or the existence of such a connection is the only reasonable explanation is a question of fact and evaluation that must be decided on the evidence in the particular case. It does not make the elimination of all possible explanations the test which remains, simply, did the person claiming the right to deduct input tax know that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT or should he have known of such a connection."

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

Denial of zero rating – Mecsek principle

88. The principle that a right existing for VAT purposes may be restricted in the context of fraudulent evasion of VAT also applies in relation to a right to exemption from VAT. In *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Foigazgatósága* (C-273/11) [2013] STC 171 ("*Mecsek*"), the CJEU stated as follows:

> "54. If the referring court were to reach the conclusion that the taxable person concerned knew or should have known that the transaction which it had carried out was part of a tax fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be asked of it to prevent that fraud from being committed, there would be no entitlement to exemption from VAT.

> 55. In light of all the foregoing considerations, the answer to Questions 1 and 2 is that art 138(1) of Directive 2006/112 is to be interpreted as not precluding, in circumstances such as those of the case before the referring court, refusal to grant a vendor the right to the VAT exemption for an intra-Community supply, provided that it has been established, in the light of objective evidence, that the vendor has failed to fulfil its obligations as regards evidence, or that it knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser, and that it had not taken every reasonable step within its power to prevent its own participation in that fraud."

89. The CJEU subsequently approved the principle set out in [54] of *Mecsek* in *Staatssecretaris van Financien v Schoenimport 'Italmoda' Mariano Previti vof and other cases* (C-131/13, C-163/13, C-164/13) [2014] 12 WLUK 662, at [45]. The CJEU stated:

> "49. In the light of the foregoing considerations, it is, in principle, the responsibility of the national authorities and courts to refuse the benefit of the rights laid down by the Sixth Directive when they are claimed fraudulently or abusively, irrespective of whether those rights are rights to a deduction, to an exemption or to a VAT refund in respect of intra-Community supplies, as at issue in the case in the main proceedings.
>
> 50. It must further be noted that, according to settled case-law, that is the position not only where tax evasion has been carried out by the taxable person itself but also where a taxable person knew, or should have known, that, by the transaction concerned, it was participating in a transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in the supply chain (see to that effect, inter alia, judgments in *Kittel and Recolta Recycling* , EU:C:2006:446, paragraphs 45, 46, 56 and 60, and *Bonik, EU:C:2012: 774* , paragraphs 38 to 40).
>
> …
>
> 69… the Sixth Directive must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of VAT, that person was participating in evasion of VAT committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefitting from those rights".

90. The case law set out at [77] to [87] above in relation to the "should have known" limb of the *Kittel* principle apply equally to considering a denial of zero rating based on *Mecsek*. However, we do also have regard to the clear fact that the CJEU in *Mecsek* required that the trader knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser and that (at [55]) "it had not taken every reasonable step within its power to prevent its own participation in that fraud".

ISSUES

91. The issues to be determined are as follows:

(1) was there a tax loss;

(2) if so, did the tax loss result from fraudulent evasion;

(3) if so, were the M&M's transactions which are the subject of appeal connected with that fraudulent evasion;

(4) if so, did M&M know or should it have known that its transactions were so connected, and, in respect of the *Mecsek* decisions, did M&M take every reasonable step within its power to prevent its own participation in that fraud.

92. The burden of proof rests with HMRC; per Moses LJ in *Mobilx* (at [81]):

> "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."

93. In *HMRC v Citibank NA, E Buyer UK Limited* [2017] EWCA 1416 (Civ) the Court of Appeal held that satisfying the burden of proof in respect of the allegation that M&M knew or should have known that its transactions were connected with the fraudulent evasion of VAT does not require HMRC to prove that the taxpayer (or those acting on its behalf) was dishonest or fraudulent. We are bound by this conclusion and consider that it applies equally to denials of zero rating based on *Mecsek*.

94. The only standard of proof is the balance of probabilities.

95. The Tribunal notes that *Fairford* directions were issued on 11 September 2018. This did not have the immediate effect of narrowing down the issues between the parties – the List of Issues filed on behalf of M&M on 14 January 2019 made it clear that whilst M&M accepted the existence of some transaction chains, it did not accept that (i) certain supplies had occurred as specified by HMRC in 65 of the chains (setting out in each instance the point of dispute), (ii) there was an orchestrated fraud or (iii) any of the tax losses (the existence of some of which was disputed) were fraudulent.

96. Ongoing communication between the parties and provision of further information meant that, by the time of the hearing, Mr Sherratt was able to confirm that (i) M&M accepted the existence of the transaction chains, (ii) M&M did not challenge that there was a tax loss in each of these transaction chains, and (iii) M&M thus accepted that its transactions which are the subject of this appeal are therefore connected with that tax loss. M&M did, however, take the position, in addition to denying that M&M knew or should have known that its transactions were connected with fraudulent evasion, that it was not able to confirm that the tax losses resulted from fraudulent evasion (rather than, eg, default by reason of insolvency). Mr Sherratt highlighted in particular those four transactions where the defaulter was stated to be either Christopher Griffiths (one transaction) or Supply A Car Limited (three transactions). We therefore consider whether the evasion of VAT was fraudulent in respect of all of the defaulting traders at [125**Error! Reference source not found.**] to [273].

97. The agreed transaction chains are set out at Annex 1 to this Decision. Each transaction concerned the purchase and sale of one vehicle by M&M, and the numbering of each transaction is based on the invoice number issued by M&M to the purchaser in respect of each transaction.

DEFINED TERMS USED FOR SUPPLIERS AND CUSTOMERS

98. In the Chronology we have referred to the counterparties by the names used by HMRC or M&M in the relevant context at that time.

99. In the remainder of this Decision, we use the following defined terms:

A4W	Adapt 4 Work Limited or Adapt 4 Work Limited t/a Flexible
Autostyle	Autostyle Hong Kong Limited
Autovillage	Autovillage Sales and Maintenance Limited
B&W	B&W Direct Trading Limited
Ikonic	Ikonic Solutions Ltd
JRS	JR Stinson Commerials and Cars Limited
JMC	JMC Automobiles Limited
Lakeview	Ruairi McNulty t/a Lakeview Motors
Mr Burns	John Burns
Mr Griffiths	Christopher Griffiths or Chris Griffiths Car Sales
Mr O'Kelly	Colin O'Kelly
Mr Quinn	James Quinn
OSD	OSD Limited or OSD Limited t/a O Davis Cars
SACL	Supply A Car Limited
Swift	Swift Assets Limited

EVIDENCE

100. We considered 12 lever arch files of documents, including correspondence between the parties, notes of visit reports compiled by HMRC officers, due diligence materials and copy documents and invoices relating to the vehicles in the appeal. We also considered a number of supplemental documents produced during the hearing.

101. We received witness statements from the following individuals, who gave evidence on oath and were examined and cross-examined, and who we had the opportunity to question:

(1) Officer Julia Danson, officer of HMRC, who had joined HMRC's MTIC team in 2009 and moved to the Labour Market Investigation Team in 2012 – first witness statement dated 30 January 2018 and second witness statement dated 1 October 2018. Officer Danson's witness statements address the background to HMRC's action against M&M, a summary of M&M's history and its contact with HMRC, the connection with fraudulent tax losses, whether M&M knew or should have known, the commercial checks undertaken by M&M and evidence around contrivance;

(2) Officer Stefan Tosta, officer of HMRC, who has been a member of the Fraud Investigation Service Operational Team based in Leeds since 2012. His witness statement is dated 23 January 2018 and he was the allocated officer for Ikonic from 22 July 2014; and

(3) Mr James Crickmore, partner of M&M – first witness statement dated 13 June 2018 and second witness statement dated 14 December 2018.

102. As to our evaluation of this evidence, we accept that of Officer Danson which was primarily given as the officer responsible for this matter since 2017. We address further the evidence of Officer Tosta and Mr Crickmore in the Discussion.

103. We also had witness statements from the following individuals, who were not required to attend the hearing:

(1) Officer Emma Harris, officer of HMRC who is a member of HMRC's Fraud Investigation Service Operational Team. Her witness statement, dated 23 January 2018, deals with SACL;

(2) Officer Geraldine Fazakerley, officer of HMRC who was a member of the MTIC team in the Fraud Investigation Service. Her witness statement, dated 26 January 2018, deals with A4W;

(3) Officer Lisa Wilkinson, officer of HMRC who is a member of the MTIC team in Belfast. Her witness statement was stated (on the front page) to be dated 11 October 2017 but the date next to her signature on the last page is 24 January 2018 and deals with Swift. There was another witness statement from Officer Wilkinson, also stated to be the "First Statement" and also stated to be dated 11 October 2017. However, that is different to the statement of 24 January 2018 as it deals with Mr McNulty and Lakeview and the date next to her signature is 29 January 2018; and

(4) Officer Susan Hirons, officer of HMRC who has been a member of the MTIC team since April 2001. Her witness statement, dated 23 January 2018, deals with Mr Griffiths.

104. We have set out above the discrepancies as to form in relation to the two witness statements of Officer Wilkinson. Officer Wilkinson had not been required to attend the hearing, and we were not referred to these statements during the hearing. Perhaps as a result of this, the parties (in particular M&M) did not make any representations on these matters. We consider that whilst there are errors in form, it is evident from the face of the documents that these two witness statements deal with different traders and consider that no confusion can have been caused. Having regard to the overriding objective in rule 2 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules"), we considered that it is in the interests of fairness and justice that we accept the admittance of these two witness statements from Officer Wilkinson.

105. We noted that, in addition to factual matters, the witness statements of HMRC officers contained opinions and conclusions to be drawn from the evidence. As the Tribunal observed in *Megantic Services Limited v HMRC* [2013] UKFTT 492, at [15], such evidence:

> "… is not a matter of fact but a matter of opinion. It is merely a view of a witness on a matter on which the tribunal itself must reach its own conclusion, and as such is of no value as evidence. Such evidence may rightly be excluded on that basis. In most cases, however, we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude."

106. We have adopted a similar approach in this case.

107. We have considered all the evidence before us, even when it has not been referred to within the body of this decision. We have not referred to all of the material - that does not mean that the Tribunal has not given it due consideration.

Adverse inferences

108. Mr Foulkes submitted that we may draw adverse inferences against M&M for its failure to call any witness from any of its counterparties to support its case on the facts (whether from

its main customer, Autostyle, or from its suppliers whose status as fraudulent defaulters is challenged by M&M), or any other individual involved in the transactions on behalf of M&M (notably Ms Roberts, but also extending to others who acted for M&M during the periods under appeal, namely Mr Doggett and Mr Wong). Mr Sherratt submitted this would not be appropriate but that if we were to consider that the absence of particular witnesses was significant such that adverse inferences were to be drawn, he invited us to consider HMRC's failure to adduce witness evidence from the officers who had dealt with M&M prior to Officer Danson, in particular Officer Bond.

109. The relevant principles were summarised by Morgan J in *British Airways Plc v Airways Pension Scheme Trustee Ltd* [2017] EWHC 1191 (Ch):

> "141. The consideration which a court should give to the fact that a potentially relevant witness has not been called is well established. I can take the principles from the judgment of Brooke LJ in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at P340 where, having reviewed the authorities, he said:
>
> "From this line of authority I derive the following principles in the context of the present case:
>
> (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."
>
> 142. This statement of principle is in accordance with the earlier decisions of the House of Lords in *R v IRC ex p. T C Coombs & Co* [1991] 2 AC 283 and *Murray v DPP* [1994] 1 WLR 1 and the comments of Lord Sumption in the Supreme Court in *Prest v Prest* [2013] 2 AC 415 at [44].
>
> 143. These principles mean that before I draw an inference and made a finding of fact adverse to a witness who was not called, I need to ask myself:
>
> (1) is there some evidence, however weak, to support the suggested inference or finding on the matter in issue?
>
> (2) has the Defendant given a reason for the witness's absence from the hearing?
>
> (3) if a reason for the absence is given but it is not wholly satisfactory, is that reason "some credible explanation" so that the potentially detrimental effect of the absence of the witness is reduced or nullified?
>
> (4) am I willing to draw an adverse inference in relation to the absent witness?

(5) what inference should I draw?"

110. M&M has drawn our attention to the particular circumstances with which the authorities are concerned, noting, by way of example, that:

(1) In *Prest v Prest* the adverse inference drawn was against a husband in proceedings to which he was party who had "repeatedly flouted his duty to give full frank and clear disclosure…was in breach of many orders" at [12].

(2) In *Wisniewski* the adverse inference drawn was against a health authority who had been the employer of a doctor whose decision was the issue on which damage to the unborn child turned Brooke LJ noted that the trial judge had warned the defendant that he wanted to indicate that he had "never come across a case before where a person had chosen not to come to defend his clinical judgment".

(3) In *British Airways* Morgan J considered whether an adverse inference should be drawn against the Trustees for failing to call material decision makers from amongst themselves (a party to proceedings) as eight trustees had made the decision in question and the absence of any explanation as to the absence of three of them was criticised.

(4) In *Astex Therapeutics Limited v Astranzenca AB* [2017] EWHC 1442 (Ch) the High Court was invited to draw inferences against the defendant on the basis that it had not called witnesses who were former employees and had not established by evidence that the individuals had declined to cooperate with them and not established that they were resident in countries which did not have procedures for taking evidence in support of foreign witnesses. Arnold J dismissed the argument that the court should draw adverse inferences from absent witnesses resident abroad.

111. We have carefully considered this approach in respect of the potential witnesses who have been identified. Whilst bearing in mind all of the principles summarised by Morgan J above, we have particular regard at the outset to whether a person might be expected to have "material evidence" to give and whether there is a reason for that person's absence (as the remaining principles go to the subsequent question of what inference to draw from such absence).

112. Mr Crickmore was the only witness giving evidence on behalf of M&M. HMRC point out that other individuals who either worked for M&M or advised M&M who might have been expected to give evidence are Ms Roberts, Mr Wong and Mr Doggett. No reason was proferred for the absence of these individuals, save that they were not necessary – Mr Sherratt pointed out that Mr Crickmore was the partner in M&M, he was the decision-maker and it is his knowledge that is relevant. He can give the evidence that is needed. We would be inclined to accept this proposition, but for the following:

(1) whilst Mr Crickmore's explanation of Ms Roberts' role changed (see [366]), there were occasions where Mr Crickmore referred to steps he had asked Ms Roberts to take, and he referred in his witness statement to there being "processes" in place for due diligence. These were not written down, and it would, for example, have been relevant to hear evidence from Ms Roberts as to the approach taken by M&M to requesting due diligence information from counterparties and steps taken upon receipt of this information; and

(2) Mr Crickmore challenged aspects of HMRC's visit reports of some of the meetings which occurred before and during the periods under appeal. The reports show that Mr

Crickmore was always accompanied by at least one other person at those meetings – Mr Doggett initially, and then later Mr Wong and/or Ms Roberts as well. The evidence of such individuals as to what was said at those meetings would have been relevant in the light of Mr Crickmore's challenge to the reports.

113. We do therefore consider that it may, in principle, be appropriate to draw adverse inferences from M&M's failure to call any of these individuals. However, it is clear that any such inference must be carefully drawn having regard to the evidence otherwise available on the matter. With that in mind, we do not take a sweeping approach but have identified in the Discussion the limited areas where we do draw such an inference.

114. We consider that the position is different in respect of the counterparties to M&M's transactions. These are third parties, and were not employed by M&M, acting for on behalf of M&M or alleged to be controlled by M&M. Many of these counterparties are alleged by HMRC to be fraudulent defaulters (some of whom are stated by HMRC to be missing or, in Mr Burns' case, non-existent). Autostyle is not alleged to be a fraudulent defaulter, but the links between Autostyle and M&M form a key part of HMRC's submission that M&M knew or should have known that its transactions were connected to fraudulent evasion and are said to constitute evidence of contrivance. Whilst Mr Sherratt did not suggest that M&M had even asked any of the counterparties to give evidence, we would not have expected them to do so and are satisfied that the accusations being made against these counterparties by HMRC (and the potential to harm themselves further by giving evidence) sufficiently explains the lack of evidence from them. No adverse inferences are drawn from their absence.

115. As to HMRC's failure to adduce evidence from officers other than Officer Danson, we have concluded that we should accept HMRC's submission that this criticism is unfounded on the facts in this case. As a starting-point, we note that s2(4) of the Commissioners for Revenue and Customs Act 2005 ("CRCA 2005") provides that anything, including anything in relation to legal proceedings, begun by or in relation to one officer may be continued by or in relation to another. Furthermore (and as also addressed at [283] to [289] below in the context of HMRC's conduct), it is M&M's knowledge and actions which are under appeal not those of HMRC. We do note that the relationship between M&M and Officer Bond formed a key part of M&M's submissions. The majority of the communications between them are included in the papers before us, including Officer Bond's visit reports.

116. The matter on which it became clear that M&M did want Officer Bond's evidence related to Mr Crickmore's challenge giving evidence as to the accuracy of the visit reports of Officer Bond. However, we consider that such challenge could not reasonably have been known to HMRC before the hearing, indeed it was not known until Mr Crickmore gave evidence. We have carefully reviewed the communications between the parties that are before us and Mr Crickmore's two witness statements in reaching this conclusion. We note that there are two areas where Mr Crickmore refers in his statements to "discrepancies" in HMRC's visit reports. However, these matters relate to Mr Crickmore's challenge to the conclusions drawn by HMRC (that M&M was a high risk trader) and inaccurate information in the preamble to the report stating (wrongly) that Mr Colin Crickmore had been in prison for VAT fraud. The identification of these discrepancies was not a challenge to the accuracy of the report as a record of the visit. Therefore, whilst no explanation was given by Mr Foulkes as to the reason for the failure to call Officers Bond, Eaton or Essex, save as to note that the events in question were dealt with in Officer Danson's witness statements, we do not draw any adverse inferences from the absence of these other officers.

Hearsay

117. Mr Sherratt submitted that the Tribunal should exercise caution as to the weight we give to some of the evidence produced by HMRC given that it is hearsay, in that it contains assertions by someone other than as a witness before us. There were two particular categories of evidence identified in this respect:

> (1) information received by HMRC from authorities in the Republic of Ireland in response to exchange of information requests by HMRC as to the status of various traders. Such requests are stated by HMRC to be Standing Committee for Administrative Cooperation ("SCAC") requests and the responses were referred to as the SCAC reports; and
>
> (2) transcripts of two interviews of Mr Crickmore by HMRC officers where he was interviewed under caution (in 2009 and 2016). The various materials referred to by the interviewing officers have not been disclosed (nor have they been requested by M&M), and Mr Crickmore was not charged with any offence on either occasion.

118. Rule 15(2) of the Tribunal Rules provides that the Tribunal may admit evidence whether or not the evidence would be admissible in a civil trial in the UK. M&M did not seek to argue otherwise.

119. The SCAC reports were relied upon by HMRC to support its case that the defaulting traders were fraudulent defaulters, and as part of its argument (relevant to whether M&M knew or should have known) as to contrivance. We do have regard to the status of this evidence as hearsay when considering the weight to be attached to it (in particular whether there is any other evidence which suggests the contrary) and the purpose for which it is adduced when we consider the content of these reports.

120. We should, however, set out more fully our consideration of the weight to be given to the transcripts of the interviews under caution of Mr Crickmore. These took place on two dates:

> (1) Mr Crickmore was interviewed under caution by Rachael Sampson and Jeff Harvey of HMRC on 22 April 2009 at Parkside Police Station (the "2009 Interview"). We had a transcript of that interview which was conducted in two parts from 10.45 to 11.29 and 12.39 to 13.04 but no additional material. From the transcript it appears that Mr Crickmore had been arrested earlier that day, but no charges were subsequently brought.
>
> (2) Mr Crickmore was interviewed under caution by Ian Baxter and Matthew Neal of HMRC on 9 June 2016 at Parkside Police Station (the "2016 Interview"). That interview was conducted in two parts that day (from 10.30-11.48 and from 12.59 to 13.47). We had a transcript of that interview, but nothing else. Mr Crickmore was not arrested or charged with any offence.

121. The 2009 Interview took place several years before the periods under appeal, and two years before M&M Trading was established and began business. There was no challenge to the accuracy of the transcript (the language of which shows that it was made from tape-recorded interviews). In that interview various allegations were made by HMRC officers to Mr Crickmore, which he denied. We have not had sight of any evidence which HMRC allege supported such allegations, and we give no weight to the accusations made against various individuals and counterparties. However, whilst recognising that this transcript is hearsay and

of its nature prejudicial to Mr Crickmore, we conclude that we should have regard to, and give weight to, what Mr Crickmore was told by HMRC officers in that interview about fraud (as considered further under "M&M's general awareness of VAT fraud" below). By this we do not accept that any of what the HMRC officers said was true; however, what they said is relevant to Mr Crickmore's general awareness of the risk of fraud.

122. The subject matter of the 2016 Interview overlapped with the transactions under appeal. That interview was stated to be in relation to allegations of cheating the public purse, money laundering and suspicion of being a member of an organised crime group. We note that Mr Crickmore denied being guilty of these offences when asked and no charges were brought against him. Whilst some of the material put to Mr Crickmore in that interview may be in the papers before us, they are not identified or exhibited as such. We give no weight to the allegations made by HMRC officers in that interview. We do, however, consider the statements and responses given by Mr Crickmore in that interview in assessing the consistency of his explanation of various matters at different times (as considered further under "Contrivance" below).

DISCUSSION

123. Given that M&M accept that there was a tax loss and that the transactions which are the subject of the appeal are connected with those tax losses, we need to decide whether, on the balance of probabilities, HMRC have established that:

(1) those tax losses resulted from fraudulent evasion of VAT; and

(2) M&M knew or should have known that its transactions were connected with that fraudulent evasion and, in respect of the *Mecsek* decisions, whether it took every reasonable step within its power to prevent its own participation in that fraud.

124. We have considered and addressed the submissions of the parties throughout.

WHETHER EVASION OF VAT WAS FRAUDULENT

125. Mr Sherratt submitted that we should assess whether the defaulters were fraudulent in two stages:

(1) whether any given default occurred in the context of a fraudulent evasion of VAT; and

(2) whether HMRC had established that the transactions were contrived such that they can be said to have occurred in the course of an MTIC chain.

126. We disagree; only the first limb is relevant to this issue. Evidence and submissions around contrivance are relevant to the parties' arguments in respect of whether M&M knew or should have known that its transactions were connected with the fraudulent evasion of VAT; they are not an additional test that needs to be met before it can be concluded that the evasion of VAT was fraudulent.

127. Mr Sherratt indicated that M&M challenged HMRC's conclusion that Mr Griffiths and SACL were fraudulent defaulters (rather than, eg, insolvent traders). The evidence and submissions are considered in each case below. However, for the remaining defaulters – A4W, Autovillage, B&W, Mr O'Kelly, Ikonic, Mr Quinn, Mr Burns, Lakeview, and Swift (the "Unchallenged Defaulters") - he did not accept that they were fraudulent by which he clarified that M&M were not in a position to know that this was the case. Instead, M&M offered no submissions or evidence against HMRC's position in respect of these Unchallenged Defaulters.

128. HMRC therefore still need to meet the burden of proof in respect of these Unchallenged Defaulters as they do with Mr Griffiths and SACL. We therefore consider the evidence adduced in respect of all of the defaulters, and refer to the submissions made by M&M in respect of Mr Griffiths and SACL.

129. The defaulting traders in the *Kittel* chains are A4W, Mr Griffiths, Ikonic, Lakeview, SACL and Swift. The defaulting traders in the *Mecsek* chains are Autovillage, B&W, Mr O'Kelly, James Quinn and John Burns.

Defaulters in chains in respect of which HMRC denied credit for input tax

Adapt 4 Work Limited t/a Flexible

130. Officer Fazakerley prepared a witness statement in respect of A4W. She was not asked to attend the hearing. We make the following findings of fact.

131. A4W was incorporated on 14 January 2013 and its initial directors were John McEvoy and Conrad Howard (although Mr Howard resigned on 1 November 2013). It applied for VAT registration on 12 March 2013, stating that its main business activity was "training services to unemployed and school children".

132. HMRC became aware that A4W had sold two vehicles (with a VAT value of £12,774.99) to Vanrooyen (Elite Prestige Supercars) Ltd and five vehicles (with a VAT value of £47,666) to M&M or Leisure Park Estates LLP (one of the Crickmore family companies that was used by Mr Crickmore as a buffer company). The sales to M&M and Leisure Park Estates LLP had occurred in A4W's VAT period 07/14. Three of these transactions took place in M&M's period 05/14 and two in 08/14, but on review the denials were reduced to four transactions (deals 868, 870, 877 and 880) as HMRC established that one of the three transactions in 05/14 did not trace back to an input tax reclaim by M&M.

133. Two different VAT numbers were used on the invoices sent to M&M. One is that of A4W. The other is that which had been issued to Flexible Vehicles Ltd ("Flexible"), which had been de-registered with effect from 14 January 2014. The director of Flexible was Rebecca McEvoy, the daughter of Mr McEvoy, and the business was run by Ian Harrison, her then partner.

134. By 14 April 2015 A4W had not submitted VAT returns for 07/14, 10/14 or 01/15. On 11 May 2015 HMRC noted that VISION (the VAT Information System Inter Office Network) had been updated on 8 May 2015 and that A4W had now submitted the VAT returns, but the sales of cars were not included in those returns.

135. On 12 May 2015 Officer Fazakerley made an unannounced visit to A4W accompanied by Officer Andrew Hopkins. They met Mr McEvoy at the business premises:

(1) During that meeting he explained about the training A4W provided. He was asked if he had any other businesses. The visit report notes:

> "JM said no, but wavered slightly and said that he had helped Ian Harrison (IH) who was his daughter's ex-partner. He had opened a bank account in his own name for him because he was bankrupt and unable to open an account himself. He explained this was to enable IH to do business so he could provide support for his child that he had with JMs daughter Rebecca McEvoy (RM)…
>
> JM said that [IH] was a sole trader buying and selling second hand cars."

(2) The invoices produced by Mr McEvoy showed a layout different from the invoices which HMRC had received from Vanrooyen and M&M, and the bank account details were different.

(3) When asked why VAT returns had only recently been submitted, Mr McEvoy said that he had had problems accessing the online system.

(4) The conclusion to the report states that it appears that A4W has had its VAT registration number hijacked.

136. On 18 May 2015 Mr McEvoy supplied the number for the bank account he had opened for Mr Harrison. This matched the account details shown on the invoices which HMRC had obtained from Vanrooyen and M&M.

137. A4W continued to make supplies of cars in the periods 01/15, 04/15, 07/15 and 10/15 using both the VAT registration number of A4W and Flexible.

138. On 16 June 2016 HMRC issued an assessment addressed to "Taxable person purporting to be Adapt 4 Work Ltd t/a Flexible" for £119,416.64. This was returned by Royal Mail as "addressee gone away". On that same date HMRC also wrote to A4W itself, noting that it had failed to file VAT returns for the periods from 04/15 to 01/16 and asking if the company was still trading. This letter was also returned by Royal Mail.

139. On 24 June 2016 A4W were de-registered from VAT.

140. On the basis of the above findings, we consider that HMRC have established that, on the balance of probabilities, the defaults by A4W were fraudulent. We have particular regard to the supplier using both a previous registration number for a previous business which had been de-registered, hijacking the registration number of A4W, failing to declare the sales of vehicles made using either of these registration numbers on the VAT returns which were submitted for A4W and not paying the VAT in respect of these sales.

Christopher Griffiths t/a Chris Griffiths Car Sales

141. Mr Sherratt submitted that the bankruptcy of Mr Griffiths following a trade creditors' petition supports the position that Mr Griffiths was merely an insolvent defaulter, not fraudulent.

142. Officer Hirons prepared a witness statement in respect of Mr Griffiths. She was not asked to attend the hearing. We make the following findings of fact.

143. Mr Griffiths applied for VAT registration stating his business activity was building and construction. He stated he would like to be registered from 1 September 2012. On 18 March 2014 an application for variation was submitted, adding a trading name of Chris Griffiths Car Sales and providing an email address so@caservices.co.uk. These changes were confirmed by HMRC's VAT registration service on 19 March 2014.

144. Mr Griffiths submitted VAT returns for the periods 10/12 (outputs of £2,050), 01/13 (outputs of £4,400), 04/13 (outputs of £10,650), 07/13 (outputs of £14,085), 10/13 (outputs of £4,800) and a nil return for 01/14. No further returns were received. Central assessments were issued for 04/14 and 07/14.

145. One transaction (deal 879) carried out by M&M had been traced back to a tax loss in a supply chain that traced back to Mr Griffiths as the defaulting trader. Mr Griffiths had supplied a Toyota Land Cruiser to OSD on 6 June 2014, which had then been sold to M&M.

146. On 9 December 2014 a petition for bankruptcy was filed against Mr Griffiths by Vehicle Stocking Limited at the County Court in Worcester, and a bankruptcy order was made on 20 January 2015.

147. Officer Hirons received a request from Office Palmer on 24 November 2014 to conduct an urgent unannounced visit. The reasons for the unannounced visit were stated to be to prevent destruction of evidence, to prevent collusion between traders and to prevent fabrication of documents. The purpose of the visit was to verify the transaction involving the supply by Mr Griffiths to OSD.

148. On 8 December 2014 Officer Hirons and Officer Paul Gemmell visited The Oaklands (the principal place of business of Mr Griffiths). This was a residential property, and an elderly gentleman at the property informed Officer Gemmell that Mr Griffiths was currently at the hospital with his wife. Officer Gemmell handed over the unannounced visit letter, factsheets and de-registration letter. Ahead of this visit the officers had identified that the bank account details on the invoice issued to OSD did not match those shown on VISION.

149. On 10 December 2014, having received no response from Mr Griffiths, Officer Hirons asked the VAT Registration Service to de-register the VAT number with effect from 8 December 2014. Mr Griffiths was informed of the cancellation of the VAT registration.

150. No final return was submitted and on 24 March 2015 HMRC assessed the VAT payable for 1 November to 8 December 2014 as £704.

151. On 30 March 2015 Officer Palmer requested a further unannounced visit within four days. The request asked that the team attempt to make contact with Mr Griffiths and establish the details surrounding the sale of the Toyota Land Cruiser and if no information is available or forthcoming to issue an assessment to cover the VAT liability.

152. On 17 April 2015 Officers Samantha Pearce and Tracey Griffiths visited the The Oaklands and were told by two men at the premises that Mr Griffiths was not at home. They handed an envelope to one of the men containing an unannounced visit letter, factsheet and seven day contact letter.

153. On 14 May 2015 Officer Caroline Smith of HMRC's Money Laundering Regulations Intelligence Unit emailed Officer Hirons asking her to hold off issuing an assessment and informing her that a Special Investigations officer would be in touch to discuss further.

154. On 8 July 2015 Officer Hirons emailed Officer Palmer to provide an update explaining that Officer Smith had informed her that "a great deal of money has passed through Chris Griffiths bank account" and they had been asked to take no action in regards to this trader.

155. On 2 March 2016 Officer Louise Bines of HMRC Fraud Investigation Service confirmed that it would not be prejudicial to raise the assessment (for the VAT in respect of the Toyota).

156. On 8 March 2016 HMRC gave notice of assessment for the period 07/14 of £6,514 (this being £8,166 less a central assessment previously issued of £1,652). The Statement of Account showed that at 4 March 2016 Mr Griffiths owed a total amount of VAT plus interest of £12,074.

157. On 14 March 2016 Officer Hirons received a call from a man who identified himself as Christopher Griffiths. He said he had been made bankrupt in January (not specifying which year) and that the sale of the Toyota Land Cruiser was not one of his. Officer Hirons offered to revisit his address to discuss the invoice she had assessed him for as well as to allow for the

inspection of the rest of the books and records. Mr Griffiths said he would carry out his own investigations.

158. HMRC submit that Mr Griffiths was a fraudulent defaulter. They rely on Mr Griffiths' failure to declare the sale of the Toyota to HMRC, charging VAT on that sale and failing to account for it to HMRC, he did not contact HMRC for two years, and when he did contact HMRC he declined the opportunity to be re-visited by HMRC, then failed again to contact HMRC. HMRC also drew attention to large sums of cash being transferred through his bank accounts against a background that Mr Griffiths had declared small outputs throughout the trading history and the bank account details supplied on invoices were different to those held by HMRC.

159. We have carefully considered Mr Sherratt's submission that the default could be attributable to the insolvency of Mr Griffiths rather than fraudulent evasion. We do note in this regard that Mr Griffiths had applied to HMRC to vary his VAT registration during the period in which he was failing to submit returns (no returns were submitted after 1 February 2014 and the application to vary was made on 18 March 2014). However, the vehicle which was subsequently acquired by M&M was sold to OSD on 6 June 2014 and should have been reported in a return for 07/14; the bankruptcy petition was not filed until December 2014. Whilst financial difficulties may explain a failure to pay a tax liability we do not consider, in the light of our other findings above, that this provides a reason for the failure to file returns and declare the transaction several months previously. We consider that HMRC have established, on the balance of probabilities, that the default by Mr Griffiths was fraudulent.

Ikonic Solutions Ltd

160. Officer Tosta prepared a witness statement in respect of Ikonic, having become the allocated officer for that company on 22 July 2014. He gave evidence at the hearing on which he was cross-examined. That evidence is considered here (so far as relevant) and is also considered in the context of whether M&M knew or should have known that the transactions were connected to a fraudulent evasion of VAT. We make the following findings of fact.

161. There are 26 direct transactions with which M&M are connected where Ikonic was said to be a fraudulent defaulter. Ikonic was the direct supplier to M&M in deals 748, 751, 758, 763, 769, 776, 779, 781, 784, 788, 790, 792, 794, 799, 800, 801, 802, 808, 823, 828, 829, 830, 831, 832, 860 and 887 which took place in periods 11/13, 02/14 and 05/14. Ikonic was also an indirect purchaser in deals 774, 775 and 789.

162. Ikonic was incorporated on 17 November 2011. There were two equal shareholders, initially recorded as Mr John Brian Copper and Mr Potter, each of whom were appointed directors. Its registered office was 12 Sedgewood Way. On 8 March 2012, the name of Mr Copper was corrected, to Mr Capper.

163. Ikonic applied for VAT registration on 14 March 2012, stating that its trading name was UK Risk Assessment, and giving its business address as Westwood House, Annie Med Lane. It was registered for VAT with effect from that date. Mr Potter resigned as a director on 14 March 2012, and BM Howarth Ltd was appointed as agent for Ikonic on 17 April 2012.

164. Its address history was then as follows:

(1) on 22 October 2012 BM Howarth wrote to HMRC informing them that the correspondence address had changed with immediate effect to 20 Manor Fields;

(2) on 27 November 2012 BM Howarth sent a fax to HMRC to "confirm" that the trading address was 20 Manorfields;

(3) on 20 March 2013 HMRC sent a remittance advice and VAT payable order for £4,880.82 to Ikonic at 20 Manor Fields. That was returned by Royal Mail as "not at this address";

(4) on 16 April 2013 Mr Capper called HMRC stating that he had updated the address online and asking for the VAT repayment to be re-issued;

(5) on 17 April 2013 HMRC received a handwritten letter from Mr Capper explaining that his old address was 20 Manorfields and his new address is 12 Athens, Silver Cross Way;

(6) on 19 April 2013 HMRC updated their records, but could not validate this address;

(7) on 27 April 2013 HMRC validated the address Athens, Silver Cross Way;

(8) on 2 July 2013 a letter issued to this address by HMRC's banking team was returned as "gone away";

(9) on 29 July 2013 the address of Athens, Silver Cross Way was again validated on HMRC's systems;

(10) on 1 August 2013 HMRC wrote to Ikonic (at Athens, Silver Cross Way) informing them that HMRC was checking the company's VAT return for the period 07/13 and that they also wanted to examine records for the period 04/12 to date. That letter, from Officer Michelle Docherty, noted that she had tried to phone the company but had not been able to speak to Ikonic. That letter was returned by Royal Mail on 20 August 2013; and

(11) on 16 August 2013 Officer Neil Robertshaw of HMRC emailed Ikonic attaching a letter and asking them to confirm their business address. The letter attached to that email is dated 19 August and says that due to the size of the return for 07/13 it will need verification in order to be processed.

165. On 2 August 2013 HMRC had received a call from a "Mr Kappa" about repayments/reclaims asking to speak to Michelle, but the caller failed the security check.

166. When the letter of 1 August 2013 was returned, Officer Tosta states in his witness statement that Ikonic was classed as a missing trader on HMRC's VAT system. Giving evidence, he confirmed that at that stage this was recording the fact that HMRC were not able to contact Ikonic.

167. On 17 December 2013 Officers Diane Warren and Des English visited Wibsey Construction Services Ltd, a broker in metal transactions. During that visit officers inspected purchase orders and sales invoices which showed that the main supplier for the deals carried out in October and November 2013 was Ikonic (with its address on the purchase orders stated as 12 Athens, Silver Cross Way), and the customers were Intertrade Global Ltd and GTC Young Ltd. The director of Wibsey, Gregory Hoe, said that he stored the metals at a yard in Leeds which was owned by a Mr Capper, and he confirmed that this was the same Mr Capper as his contact at Ikonic.

168. On 20 December 2013 Officer Warren contacted Officer Robertshaw in relation to Ikonic. HMRC's log notes that there was a note on current interest. Officer Robertshaw

explained that Criminal Investigations were looking at this trader and she would therefore need to contact them before proceeding with a request for a visit.

169. On 7 January 2014 Officer Beverley Henson from Criminal Investigations emailed Officer Warren asking them to hold any action they intend taking with Wibsey at this stage.

170. On 18 July 2014 Officer Tosta received a request from Officer Palmer to conduct an urgent unannounced 24 hour visit to Ikonic. The request noted that:

> (1) Ikonic had supplied M&M with vehicles in 39 transactions to the value of £1.8 million with a VAT liability of £365,000 in the period 02/14 but had not declared VAT since 07/13. M&M had exported these cars and reclaimed the input tax. (On 29 July 2014 Officer Palmer emailed Officer Tosta to inform him that he had identified another transaction between Ikonic and M&M, which made the total VAT £375,259.)
>
> (2) John Capper was the main point of contact at Ikonic and he had been jailed for VAT fraud in 2012.

171. Mr Capper's conviction was reported in an article from WalesOnline dated 12 July 2012 and updated on 27 March 2013, with a headline "Car salesman David Lloyd Francis jailed for £41,000 attempted VAT fraud". The article states that John Capper of Manor Fields was one of Mr Francis' accomplices and they were involved in a scam where high value cars were supposedly bought and then sold on to individuals outside the EU. Mr Capper was jailed for 12 months.

172. On 23 July 2014 Officer Warren and Officer Tosta carried out an unannounced visit to Athens, Silver Cross Way. This was a residential block of flats and there was no response from number 12. Officer Tosta left a letter asking for Ikonic to contact him in seven days or the company would be de-registered.

173. On 30 July 2014 Ikonic was de-registered with effect from 23 July 2014. A copy of this letter was sent to Ikonic at 12 Athens Silver Cross Way, 20 Manor Fields (as this was the registered office address at Companies House) and Flat 2 Hillcroft Place (an address in HMRC's system). On that same date Officer Tosta wrote to Ikonic at 12 Athens, Silver Cross Way requesting all business records from 1 August 2013 to 23 July 2014 and informing the company that if the information wasn't received by 29 August 2014 he would be raising a VAT assessment.

174. On 29 August 2014 Officer Tosta raised a VAT assessment totalling £582,673.73. This assessment was for undeclared sales of vehicles to M&M, undeclared sales of copper to Wibsey and undeclared EC acquisitions from Bulgaria and Romania.

175. On 18 September 2014 Officer Robertshaw received a phone call from the occupant of 12 Athens stating that she had lived there since July 2013.

176. On 21 May 2015 Officer Robertshaw issued a letter to Ikonic notifying them that the repayment claim for 07/13 was being reduced to nil as no evidence had been received to verify the claim. That letter gave notice of a VAT assessment of £2,900.96.

177. On 21 May 2015 Officer Robertshaw issued a letter to Ikonic giving notice of further assessments (£4,963 for 01/13 and £8,183 for 04/13).

178. On 2 November 2015 HMRC's Fraud Investigation Service wrote to Mr Capper stating that the unpaid VAT due was £654,241.84. The company was wound up on 14 January 2016

179. HMRC submit that Ikonic is a fraudulent defaulter. The basis for this submission included that Ikonic had not submitted a VAT return since 07/13, it failed to make contact with HMRC despite attempts to get in touch with it from July 2013, it made significant taxable supplies on which it charged VAT but failed to account for it or pay it to HMRC, there was a huge increase in expected turnover with no credible explanation as to why, and Mr Capper had been involved in criminal VAT fraud previously.

180. The weight of evidence supports the conclusion that HMRC have established that, on the balance of probabilities, the defaults of Ikonic were fraudulent.

Ruairi McNulty t/a Lakeview Motors

181. Officer Wilkinson prepared a witness statement in respect of Lakeview (that dated 29 January 2018). We make the following findings of fact.

182. Lakeview was a supplier in deals 750, 760, 762, 773, 777, 782, 795, 803, 804, 805, 806, 809, 810, 815, 816, 817, 818, 819, 820, 824, 825, 826, 827, 850, 851, 863, 864, 882, 884, 885 and 886. Only one of these was a direct supply to M&M (deal 863); the others were to JMC or JRS. The invoices issued by Lakeview were dated from 28 November 2013 to 29 May 2014.

183. Mr McNulty applied to register the business for VAT with effect from 1 July 2012. He submitted the following returns:

VAT period	Tax due/[repayment claimed]	Net purchases	Net sales
07/12	Nil return		
10/12	Nil return		
01/13	£83.33	£65,000	£65,417
04/13	£566.23	£600,385	£603,216
07/13	[£359.52]	£421,060	£467,237

184. On 7 October 2013 Officer Wilkinson received a request to conduct an unannounced visit from the Central Coordination Team. This visit was requested in response to a mutual assistance reply from the Irish authorities in relation to the business of RMC Autos (based in the Republic of Ireland). This information made HMRC aware of the VAT registration for Mr McNulty t/a Lakeview Motors.

185. On 16 October 2013 Officer Wilkinson called at the notified principal place of business, 209 Rehaghy Road, but was not able to establish that the business was operating. On 21 October 2013 she wrote to Lakeview informing them of this visit, explaining that she had left a notice of inspection in the post box but Mr McNulty had not been in touch. That letter stated that unless he contacted HMRC within seven days of the date of the letter he would be de-registered with effect from 1 November 2013.

186. On 5 November 2013 Mr McNulty's newly appointed accountant (Michael Hanlon of WHR Accountants Ltd) called Officer Wilkinson in response to the seven day letter. The accountant stated that the principal place of business was Mr McNulty's home and business address and he would prefer to have the meeting at the accountant's office. The meeting was arranged for 14 November 2013.

187. On 14 November 2013 Officer Wilkinson attended that office and was told by Mr Hanlon that Mr McNulty was unable to attend the meeting as he had to go to a funeral. It was agreed that Officer Wilkinson would review the records available that day and a further appointment was made for 21 November 2013 when Mr McNulty would be present.

188. On 21 November 2013 the re-arranged meeting took place. At that meeting Officer Wilkinson provided information on MTIC, explaining how MTIC fraud works and due diligence obligations, as well as providing VAT Notice 726. Mr McNulty accepted that he had no previous involvement in the car trade, the place of business was his parents' house, and the business had no assets, no loans or overdraft facilities and the only advertising was approaching potential customers and asking if they needed a car. Officer Wilkinson also established that Mr McNulty's main supplier was John Buchanan.

189. On 4 December 2013 Officer Wilkinson carried out an unannounced visit to Mr Buchanan's principal place of business, which was his home address. No-one answered, so she left a letter authorising the visit. Later that day she received a call from Mr Buchanan and they arranged to meet that afternoon at Mr Buchanan's accountant's office. At that meeting Mr Buchanan informed Officer Wilkinson that he had not carried out any transactions with Mr McNulty t/a Lakeview Motors, but had conducted one transaction with RMC Autos.

190. Officer Wilkinson completed an evasion referral form (as she suspected Mr McNulty of using false invoices) and the case was adopted by Criminal Investigations on 19 March 2014.

191. On 14 October 2014 Officer Wilkinson sent a letter to Mr McNulty informing him that HMRC had noticed that he had not rendered VAT returns for the periods 10/13 to date. Unless he contacted HMRC within seven days of the date of that letter he would be de-registered with effect from 22 October 2014.

192. On 22 October 2014 Mr McNulty called Officer Wilkinson and stated that he had not been filing VAT returns as HMRC had uplifted his records in relation to another investigation. They arranged an appointment for 4 November 2014 at the accountant's office. When Officer Wilkinson called Mr McNulty on 3 November 2014 to confirm the appointment the phone rang out and there was no option to leave a message. She called Mr Hanlon to confirm the appointment and he said he was not aware of the meeting and had not seen Mr McNulty for several months.

193. On 10 November 2014 Officer Wilkinson wrote to Mr McNulty setting out the above, and adding that on 4 November 2014 Mr McNulty had called HMRC to cancel the meeting. He had then asked Officer Wilkinson to re-arrange but said he would not be available until 17/18 November. She informed him that she would be issuing a letter (this letter of 10 November) requesting evidence of trading with a 14 day deadline, failing which he would be de-registered. He was de-registered with effect from 25 November 2014 on the basis that he had failed to provide the requested information.

194. Officer Wilkinson established a total debt of £866,915.11 (although assessments were not raised due to the involvement of Criminal Investigations). These amounts related to false invoices from John Buchanan and dealing directly with three traders who had been de-registered as missing traders. Having received information from the officer for M&M, Officer Wilkinson calculated a total tax loss of £436,145.91 from 31 deals in which Lakeview was the defaulter, with this figure being established from invoices and bank statements.

195. HMRC had sent an information request to the Republic of Ireland on 29 May 2013 in relation to Mr McNulty. The SCAC report included:

> (1) Ruairi McNulty t/a RMC Autos was a missing trader – they had been unable to contact him or locate him despite several attempts;

(2) there was no freight documentation, no evidence of payment and no evidence of due diligence;

(3) they believed he was involved in MTIC fraud. He had acquired vehicles from the UK and had subsequently sold these to Irish car dealerships. He had charged VAT on the invoices but had failed to account for that VAT; and

(4) the value of VAT at risk according to the VIES records is €2,845,000. Assessments had been raised and issued for this amount and no appeal had been received.

196. We accept the evidence above from the SCAC report, but give no weight to expressions of opinion therein. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, but note in particular that no evidence has been adduced to contradict the assertions contained therein.

197. HMRC submit that Lakeview was a fraudulent defaulter. They note that, having submitted nil returns for the first two periods, there was a sudden spike in sales (from a standing start, with what he claimed was no experience in the industry), he created false invoices, he had traded as RMC Autos which was treated as a missing trader by the Irish authorities, and Mr McNulty had suppressed the level of returned sales.

198. We are satisfied that HMRC have established, on the balance of probabilities, that the defaults of Lakeview were fraudulent.

Supply A Car Limited

199. SACL is the second supplier where M&M challenged (rather than did not accept) its status as fraudulent rather than an "innocent" or insolvent defaulter. Mr Sherratt submitted that there was evidence to indicate that SACL was an insolvent defaulter rather than fraudulent.

200. Officer Harris prepared a witness statement in respect of SACL. She was not asked to attend the hearing. Her witness statement makes it clear that she assumed control of this matter on 20 July 2017 – accordingly, her evidence is based on the documents and records held by HMRC and from other officers previously involved. We make the following findings of fact.

201. SACL was incorporated on 26 October 2011 and its (equal) shareholders were David Darley and Paul Moir. Mr Moir was a director of the company (as was Ms Maria Moir from 19 March 2012 to 1 November 2012). SACL was registered for VAT with effect from 26 October 2011, with a business address of 77 Nunburnholme Park.

202. SACL undertook three transactions with M&M in September and October 2013 (deals 764, 875 and 881):

(1) sale of Rolls Royce Ghost, invoice dated 16 September 2013 issued to Leisure Park Real Estate LLP for £119,166.67 plus VAT of £23,833.33, total £143,000 which was then sold by Leisure Park to M&M;

(2) sale of Porsche Cayenne, invoice dated 10 October 2013 issued to M&M for £43,093.33 plus VAT of £8,618.67, total £51,712; and

(3) sale of Range Rover Sport, invoice dated 11 October 2013 issued to M&M for £50,645 plus VAT of £10,129, total £60,774.

203. On 21 October 2013 two officers from HMRC's Special Investigations MTIC team (Officers Robert Payne and Emma Raglan) visited SACL at the offices of their advisers. That

meeting was attended by Mr Moir and Mrs Claire Cooper (a representative of SACL's accountant). HMRC's notes o the reason for the visit include:

> (1) the former associated businesses (One Gas One Ltd and Quest Ltd) and their director, Mr Darley, were well known to SI/MTIC. SACL's agent had stated that SACL now actually trades from Hawthorne Street (as do Mr Darley's other businesses, Intertrade and Venus Global). Mr Moir confirmed this, and completed the form notifying HMRC of the change to the principal place of business;
>
> (2) Mr Darley is a disqualified director but it is "strongly suspected that he is "behind" this business"; and
>
> (3) HMRC's electronic file recorded that the previous VAT officer had his doubts about the credibility of SACL because of the association with Quest Facilities Ltd and One Gas One Ltd, which are both now insolvent and had a poor compliance history and MTIC involvement;

204. The visit report for the meeting itself then includes:

> (1) Mr Moir informed HMRC that his background was in car sales, and he used to sell pre-registration cars to other brokers. He made contacts within the industry and decided to set up his own business;
>
> (2) SACL has a website but this is currently down due to an issue with a now-former employee (costing the business £57,000 in lost sales);
>
> (3) when asked about due diligence checks, Mr Moir said he doesn't do any on customers as there's no point as he receives payment before he delivers a vehicle to them. Most of his due diligence on suppliers is carried out through word of mouth – he asks his contacts to see whether anyone knows of them;
>
> (4) the officers explained MTIC fraud and the implications and handed Mr Moir notices include Notice 726 and "How to Spot MTIC Fraud". Mr Moir "didn't appear to be aware of MTIC fraud but after [he] explained it seemed to understand it and the need to carry out due diligence checks" on suppliers;
>
> (5) Mr Moir said they'd been "stung" before when they paid a deposit to a broker who subsequently disappeared, so he agreed there is a need for both commercial and tax reasons to carry out due diligence checks;
>
> (6) Officer Payne asked Mrs Cooper to email him the last three SAGE VAT returns and send him a SAGE back-up file. This was to be sent in the next two weeks; and
>
> (7) the conclusion notes that the links to Intertrade and its director will always cast doubt on Mr Moir's credibility so a watching brief is warranted.

205. SACL failed to submit any VAT returns for the VAT periods 10/13, 01/14, 04/14, 07/14 and 10/14. On 13 December 2013 HMRC issued a central assessment of £3,113 for the 10/13 period.

206. SACL was subject to a creditors' voluntary winding-up. There was a meeting of the creditors on 21 August 2014 and on that same date the shareholders passed a special resolution to wind up the company and appoint a liquidator. The liquidator's abstract of receipts and payments from 21 August 2014 to 12 May 2015 shows unsecured creditors including "trade

and expense creditors" of £5,61.20, loans to directors of £10,200, and VAT owing to HMRC of £3,047.66.

207. SACL was de-registered for VAT on 10 October 2014 (and later dissolved on 27 August 2015).

208. On 4 December 2014 HMRC sent a pre-assessment letter to SACL for the period 10/13 on the basis that information available to HMRC indicated that SACL had done three deals in October 2013 and the VAT due on those sales had not been declared to HMRC. The letter notes that the three sales invoices indicated that the correct amount of VAT due to HMRC for 10/13 was £42,581. SACL was given the opportunity to comment, and asked to do so by 2 January 2015.

209. On 13 May 2015 HMRC issued a VAT assessment for £39,468. That letter referred to the pre-assessment letter but noted that it had not made an adjustment for the central assessment already issued. The final assessment was therefore re-calculated.

210. On 26 November 2015 HMRC issued a penalty explanation letter on the basis that SACL had received a central assessment for the period 10/13 which it failed to notify HMRC was too low. On 12 January 2016 HMRC gave notice of penalty assessment, requiring £10,988.78 be paid within 30 days. A copy of that notice was sent to the liquidator.

211. HMRC submit that SACL is a fraudulent defaulter. They refer to the above and to Mr Darley's association with other businesses which were subject to MTIC assurance activity:

> (1) Quest Facilities Ltd ("Quest") – HMRC visited this company on 11 August 2011 due to the extended verification of the VAT repayment return for the period 05/11. Mr Darley was categorised by HMRC as a shadow director and had attended that meeting. Mr Darley explained that Mr Moir was being used in a non-official role due to his contacts within the car industry. The visit report notes that "on the face of it, there are neither UK tax losses nor links to MTIC traders across the chain of supply". HMRC's investigation discovered that Quest had made an under-declaration of sales within the 05/11 period and amendments were made. Quest failed to submit any further VAT returns and was dissolved on 7 April 2014;
>
> (2) One Gas One Limited ("OGO") – HMRC visited this company on 14 November 2011 due to information received that this company (whose main business activity was stated to be plumbing, heat and air-conditioning installation) was buying cars from manufacturers and then selling these on to Quest. OGO was not submitting VAT returns. The visit report records that HMRC attended the principal place of business and noted that the signs showed a different business occupied the premises – staff at an office there stated that they had been receiving post for OGO at this address but this was just left in the foyer, and that there had been three other people asking for the company in the last few days. HMRC left the seven day letter. On 23 November 2011 Mr Moir called to arrange a visit, but was told that the director would need to contact HMRC. There was no contact from the director. OGO was compulsorily de-registered with an effective date of 11 November 2011; and
>
> (3) Intertrade Worldwide Ltd ("Intertrade") – This company was referred to the MTIC monitoring team due to concerns with their business activity. Mr Darley was a director of this company. On 29 January 2010 HMRC notified Intertrade of its decisions to deny input tax of £2,080,097.67 for the period 03/06 and input tax of £5,865,569 for

the period 06/06 due to all transactions being traced back to fraudulent tax losses. Intertrade was dissolved on 13 July 2010.

212. In addition to the fact that SACL was wound-up following a creditors' voluntary arrangement, Mr Sherratt drew attention to the additional indicators from the meeting of 21 October 2013 that SACL was experiencing financial difficulties:

(1) it was noted that the business was not doing well (because of the actions of the former employee and a reference to low margins in the sector); and

(2) in the context of due diligence, reference was made to the company having been "stung" when they paid a deposit to a broker who disappeared.

213. Whilst we accept that HMRC have demonstrated that Mr Darley and Mr Moir had been involved in a number of companies that had been non-compliant with their tax obligations, and that SACL had failed to advise HMRC that it had moved into an address that was connected with Mr Darley (which HMRC submit was a deliberate choice so as to prevent them from discovering the close connection with Mr Darley until the last possible moment), these factors serve only to explain how HMRC identified that investigation of SACL was appropriate. Instead, in assessing whether the defaults by SACL were fraudulent, we rely on the facts that, against the background that Mr Moir had been made aware of MTIC fraud (to the extent he was not already aware), SACL:

(1) failed to declare supplies it made in the period 10/13 to HMRC,

(2) having received amounts in respect of VAT from its customers it failed to pay this VAT to HMRC,

(3) these supplies had already been made by the time of the visit by HMRC and SACL failed to produce the requested SAGE information which would have revealed these supplies, and

(4) SACL did not make any contact with HMRC in response to the pre-assessment letter, assessments or penalty determination.

214. We consider that these actions were deliberate. We note that there were various unsecured creditors of SACL at the time of its winding-up. We do not consider that their existence makes these failings any less deliberate. We have concluded that HMRC have established that, on the balance of probabilities, the defaults by SACL were fraudulent.

Swift Assets Limited

215. Officer Wilkinson prepared a witness statement in respect of Swift (that dated 24 January 2018). She was not asked to attend the hearing. Her witness statement makes it clear that she was asked to make the statement in response to M&M's appeal, and had not investigated or been responsible for Swift before making the statement. We make the following findings of fact.

216. Swift was an indirect supplier to M&M in one transaction, deal 752.

217. Swift was incorporated on 12 June 2013, with a registered office at 8 Malachy Conlon Park. It had one director, Mr Larry Shields, who was the sole shareholder and his address was also stated to be 8 Malachy Conlon Park.

218. Swift did not apply to HMRC to be registered for VAT. It issued an invoice (number 0064) to OSD on 12 August 2013 in respect of a Rolls Royce Phantom, for a cost of £243,750

plus VAT of £48,750, giving a total price of £292,500 which was then sold by OSD to Leisure Park Estates and then to M&M.

219. Another company, Greenfield Building Company Limited ("Greenfield") was registered at 8 Malachy Conlon Park, and it had applied to be registered for VAT on 22 July 2013. The applicant was stated to be Laurence Shields of that same address. That company submitted two VAT returns (both nil returns) and then failed to submit further returns.

220. Swift was dissolved on 30 January 2015.

221. HMRC submit that Swift was a fraudulent defaulter. They note that there were traders earlier in the transaction chain (Rolls Royce Manchester and B&W) but submit that they are not required to prove that the first identified participant in a chain fraudulently defaulted on its liability. They are required to prove that a trader in the chain fraudulently defaulted on its liability.

222. We accept that HMRC have established that, on the balance of probabilities, the default by Swift was fraudulent. We agree that it is irrelevant that this company was not the first participant in the chain. Swift charged VAT on a supply of a vehicle, did not account to HMRC for that VAT, was aware (by reference to Greenfield) of the need to be VAT registered and cannot have believed that it was entitled to charge VAT given that it had not so registered.

Defaulters in chains in respect of which HMRC denied zero rating

Autovillage Sales and Maintenance Limited

223. Officer Danson's first witness statement dealt with Autovillage. Officer Danson gave evidence on days two and three of the hearing, but was not cross-examined on her evidence relating to Autovillage. We make the following findings of fact.

224. Autovillage was incorporated in the Republic of Ireland and was registered for VAT on 1 April 2001 with trade class "sales of cars and light motor vehicles". A print-out from the Irish Companies Registration Office stated a date for the company (presumed to be the date of incorporation) as 2 November 2013. We doubt this is correct, based not only on Autovillage having been registered for VAT 11 years previously, but also as the registry information states that the accounts for the company are required to be filed on or before 20 September 2013. That would be before the stated date of incorporation. However, nothing turns on this and it is sufficient for us to find that the company was incorporated in the Republic of Ireland.

225. Autovillage purchased six vehicles from M&M in February 2014, in transactions 805, 806, 815, 823, 850 and 851. It was also an indirect supplier to M&M in deal 864.

226. A SCAC request was sent to the Irish authorities on 2 September 2014, and the reply in November includes:

> (1) The Irish Revenue had spoken to Mr Kieran Sherlock, a director of Autovillage, who said that the vehicles were purchased from M&M, shipped to Dublin port and then sold to Mark Wright Motors in Belfast and shipped to Southampton port for collection by Mark Wright.
>
> (2) When questioned about the reason for these shipping arrangements Mr Sherlock stated that it was done to avail of zero rate of VAT on the transactions which benefits cashflow for all concerned.

(3) Autovillage had correctly accounted for the transactions in their relevant VAT returns.

(4) Mr Sherlock stated that payments were received from Mark Wright and made to M&M in instalments "by ETF".

(5) Mr Sherlock had verified that the VAT number for Mark Wright was valid but he would not have noticed that the business was classified as building supplies.

(6) Autovillage had substantial intra Community acquisitions and supplies with UK traders, €5.9 m for 2013 and €3.29 m to date for 2014.

227. In July 2016 the Irish authorities contacted HMRC with additional information explaining that:

(1) the Sherlocks were still shown as shareholders of Autovillage but had been replaced as directors by Nicholas Gligic and Margaret Gligic. It was noted that Mr Gligic was known to HMRC as he had been the director of Rioni Limited which had wholesaled mobile phones and computer memory products and been denied input tax of £22 million and his appeal to the Tribunal had been dismissed with the Tribunal having found that "Mr Gligic's account of his trading is nothing short of a work of fiction which bears not even a passing resemblance to the truth".

(2) There had been a fire at the premises of Autovillage in February 2015 and it was claimed that all business records had been destroyed.

(3) Requests for bank statements in relation to a UK bank account had been ignored and the Irish authorities considered that there had been a lack of co-operation from the company.

228. In October 2017 further information was received from the Irish authorities:

(1) The company had been sold to Mr Gligic in December 2015

(2) Referring to the explanation by Mr Sherlock of the sales to Mark Wright, the company's Irish bank accounts for that period had been examined and there was no evidence to substantiate these payments.

(3) An audit had been scheduled for 24 March 2015 and the business suffered a fire in February 2015.

(4) Correspondence to the company's registered address was returned marked unknown and as a result the VAT registration was cancelled on 4 February 2016

229. We accept the evidence above from the SCAC reports. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, but note in particular that no evidence has been adduced to contradict the assertions contained therein.

230. HMRC submit that Autovillage was a fraudulent defaulter on the basis that Mr Gligic's involvement cannot be a coincidence, the turnover was enormous for such a brief period, Autovillage failed to produce any records claiming that they had been destroyed by fire, nor bank statements of which duplicates could have been obtained, the directors became obstructive as the Irish authorities increased their investigations and information which had been provided by Mr Sherlock to the Irish authorities later proved to be false.

231. We do not accept all of HMRC's submissions – whatever the character of Mr Gligic, the evidence only demonstrates his involvement with the company after the transactions under appeal, and the information from the Irish authorities only supports a conclusion that Autovillage was not cooperative with the authorities (rather than that it was obstructive). Nevertheless, on the basis of the findings as to the transactions with Mark Wright, the shipping arrangements, the failure to provide any records and the incorrect information as to payment arrangements, we consider that HMRC have established that, on the balance of probabilities, the defaults by Autovillage were fraudulent.

B&W Direct Trading Limited

232. Officer Danson's first witness statement dealt with B&W but she was not cross-examined on this evidence at the hearing. We make the following findings of fact.

233. B&W was incorporated in the Republic of Ireland on 20 December 2010 and it was registered for VAT on 28 February 2011. The trade class was stated to be agents sale of furniture.

234. B&W had purchased 23 vehicles from M&M in 11/13 and two in 02/14 (deals 766 and 767). Only deals 766 and 767 were amongst the transactions under appeal before us.

235. B&W was de-registered by the Irish authorities on 7 July 2014 and the company was dissolved on 8 October 2014.

236. On 24 September 2015 Officer Palmer received an email from Officer Kam Matharu noting (in the context of informing HMRC that the Irish authorities would not be able to reply to an information request within the 90 day deadline) that the Irish authorities had said the company was no longer trading and they were trying to trace the owner.

237. On 28 September 2015 Officer Matharu said that the Irish authorities had confirmed that no returns had been filed and no correspondence had been received from the company.

238. On 13 October 2015 the Irish authorities interviewed Andrew Warnock, who had been a director of B&W. The notes from that interview include:

(1) VAT returns were filed for periods from January 2011 to April 2012 (mostly nil);

(2) VIES indicates substantial imports particularly from the UK and Netherlands and relate mainly to vehicles and furniture;

(3) the directors when the company was dissolved were Andrew Warnock and Kerry Byrne;

(4) Mr Warnock had been introduced to a Mark Ralph who was to invest over €100,000 in the company. He became company secretary and dealt with all paperwork (including tax returns). The investment never materialised but Mr Ralph had all the company records. Mr Warnock has no contact with Mr Ralph; and

(5) when the company was first set up it was to import soft drinks. Instead it imported some furniture but mainly dealt with buying and selling cars. It sourced cars from the UK and imported them back to Ireland tax free. They were retained for about one month before being sold to UK leasing companies "eg Iconic Solutions, M&L Trading etc" for ultimate export mainly to the Far East.

239. On 18 October 2017 the Irish authorities visited the address of Mr Warnock, leaving a letter asking that he contact them. The following day Mr Warnock called the officer, stating

that he had been "ripped off" by Mr Ralph and did not have any records from the business. In December 2015 he wrote to his suppliers requesting copies of all purchase invoices but had not received anything – he said he had been asked to do this by the Revenue. He has been trying to pay back all the debt he has from the business.

240. We accept the evidence above from the SCAC reports. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, but note in particular that no evidence has been adduced to contradict the assertions contained therein.

241. HMRC submit that B&W was a fraudulent defaulter noting the difference in its trade classification, that Mr Ralph appears to have infiltrated the company, made a large number of purchases and then failed to pay the tax associated with them, and the vehicles were then sent back to what HMRC allege were fraudulent defaulters in M&M's transaction chains where there can be little explanation for this movement other than one connected to the tax position.

242. We do not accept HMRC's submissions in their entirety; and in particular we are not convinced of the importance of the difference in the trade classification. However, we are satisfied that HMRC have established, on the balance of probabilities, that the defaults by B&W were fraudulent.

Colin O'Kelly

243. Officer Danson's first witness statement dealt with Colin O'Kelly but she was not cross-examined on this evidence at the hearing. We make the following findings of fact.

244. Mr O'Kelly was registered for VAT on 1 January 2009 with a business class of agent for the sale of agricultural material and his registration was cancelled on 5 December 2015 with effect from 1 September 2014. This finding is based on print-outs of information from VIES. In making submissions on trade classes, HMRC had referred to Mr O'Kelly as having been registered as a plumbing and heating contractor. This appears to have been based on him having been referred to as such in one of the SCAC reports, but that report also noted that the original VAT registration form was in storage and they were trying to locate it. Later reports add that they have not located that form. We therefore prefer the information from the VIES records.

245. M&M sold four vehicles to Mr O'Kelly (deals 774, 775, 789 and 827). Mr O'Kelly had also been an indirect supplier in deal 863 and an indirect purchaser in deal 875.

246. In September 2014 the Irish authorities provided a response to an exchange of information request sent by Officer Palmer explaining that:

> (1) Mr O'Kelly had denied that he purchased a Rolls Royce Wraith from M&M – he did not import or pay for it. He said he did not allow his VAT number to be used in the purchase of this vehicle, but he did allow his VAT number to be used for other cars purchased from M&M.
>
> (2) The transaction could not be found in his bank records
>
> (3) He had allowed his VAT number to be used by Lee Cullen and Martin Byrne for the purchase of UK zero rated vehicles. These were then sold by Mr O'Kelly to Mr Griffiths and Ikonic Solutions. He had produced sales invoices to Ikonic when requested by Lee Cullen and Martin Byrne and had allowed the transactions to go through his bank account.
>
> (4) He had no contact with M&M in a personal capacity.

247. In January 2016 HMRC received a response from the Irish authorities in relation to a request for information in respect of the acquisition of four vehicles (three Range Rover Sports and a VW Golf) from M&M. That response included:

(1) the vehicles were not accounted for or paid for by Mr O'Kelly;

(2) the VW Golf had been sold to and registered in Ireland to a private individual, Sean McGovern, and the three Range Rovers had been sold to Ikonic; and

(3) under cautioned interview Mr O'Kelly stated that he allowed his VAT number to be used by Lee Cullen and Martin Byrne for the purchase of UK zero rated vehicles. He produced sales invoices to Ikonic when requested and allowed the transactions to go through his bank account. He had no personal contact with M&M.

248. A response was received in relation to a further information request in February 2016. That request had sought to establish whether 66 vehicles that Vanrooyen (Elite Prestige Supercars) Ltd sent to Mr O'Kelly (valued at £3.5m) had been part of a fraud. Vanrooyen (trading name Pyramid Auto) had purchased these cars from a number of UK suppliers:

(1) Mr O'Kelly denied receiving these goods and had not accounted for them;

(2) it appears unlikely that Mr O'Kelly actually received these 66 vehicles. There was no information in relation to them (and the Irish authorities only had registration details for two of them). They had Mr O'Kelly's bank statements and there is no evidence that he had made payment for them; and

(3) his address is his home address in a housing estate and is not a commercial business premises.

249. In October 2017 additional information was provided by the Irish authorities:

(1) Mr O'Kelly was stated to be disengaged; and

(2) he stated he received £250 for each transaction that was facilitated through his bank account and received £1,600 in total.

250. We accept the evidence above from these SCAC reports (subject to the finding at [244] in relation to trade class), giving no weight to the expressions of opinion contained therein. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, but note in particular that no evidence has been adduced to contradict the assertions contained therein.

251. HMRC submit that Mr O'Kelly is a fraudulent defaulter. They rely on the different trade classification recorded, he allowed his VAT number to become compromised by allowing other people to use it, he had no connection with the deals under appeal, did not do any due diligence and received payments for permitting his bank account and VAT number to be used.

252. We consider that HMRC have established that, on the balance of probabilities, the defaults by Mr O'Kelly were fraudulent on the basis of the findings above. We place little weight on the trade classification being other than for the sale of cars, but otherwise accept that the weight of evidence supports HMRC's submissions.

James Quinn

253. Officer Danson's first witness statement dealt with Mr Quinn but she was not cross-examined on this evidence at the hearing. We make the following findings of fact.

254. Mr Quinn's letter of introduction to M&M stated that he had been trading since 2011 but he did not become registered for VAT in the Republic of Ireland until May or June 2013. His trade classification was "freight transport by road".

255. M&M sold fourteen vehicles to Mr Quinn, in deals 757, 758, 759, 760, 761, 764, 788, 790, 791, 797, 798, 799, 803 and 804. Mr Quinn was also a supplier to Lakeview, and had indirectly supplied vehicles to M&M in deals 762, 773, 777, 782, 795, 805, 806, 809, 810, 827, 851, 864 and 884.

256. HMRC sent an exchange of information request to the Republic of Ireland in January 2014. The response stated that the Irish authorities were not aware of Mr Quinn's business activity in County Monaghan (his address stated as his business address). He had registered as a sole trader in May 2013, had not submitted any VAT returns since that period and the agent had not had recent contact with him. He had used the VAT number to acquire €1.9 million of stock. The UK traders he was doing business with were British Car Auctions Limited, Tyre Safety Centre Co, Manheim Europe Limited, Kardi Vehicles Ltd and Sytner Group Ltd. Mr Quinn's VAT number was to be cancelled with effect from 24 January 2014.

257. In October 2014 the Irish authorities informed HMRC that Mr Quinn was under enquiry, there was no evidence of a business being undertaken at the address he had provided and intelligence suggested he was resident in Northern Ireland (and they were trying to locate him).

258. In January 2016 the Irish authorities provided additional information setting out that he had used his grandmother's address in the Republic of Ireland and did not live here. He had made intra-community acquisitions in 2013 for €3,220,654 and in 2014 for €812,665. It was not believed that he was trading in the Republic of Ireland.

259. In October 2016 they indicated that Mr Quinn had failed to appear for interview and had not provided information as requested.

260. We accept the evidence above from these SCAC reports. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, and that there is an even more distant reference therein to unspecified "intelligence" but note in particular that no evidence has been adduced to contradict the assertions contained therein.

261. HMRC submit that Mr Quinn was a fraudulent defaulter. Their submissions include that he had provided his grandmother's address as the trade address despite not being resident there, his trade classification was different to his actual activity, he failed to submit VAT returns, failed to respond to enquiries from the Irish authorities, failed to attend an interview and there was no evidence of him ever having undertaken trade.

262. On the basis of the findings of fact we have made, we consider that HMRC have established that, on the balance of probabilities, the defaults by Mr Quinn were fraudulent (albeit that we have placed little weight on the trade classification being different from the actual activity undertaken).

John Burns

263. Officer Danson's first witness statement dealt with Mr Burns but she was not cross-examined on this evidence at the hearing. We make the following findings of fact.

264. Mr Burns received advice of registration for VAT with effect from 1 March 2014 and was a sole trader with a trade classification of "construction of buildings" based at Flat 69

Buckingham Village. Mr Burns' VAT registration was cancelled with effect from 13 October 2014.

265. Mr Burns acquired six vehicles from M&M, in deals 856, 857, 858, 859, 860, 862a. He was also an indirect purchaser in deals 877, 884, 885 and 887.

266. Deal 862a was the sale of a Rolls Royce from M&M to John Burns for £164,000, invoice dated 30 April 2014. There is the following additional information in respect of this vehicle/transaction:

(1) HMRC have identified invoices which show that on 25 April 2014 EMCC Solutions Ltd sold this vehicle to Autostyle for £137,000, on 22 May 2014 Lakeview sold this vehicle to JRS for £162,000 and on 22 May 2014 JRS sold this vehicle to Kardi Vehicles Ltd.

(2) M&M's bank statements show two payments received on 30 April 2014, for £90,000 and £74,000, with details stating "James Quinn". Officer Palmer questioned this in his meeting with Mr Crickmore on 4 November 2014, and the visit report records the following:

> "JC said it did relate to this sale and that he believed that John Burns and James Quinn were the same person which he then said he meant was the same entity. DP queried this and said that the due diligence checks provided by M&M for Burns and Quinn showed two different addresses. JC advised that all due diligence was done by SR, he doesn't get involved and doesn't meet the people involved or visit their sites."

267. Officer Palmer sent SCAC requests to the Irish authorities on 19 February 2015 and 18 June 2015. The responses stated that:

(1) "bottom line" was that this was a missing trader who had set up a bogus registration as a potential PAYE worker over a year ago;

(2) the VAT number was used to import vehicles and in one instance at least consigned them back to the UK;

(3) the passport was false and the address of Flat 69 Buckingham Village did not exist;

(4) two VAT returns had been made and these showed no liability and no intra-community acquisitions or sales; and

(5) details from VIES showed that he had made acquisitions totalling £6,186,520.

268. A further request was sent to the Irish authorities in October 2017, and the previous information was confirmed along with the following:

> "We consider John Burns to be a false identity and the identity to have been used in VAT fraud. There has been 3 instances of official photo ID's presented in this case with differing dates of birth…"

269. The Irish authorities had never been able to contact him and he had not contacted them.

270. We accept the evidence above from these SCAC reports. We are mindful that this evidence is hearsay and we were not able to interrogate the relevant authors, but note in particular that no evidence has been adduced to contradict the assertions contained therein.

271. HMRC submit that Mr Burns was a fraudulent defaulter (and that this is a false identity). The basis for their submissions include that he had used three different versions of identification, had submitted nil returns despite having made significant sales, and had obtained a bogus registration (based on that false ID and a non-existent address).

272. We consider that HMRC have established that, on the balance of probabilities, the defaults by Mr Burns were fraudulent.

Conclusions on fraudulent defaulters

273. We have therefore concluded that HMRC have established that, on the balance of probabilities, all of the tax losses (which were agreed to exist and to be connected to the transactions under appeal) result from the fraudulent evasion of VAT.

WHETHER APPELLANT KNEW OR SHOULD HAVE KNOWN AND, IN RESPECT OF THE MECSEK DECISIONS, FAILED TO TAKE ALL REASONABLE STEPS

274. This appeal relates to seven decisions issued by HMRC, the first of which denied M&M credit for input tax and the remainder denied M&M's claim to zero rate transactions. It is therefore *Kittel* which is relevant to the first decision, and *Mecsek* to the remaining six decisions. Whilst we have concluded that the body of case law which developed in the light of *Kittel* (in particular *Mobilx* and the domestic cases to which we have referred) are relevant when considering what M&M should have known for the purpose of applying the *Mecsek* principle as well as to the *Kittel* principle, we are mindful that the CJEU in *Mecsek* also laid down that there is no entitlement to zero rating if we reach the conclusion that M&M did not take every reasonable step within its power to prevent its own participation in that fraud.

275. We have already set out, at [77] to [90] above, our approach to the application of this test and the case law principles which we have taken into account in considering the issue.

276. HMRC contend that M&M knew that its transactions were connected with the fraudulent evasion of VAT or, in the alternative, that in the absence of actual knowledge, M&M should have known of the connection of its transactions with VAT fraud. HMRC support this by reference to the cumulative effect of a number of factors in relation to the transactions. Mr Sherratt has raised other factors in arguing that HMRC were wrong. We consider each of these factors, including the competing submissions of the parties. However, we have throughout kept in mind the need to consider the evidence as a whole and to stand back and consider the totality of the evidence.

277. It was common ground between the parties, and we agree, that the application of the *Kittel* and *Mecsek* principles to M&M in respect of the transactions under appeal involves ascertaining the knowledge, means of knowledge and steps taken by Mr Crickmore. He was the active partner and key decision-maker in the business throughout.

278. The main factors identified by HMRC as indicators (or that they submit are relevant) that M&M knew or should have known of the connection to fraud and, in respect of the *Mecsek* decisions, failed to take all reasonable steps to prevent its participation are:

(1) general awareness of missing trader fraud,

(2) adverse inference from M&M's failure to call evidence from certain individuals and counterparties,

(3) due diligence,

(4) contrivance,

(5) vehicles released before payment received,

(6) lack of insurance,

(7) lack of contractual terms and lack of understanding of title,

(8) sequential invoice numbers,

(9) increase in net price without value being added,

(10) failure to submit evidence of export to DVLA, and

(11) lack of credibility of Mr Crickmore as a witness.

279. There were some areas where Mr Foulkes indicated that HMRC were no longer pursuing factors which had been identified in their Statement of Case. In particular, HMRC no longer sought to rely on there being no resemblance to commercial transactions, the significant decrease in M&M's turnover during the period of investigation, the price at which vehicles were bought and sold or the level of profitability of M&M. Mr Sherratt submitted that HMRC's failure to rely on these matters is itself significant.

280. Mr Sherratt disputed the factors identified by HMRC and also relied on additional factors which he submitted argued against the denials. These were:

(1) the significance of the initial contact and guidance from HMRC officers who gave instructions to Mr Crickmore;

(2) HMRC's failure to call VAT officers who dealt with M&M at material times, or to adduce expert evidence as to commercial practice in the vehicle industry – M&M submit that the lack of expert evidence means that HMRC are not in an evidential position to challenge the evidence of Mr Crickmore when he makes assertions as to market norms;

(3) HMRC's conduct in being slow to warn M&M of the risks posed by particular traders (in particular Ikonic);

(4) the number of transactions which were conducted by M&M in respect of which HMRC has not denied input tax claims or zero-rating; and

(5) The lack of a direct connection between M&M and the fraudulent defaulter in many of the chains (noting, eg, that Lakeview was only a direct supplier to M&M in one transaction chain, with the majority of cars which had traced back to a default by Lakeview having been acquired by M&M from either JMC or JRS who are not alleged to be fraudulent defaulters).

281. We have carefully considered all of the factors raised by HMRC and the submissions of M&M. Of the factors identified by HMRC, we should explain that we do not address whether to draw adverse inferences separately. We have explained the principles relevant and how we intend to apply them – therefore, where relevant to the matters in issue, we have considered whether we ought to draw an adverse inference in relation to a particular matter on the basis of the absence of evidence from Ms Roberts, Mr Doggett or Mr Wong.

282. We have, however, addressed one matter at the outset which was raised by M&M as an argument against the factors indicating that M&M should have known that its transactions were connected to fraudulent evasion of VAT and that relates to the conduct of HMRC up to and throughout the periods under appeal.

Conduct of HMRC

283. We have set out at some length in the Chronology the level of engagement between M&M and various HMRC officers prior to 11/13 (the first period in which the transactions under appeal took place) and throughout the periods in issue. This level of engagement, and explanations given at various times by both HMRC officers (as to due diligence) and Mr Crickmore (as to his business) were relied upon by both parties. We address these arguments in our consideration of the various factors relied upon by HMRC and Mr Sherratt. However, M&M's submissions did involve arguments that:

(1) HMRC was slow to warn M&M of the dangers of trading with particular counterparties (with the example of Ikonic being relevant here);

(2) HMRC failed to prevent the fraudulent trading of the defaulters, noting in particular that Ikonic had been registered for VAT after its director, Mr Capper, had been convicted of VAT fraud;

(3) HMRC had not told M&M that specific traders were alleged to be fraudulent defaulters; and

(4) HMRC had agreed a template for M&M to follow as regards the due diligence to be conducted.

284. Addressing [283(1) to (3)] together, this Tribunal does not have jurisdiction to undertake a judicial review of HMRC's conduct; any such complaint can only be made in the High Court. As stated by Judge Mosedale when considering a disclosure application in a missing trader case in *Ronald Hull Junior Limited v HMRC* [2018] UKFTT 198 (TC) at [78]:

> "…The jurisdiction of the Tribunal is plain: it must uphold the appellant's appeal unless it is satisfied that the appellant knew or ought to have known its impugned transactions were connected to fraud. It is quite irrelevant to that determination for the Tribunal to consider whether HMRC could have done more to prevent fraudulent trading."

285. In relation to [283(3)], Officer Tosta gave evidence in relation to Ikonic, and it was put to him in cross-examination as to the steps which are open to HMRC. Whether HMRC failed to prevent the continued fraudulent trading is not relevant to this Tribunal. However, we agree with HMRC in any event that HMRC was not permitted by law to inform M&M of enquiries into the affairs of other taxpayers. This is clear from s18 CRCA 2005 which states that HMRC officials "may not disclose information which is held" by them in connection with a function of HMRC.

286. We note that in his second witness statement Mr Crickmore disputed this, in that he said he had spoken to third parties who had also experienced extended verifications and they had told him that they had been told to stop trading with entities or that entities may be involved in fraudulent activity. This is obviously hearsay, but in any event, even if this is true (a matter on which we make no finding) this cannot override HMRC's legal obligations. We consider that in any event it may be that there had been an element of confusion as to scope of Tax Loss Letters

287. The Tax Loss Letters do not breach this obligation of confidentiality – as can be seen from [53], the form of such letters is to state that tax losses have been found in transaction chains where M&M purchased from a named supplier. It does not state whether or not the named supplier is alleged to be the defaulter. However, it does seem entirely plausible that a

recipient of such a letter who was told that, eg, five transactions had been traced back to a tax loss and that the relevant supplier was M&M might construe this as an indication that M&M had been the defaulting trader, even though further reading of the detail of such letters would correct such a misunderstanding.

288. However, we consider that the submissions summarised at [283(4)] require further consideration in the light of the evidence. Mr Foulkes denied that HMRC had agreed a template and referred to the decision of the Tribunal in *Global Corporation Trading Limited v HMRC* [2013] UKFTT 170 (TC) where it was said:

> "**HMRC endorsed trading practices?**
>
> 219. We have noted a number of occasions where Mr Lewis' explanation for an oddity in his trading model was that he had traded like that before and it had not been queried by HMRC.
>
> 220. Firstly we do not accept that HMRC made any representation that Global's trading was not involved in MTIC fraud. At best HMRC's earlier repayment to Global could be taken as reassurance that HMRC would repay despite any concerns.
>
> 221. Secondly, we do not accept in any event that Mr Lewis did rely on representations made by HMRC. On the contrary it is clear that Mr Lewis disregarded HMRC's opinion on a number of occasions: he ignored the recommendations in Notice 726 (eg to undertake credit checks and take up trade references); he ignored the recommendation to undertake a Redhill check.
>
> 222. Thirdly, and more importantly, if Mr Lewis knew that his transactions were connected to fraud, to the extent HMRC made any representation by its repayment, it would be irrelevant. In so far as it is a question of ought to have known, then that requires the appellant to have acted reasonably. It would not be reasonable to rely on HMRC's repayment unless Mr Lewis knew that HMRC had the same information that he had. Mr Lewis knew many things about the transactions which HMRC did not know. We have found he knew, for instance, that buyers and sellers approached him with a done deal. But he knew HMRC did not know this: it would not have been reasonable for him to rely on the repayment as a representation that trading in such circumstances was okay."

289. To the extent that this emphasises that the question before us is what M&M knew or should have known, and that it is M&M which was in a position to judge, we agree. We do, however, take account of the potential relevance of communications between HMRC and Mr Crickmore in assessing what M&M should have known and whether it took every reasonable step. We address this in the context of the discussion on Due diligence below.

M&M's general awareness of VAT fraud

290. To what extent was M&M aware of the risk of VAT fraud in relation to its transactions or should it have been so aware?

291. M&M Trading began business during 2011 and in his witness statement, Mr Crickmore stated that he "was and am aware of how businesses should trade in compliance with HMRC standards and requirements" and (at [240]) "I was generally aware of fraud taking place in the car trading market generally. However I was not aware of the scale of fraud...nor the mechanics of MTIC fraud". At the hearing Mr Crickmore sought to correct this, giving evidence that he

had not had any experience or knowledge of VAT fraud in the car industry before the visits from HMRC at the end of 2011. He said it was minimal or non-existent, and was unaware of VAT fraud in car trading.

292. This was challenged by Mr Foulkes by reference to the 2009 Interview. The transcript includes that Officer Sampson had stated that the purpose of the interview was to discuss the reasons why Mr Crickmore had been arrested "for the fraudulent evasion of VAT and for associated money laundering". Looking at the statements, accusations and allegations of HMRC (which we recognise are hearsay and in respect of which we have no evidence to help to establish whether or not they are true):

(1) At the beginning of the interview, referring to the circumstances of the arrest earlier that day, Officer Sampson recounted as follows:

> SAMPSON "...Mr Crickmore arrested for suspicion of fraudulent evasion of VAT and associated money laundering offences, necessity given was to, as to allow prompt and effective investigation of the offence. The grounds were, for the arrest, were that you've been arrested because of the evasion of VAT on the UK sale of new cars into Europe by, by your businesses…"

(2) Officer Sampson said that they were to ask him some questions about Mr Crickmore's involvement in the motor trade, in particular the importation of new cars from Europe into the UK, and Mr Crickmore confirmed that the trading names he had used were Stable Car Sale Limited, JRC Enterprise Limited, KC 2000, C&R Straps, C&R Car Sales.

(3) Specific information then given by HMRC included the following:

> SAMPSON "…In 2003 the Finnish Porsche Dealer…sold two Porsches, VAT free to Mr Charles Arksey…HMRC has chased Mr Arksey for import VAT of eighteen thousand four hundred and fifty pounds due on these cars, but he has denied any involvement with these cars, claiming that his identity has been hijacked"

(4) For that transaction, Officer Sampson apparently showed Mr Crickmore that the email set out a phone number which was the same phone number as shown on the Stable Car Sale notepaper, and a fax was addressed to "Jim/Mr Charles Arksey".

(5) HMRC produced a purchase order dated 5 January 2004 for the sale of 10 Land Rovers from Land Rover to Charles Arksey. The phone number shown on that purchase order was the mobile phone number shown on a JRC Enterprise Limited invoice.

(6) In different transactions, Officer Sampson stated that two of the traders that failed to pay the VAT due on the cars they sold to Lee Chivers were Polistar Limited run by Scott Davis of Guildford and Philip Edghill who ran J&P Newbury Limited in Newbury. Mr Crickmore confirmed he knew both Mr Davis and Mr Edghill.

(7) Toward the end of the second part of the interview the following was said:

> SAMPSON "…I've shown you today what I consider to be good evidence that indicates that you conspired with Charles Arksey and others to set-up a number of bogus companies over several years and use them to import cars into the UK on which millions of pounds of VAT were evaded. Your phone number appear as

	a contact for many of the imports and several suspicious payments have been made on your behalf…
	…
CRICKMORE	…I haven't conspired to do anything for such I'm a legitimate business guy and I did run this business to the best of my knowledge."

293. HMRC submit that having been expressly told that he was being interviewed in respect of VAT fraud where there had been counterparties go missing without having paid the VAT must have put Mr Crickmore on "red alert" to the fact of fraud in his sector. The reasonable trader in his position would have been anxious to learn all that he could about this issue, and proactive in considering and assessing what steps he could take to avoid any repetition of the connection to tax losses that he had been involved with before. They submit that this interview must be borne in mind when considering what followed.

294. Looking at the detail of the initial visits and communications from HMRC in respect of M&M Trading as set out in the Chronology:

(1) Officer Smith visited M&M Trading on 1 November 2011 and the visit report notes that an inhibit was placed on the account to prevent repayment. Officer Danson explained that this prevents payment and triggers verification by HMRC if a repayment return is submitted. On the basis of the evidence before us, we find that either M&M Trading were not informed of this inhibit or, if they were informed, the reasons for putting it in place were not explained.

(2) Mr Doggett called Officer Eaton on 12 November 2011 and noted that due diligence was "minimal if non existent".

(3) Officers Eaton and Essex visited M&M Trading on 19 December 2011. It was noted during that meeting that due diligence was non-existent and HMRC observed that the vehicle sector was "rife with fraud". This statement was made to Mr Doggett but before Mr Crickmore joined the meeting. Later in that meeting (when both Mr Doggett and Mr Crickmore were present), HMRC advised Mr Crickmore to undertake reasonable due diligence and issued him with Notice 726: joint and several liability for unpaid VAT, which listed a range of checks that could be undertaken in order to minimise the risk of becoming involved in tax loss deal chains. He was advised that HMRC could not offer a prescriptive list of checks to undertake and advised to validate VAT numbers. HMRC's conclusion was that M&M Trading was a high risk trader.

295. Mr Crickmore was given Notice 726 at the meeting on 19 December 2011. Notice 726 states at paragraph 1.4 that this measure applies where there is a supply of specified goods, and for supplies made on or after 1 May 2007 the specified goods are equipment in relation to telephones, computers or computer systems (including satnavs) and other electronic equipment made or adapted for used by individuals for leisure purposes, eg digital cameras, camcorders, portable games systems. It then states:

> "**4.4 How can I avoid being caught up in MTIC fraud?**
>
> It is in your interests to check carefully who you are dealing with. In order to help you avoid being unwittingly caught up in a supply chain where VAT goes unpaid, this notice contains some examples of reasonable steps you can take to establish the integrity of your customers, suppliers and supplies

4.5 What are "reasonable steps"?

It is good commercial practice for businesses to carry out checks to establish the credibility and legitimacy of their customers, suppliers and supplies. These checks will need to be more extensive in business sectors that are commercially risky or vulnerable to fraud and other criminality.

…

HMRC does not expect you to go beyond what is reasonable. However, HMRC would expect you to make a judgement on the integrity of your supply chain and the suppliers, customers and goods within it.

…

4.6 Can HMRC tell me exactly what checks I should undertake?

No. The examples contained in this notice are only guidelines for the kind of checks you could make to help avoid dealing with high-risk businesses and individuals. The checks you will need to make, and the extent of them, will vary depending on the individual circumstances of your trade and you are free to ask the most appropriate questions required to protect yourself in the particular circumstances of your individual transactions. A definitive checklist would merely enable fraudsters and those willing to turn a blind eye, to ensure that they can satisfy such a list.

…

6. Dealing with other businesses – How to ensure the integrity of your supply chain

6.1 What checks can I undertake to help ensure the integrity of my supply chain

The following are examples of indicators that could alert you to the risk that VAT would go unpaid:

1) Legitimacy of customers or suppliers.

For example:

- what is your customer's/supplier's history in the trade?
- has a buyer and seller contacted you within a short space of time with offers to buy/sell goods of same specifications and quantity?
- has your supplier referred you to a customer who is willing to buy goods of the same quantity and specifications being offered by the supplier?
- does your supplier offer deals that carry no commercial risk for you – eg, no requirement to pay for goods until payment received from customer?
- do deals with your customer/supplier involve consistent or predetermined profit margins, irrespective of the date, quantities or specifications of the specified goods traded?
- does your supplier (or another business in the transaction chain) require you to make 3rd party payments or payments to an offshore bank account?
- are the goods adequately insured?
- are they high value deals offered with no formal contractual arrangements?

- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc?
- can a brand new business obtain specified goods cheaper than a long established one?
- has HMRC specifically notified you that previous deals involving your supplier had been traced to a VAT loss and/or had involved carousel movements of goods?
- has HMRC specifically notified you that HMRC date stamps have been present on goods offered for sale by your supplier, or that there is evidence of HMRC date stamps being removed from packaging. This would strongly suggest that the goods had been subject to carousel movement, which should alert you to a significant risk that the transactions entered into with that supplier may be connected with the non-payment of VAT;
- has HMRC specifically notified you that other MTIC VAT fraud characteristics (such as third party payments) have occurred in transaction chains involving your supplier?

2) Commercial viability of the transaction

…

3) Viability of the goods as described by your supplier

…

HMRC recommends that sufficient checks be carried out in each of the above categories to ensure that you are not caught in a fraudulent supply chain.

6.2 Checks carried out by existing businesses

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

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

- check details provided against other sources, eg website, letterheads, BT landline records

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

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

This is not an exhaustive list, but does show some of the more common subsidiary documentation."

296. In the light of the evidence, we find that:

(1) if not already aware, the 2009 Interview alerted Mr Crickmore to the risk of VAT fraud generally in the vehicle industry. However, that interview alone would not have given him an awareness of how different types of MTIC fraud might arise, other than the most obvious of traders charging VAT on a supply and not paying that to HMRC. It should have put him on high alert for the potential risk of being involved in VAT fraud in the industry;

(2) whilst Mr Crickmore was not present during the part of the meeting when HMRC said that the vehicle sector was "rife with fraud" on 19 December 2011, we infer from the subsequent discussion around due diligence that later in that meeting Mr Crickmore was told again of the risk of fraud in his sector; and

(3) therefore, irrespective of whether Mr Crickmore had been informed of the conversation involving Mr Doggett on 12 November 2011, we consider that this meeting on 19 December 2011 can have left Mr Crickmore in no doubt as to the risk of VAT fraud. Receiving Notice 726 and the "How to spot missing trader fraud" leaflet should also have put Mr Crickmore on alert that he needed to take positive steps to guard against the risk of fraud.

297. The above evidence relates to M&M's general awareness of the risk of VAT fraud in the industry in which it was operating. In terms of being informed that M&M itself was involved in transaction chains in which tax losses had occurred, Officer Bond's letter of 11 July 2013 informed M&M specifically of this. Thus, before any of the transactions which are under appeal, M&M was aware of both the general risk of VAT fraud in the sector and, specifically, that its own business had been identified as having participated in transaction chains where tax losses were identified.

298. It can be seen from the Chronology that M&M received several Tax Loss Letters and notices of de-registration. We note that:

(1) the first Tax Loss Letter sent to M&M was that dated 31 July 2014 in relation to Ikonic; and

(2) the first letter informing M&M that one of its counterparties had been de-registered was that of 7 February 2014 in relation to Mr Quinn.

299. These formal notifications were thus not sent until the periods under appeal; however, as set out above, M&M had been made aware of the general and specific risks before such periods.

Credibility of James Crickmore

300. The evidence of Mr Crickmore was clearly crucial. Mr Crickmore is a partner in M&M, has been involved since the incorporation of M&M Trading in January 2010 and is responsible for the day-to-day management and decision-making in relation to M&M's business. His evidence was that he had a central and pro-active role in building M&M's business and he was the only witness on behalf of M&M.

301. Mr Crickmore had provided two witness statements, totalling just over 100 pages and at the hearing gave evidence for two days – this included additional evidence-in-chief, cross-examination and re-examination. The additional evidence-in-chief primarily addressed particular transactions, to provide more information and explanation of matters which had not been fully addressed in his witness statement.

302. There were areas where Mr Crickmore acknowledged and explained practices that we regard as unethical business practices:

(1) The use of associated companies such as Leisure Park Estates to acquire vehicles from dealerships which would not otherwise sell to M&M – this was first explained to HMRC in the meeting of 19 December 2011.

We accept his explanation of the reason for using associated companies for this purpose. We note that, eg, in deal 775 Anglian Caravan Park (one of the family businesses) acquired a Range Rover Sport from Lookers Land Rover, which it then immediately on-sold to M&M. The Addendum to the Lookers Terms of Business for that vehicle order by Anglian include restrictions on re-sellers and exports which apply for six months after the delivery of the vehicle to Anglian, noting that breach of this condition would entitle the supplier to a claim in damages against the customer. This practice was thus seeking to frustrate the terms of business of the supplier and trying to disguise its potential liability to pay damages to Lookers Land Rover.

This practice was mentioned again by Mr Crickmore at various of the subsequent meetings with HMRC to different officers (eg the visit by Officer Bond on 7 December 2012), and in the 2016 Interview.

There were some transactions where M&M used an associated company to acquire a vehicle where the supplier was not a main dealer and knew M&M anyway, eg 752, where Leisure Park Estates acquired a vehicle from OSD. This does not fit with the explanation which has been given and accepted, but we do not infer anything further from this.

(2) Failure to send the required notice of export to the DVLA. This failure to comply with legal obligations was explained to Officers Eaton and Essex on 19 December 2011, and was repeated again to Officer Witziers on 3 April 2014.

303. In other respects, his evidence was straightforward, explaining how he negotiated the price for a particular car, usually over the phone, and would visit auction houses.

304. However, there were several areas where Mr Crickmore's oral evidence departed from his written statements. He "corrected" his evidence as follows (and paragraph references below are to paragraphs in his first witness statement):

(1) He had stated (at [22]) that Crickmore Developments Limited had been an extremely successful venture which provided him with the finance to invest in M&M Trading's business. At the hearing he said that no, it was that business and other sources;

(2) At [29] he had said that Mr Jafferali and Mr Popat informed him that a large number of the cars he had been "exporting to private individuals in the Far East" were ending up in showrooms in Malaysia and Thailand. This was not correct. He did not sell to private individuals and was not exporting to the Far East. He was selling to Ian Cockram of IAC Cars Limited in Southampton, who had been exporting the vehicles;

(3) At [38] he had said that as managing director of M&M he dealt with oversight of the business, "liaising with department heads" and instigating strategy. He had made the decision to employ three staff, Sharon Roberts, Sara Collings and Simon Brown. He confirmed that there were no department heads distinct from these staff;

(4) At [138] he had referred to the due diligence held by M&M in respect of OSD as including the passport and driving licence of "Davis Scott". This should have referred to "Oliver Davis" or "Oliver Scott Davis". Oliver Davis is the son of Scott Davis, whose trading had been put to Mr Crickmore in the 2009 Interview;

(5) At [153] he stated that "M&M's supplies to Autostyle constituted about 90% of its business. Mr Popat would often source cars and I would then arrange shipment to Autostyle." At the hearing Mr Crickmore clarified this, saying that if this was taken to mean that Mr Popat told him what car to buy from a particular supplier this was not correct. The position was that Mr Popat would identify a car and ask M&M to negotiate its purchase;

(6) At [240], he referred to Officer Danson's statement which emphasised that MTIC fraud had received publicity in the mainstream press and stated "I was generally aware of fraud taking place in the car trading market generally. However I was not aware of the scale of fraud that HMRC now suggest was occurring nor the mechanics of MTIC fraud in the wider market place." Mr Crickmore said this was not correct – he had not been generally aware of such fraud, and was only aware of it once he was informed of this by Officers Eaton and Essex at the end of 2011.

305. Viewed in isolation, some of these points are clearly more important and relevant than others. We accept that it is plausible that some of the errors in the witness statements may have resulted from the process of the witness statement being drafted by his advisers on the basis of information he provided and then not being checked carefully enough. On the other hand, the lack of clarity around Autostyle (and whether he was directed to buy particular cars) and the identity of the director of OSD (and the resulting due diligence which was carried out) are important in the context of this appeal.

306. Mr Crickmore was also reluctant to volunteer information on occasion. He did not volunteer information as to the possible identity of "Brian Crickmore". Officer Bond's visit report states that he visited Mr Crickmore and Mr Doggett on 11 April 2013 and saw "Brian Crickmore" at M&M's principal place of business on 22 April, a visit which he records as

lasting one hour. In his witness statement Mr Crickmore says said he was not clear who they refer to because he does not know anyone by this name. He re-iterated giving evidence that he did not know why the follow-up letter was addressed to both him and this "Mr B Crickmore". It is not relevant who Officer Bond met with when he attended the principal place of business of M&M to inspect the vehicles. The unknown man had clearly introduced himself to Officer Bond, and appeared to work there. But failing to offer an explanation as to who might have legitimately been present at the premises added to the impression of a witness who was not seeking to do everything they could to help answer questions;

307. We found Mr Crickmore to be somewhat disingenuous in his witness statement. Commenting on a VAT visit report (which is in fairly standard form and contains various background information on the front page before then going on to recount the details of the visit), he says "it is not true that I was arrested for serious VAT fraud in 2009; I am not clear what the Respondents are referring to, or the relevance of this in any event to this Appeal". Whilst we do not criticise Mr Crickmore for challenging the relevance (and we have been careful to clarify how we have used the interview), we have found that he was arrested in 2009 for matters which included VAT fraud. Even if Mr Crickmore was challenging whether this was accurately referred to as "serious" or was seeking to emphasise that no charges were brought, we find it bizarre that he would not be clear to what event HMRC were referring.

308. Most significant was his response to questions by Mr Foulkes on the fourth day of the hearing as to his awareness of missing trader fraud prior to the transactions under appeal. He had been answering questions about his experience in the car industry, and buying from main dealers and why he had not conducted due diligence on such suppliers and the following exchanges took place:

MR FOULKES	"But you'd had no experience of, or knowledge of the concept of VAT fraud, in the car industry?
MR CRICKMORE	Not to the level that when I was first visited by an inspector in 2011, no.
MR FOULKES	Well, what was your experience before then on your understanding?
MR CRICKMORE	Buying and selling vehicles. I never did export before, and accounting for the VAT on each quarterly return.
MR FOULKES	Forgive me, in terms of the issue of VAT fraud…what was your experience or knowledge of the concept of VAT fraud in the car industry? The car industry in which you were involved, in other words buying and selling cars.
MR CRICKMORE	The VAT fraud was minimal or…
MR FOULKES	Minimal or…?
MR CRICKMORE	Minimal.
MR FOULKES	Minimal.
MR CRICKMORE	Or non-existent. I'd never – I would never be under extended verification or scrutiny. I've never – was – ever experienced that before 2011.
MR FOULKES	But had you come across the concept, for instance, of MTIC fraud before your first VAT visit at M&M?
MR CRICKMORE	No
MR FOULKES	No understanding of it at all, or its existence in the car selling and buying
MR CRICKMORE	No.
MR FOULKES	Nothing?

MR CRICKMORE	No.
MR FOULKES	So as far as you were concerned when you had your first VAT visit at M&M Trading, as it was then, and you refer to, and we'll come to in in due course, but you refer to the fact that VAT fraud was rife in this market, you were unaware of VAT fraud at all in car trading?
MR CRICKMORE	Yes.
MR FOULKES	So it all came as a bit of a surprise to you, to say the least, when on your first visit at M&M a VAT verification officer started talking about fraud being rife in the market?
MR CRICKMORE	Yes.
MR FOULKES	Right. No one had spoken to you about it before then?
MR CRICKMORE	Not in the depth – like I'd never – I'd never encountered a VAT officer inspection before 2011 direct, talking about the level what they was talking about in 2011.
	…
MR FOULKES	Had you heard of VAT fraud in your industry?
MR CRICKMORE	No, because I was out of the industry for quite a while.
MR FOULKES	So you'd never heard of the concept of anyone being worried about VAT fraud as an issue in car trading?
MR CRICKMORE	No, not in 2011 until the first visit, which I don't know even in the first visit (overspeaking)"

309. Whilst the 2009 Interview had taken place ten years before the hearing, and we would not necessarily expect Mr Crickmore to have had a detailed recollection of specific allegations made therein or the paperwork put to him during that interview, it had taken place just two years before M&M Trading commenced business and the first VAT visit to which Mr Crickmore was referring. We would expect that being interviewed under caution at a police station, having been required to attend following officers having turned up at his home earlier that morning would be somewhat memorable as an event. We consider that Mr Crickmore's denial of any knowledge of the existence of VAT fraud in the car industry before that first VAT visit is incredible in the circumstances.

310. We do note that on the second day of giving evidence, Mr Crickmore, having been taken to the transcript of the interview, put forward the following explanation:

MR FOULKES	But you also said that you'd not heard of VAT fraud. You didn't know what a tax loss chain was. You'd not heard of any form of VAT fraud in your car market.
MR CRICKMORE	I said that I didn't know what a tax loss chain was. VAT fraud, obviously I knew what fraud was. I knew what tax evasion was, on the broader scale and money laundering, but not MTIC fraud. That was new to me in 2012.

311. This exchange continued with Mr Foulkes taking Mr Crickmore to some of the allegations from the 2009 Interview. That interview included HMRC officers stating that Mr Crickmore appeared to have made payments to Euro Cars UK Ltd, saying that Euro Cars UK had imported cars, sold them to Mr Crickmore's company before being sold to the end user. Officer Sampson had informed Mr Crickmore that Euro had not paid any of the VAT due on these cars, before asking him if he had any idea why not. At the hearing, Mr Crickmore correctly pointed out that that interview had not addressed due diligence or Notice 726.

312. The following exchange then occurred:

MR FOULKES	"Certainly. This interview was in relation to what we now know as missing trader fraud. Whether it was mentioned in that interview or not. It is precisely the same form of fraud that it is accepted on your behalf that tainted the transaction chains, the subject of this appeal, whether you knew about it or not, Mr Crickmore, that's right isn't it?
MR CRICKMORE	I don't accept that.
MR FOULKES	It's exactly the same kind of fraud, acquiring traders not paying the VAT on cars being sold through to other companies including your own.
MR CRICKMORE	I don't accept it.
	…
MR CRICKMORE	…But I did do nothing wrong. I don't accept that I did anything wrong and I did not get prosecuted for it."

313. Overall, we were left with the clear conclusion that Mr Crickmore had not been completely open in some areas and had been untruthful in others. This meant that, for areas where it was his evidence (unsupported by oral or documentary evidence from others) on which matters relied, we were reluctant to accept his explanation. This was particularly the case where the papers before us (or inferences therefrom) contradicted his version of events. This was particularly relevant to:

(1) his awareness of the risk of VAT fraud in the car industry from the time at which M&M Trading was incorporated;

(2) the extent to which due diligence information that was obtained was reviewed and assessed, whether material requested from counterparties was chased up and whether it was refreshed;

(3) his relationship with Autostyle, including the extent to which they directed him to acquire vehicles from a particular supplier;

(4) challenges he made to the accuracy or context of some of HMRC's visit reports; and

(5) consideration, in the light of all of the evidence, of what he knew or should have known about M&M's transactions and their connection to fraudulent evasion.

Mr Crickmore as expert and evidence of market practice in the vehicle trading industry

314. As a matter of evidence, M&M drew attention to HMRC's decision not to adduce any expert evidence as to market practice in the vehicle industry. Whilst Mr Sherratt accepted that Mr Crickmore could not be regarded as independent, he did submit that he was an expert in his industry and that, as HMRC had not adduced their own expert evidence, Mr Crickmore's evidence should be accepted as to market practice. Mr Sherratt submitted that Mr Crickmore's evidence as to whether traders would meet in person and visit premises was particularly relevant in this respect.

315. We do not accept the submission that Mr Crickmore's evidence must be accepted on this basis. We have significant doubts as to Mr Crickmore's credibility, which leads us to be unwilling to accept his evidence where it is not supported by other evidence. Furthermore, Mr Crickmore's evidence was challenged in cross-examination by HMRC (particularly as to the

level of due diligence that was reasonable and appropriate) and as a Tribunal we are able to reach conclusions as to general matters of business practice.

316. Furthermore, we do not accept that Mr Crickmore is an expert in the vehicle industry generally. He did generate high turnover in M&M (from what was a standing start) in a very short period of time, but when asked about this (given that he had already observed that the UK was in a recession at the time which was affecting his other businesses) he said that his business was booming, but could not comment on what the industry was doing generally, and that the reason for his success was based on "demand" and his ability to negotiate a good price for vehicles and exploit an opportunity of exporting luxury vehicles to the Far East (which effectively meant selling to Autostyle). This does support him having identified a good business opportunity – it does not necessarily mean that he is an expert, and we do not accept that he is.

317. Having said that, there are some areas where we are, on balance, minded to accept Mr Crickmore's evidence in the light of our own knowledge and expertise. We accept that in the vehicle industry it is market practice for sales between traders to be negotiated over the phone (or online) with little documentary evidence of that negotiation, that traders need not maintain business premises which are akin to showrooms, and that traders depend on their reputation such that the condition of a vehicle is as described.

318. We have considered Mr Crickmore's evidence as to whether traders would generally meet in person and visit premises in the context of our consideration of the due diligence below.

Due diligence

319. HMRC assert that M&M's due diligence checks were wholly inadequate. When they were completed at all, the checks were merely window dressing which established the existence of the counterparty and could not have given M&M confidence it was trading with reputable traders.

320. M&M assert that HMRC have been side-tracked by the issue of due diligence but that in any event not only was the level of due diligence conducted by M&M sufficient (in that it was reasonable, proportionate and appropriate) but that it was approved by HMRC.

321. We recognise, and HMRC accepted, that the level of due diligence is only one factor which needs to be considered when assessing what M&M knew or should have known and whether it took every reasonable step. We do look at the evidence in some detail as M&M did put considerable weight on HMRC having approved the approach taken by M&M and we consider that this factor needs to be focused on when assessing whether M&M took "every reasonable step".

Evidence of due diligence carried out by M&M

322. Before looking at the due diligence material adduced by M&M in respect of its counterparties to the challenged deals, we note the material held by M&M in respect of Club Billionaire. Club Billionaire and was introduced to M&M by Sarju Popat and is not alleged to be a defaulter. On 8 July 2013 M&M provided to Officer Bond the due diligence information which they had obtained in respect of that company, following a meeting in which Officer Bond had stated this this supplier had not filed its VAT return. This information consisted of:

(1) its certificate of incorporation dated 18 September 2012,

(2) a copy of the director Mr Ludhra's passport,

(3) a VAT certificate dated 18 September 2012 (which stated that the trade classification was "Buying and selling of own real estate"), and

(4) a VIES VAT registration check.

323. Officer Bond wrote to M&M on 11 July 2013 referring back to the earlier advice that M&M validate VAT numbers with HMRC. This check of the VAT number with HMRC is different to checking that same VAT number through VIES. This (ie the material adduced plus the VAT verification with HMRC) was referred to at the hearing as the "Club Billionaire template", or the "template". We bear this template in mind when assessing the information which M&M obtained in respect of other counterparties.

Adapt 4 Work

324. M&M's due diligence material consisted of:

(1) summary details from Companies House dated 15 May 2014, showing that the company was incorporated on 14 January 2013 and its business is "other education";

(2) DueDil report dated 15 May 2014 on Adapt 4 Work which describes the company as Adult and Other Education Not Elsewhere Classified, and states that it was established on 14 January 2013. There is no financial information recorded;

(3) Mr McEvoy's driving licence;

(4) VAT certificate dated 22 May 2014, describing the business activity as "technical and vocational secondary education";

(5) VIES VAT number validation checks with the EC on 3 June 2014 and 5 June 2014; and

(6) emails from HMRC in relation to the verification of the VAT number - requests were sent on 27 May 2014 (HMRC confirmed VAT registration) and 4 June 2014 (HMRC confirmed VAT registration).

325. On 5 September 2014 Mr Crickmore sent a due diligence checklist (the "Checklist") to Mr Howard of A4W asking for various information (including as to names and addresses of directors, trading address, registered address, principal place of business) and requesting copies of documents (including photo ID for directors). This letter also sought declarations including that:

(1) all accounts and annual returns have been filed with Companies House,

(2) all VAT returns are up to date,

(3) reasonable due diligence checks have been carried out on their supplier,

(4) their sale of goods to M&M is not at a lower price than the corresponding purchase by them unless specifically declared,

(5) payment in respect of their purchase has been or will be made to their supplier and not to any third party unless specifically declared,

(6) any VAT output tax on their sale to M&M will be declared on the relevant VAT return and accounted for, and

(7) there are no grounds to believe that the relevant VAT on these goods has not been or will not be declared and accounted for by their supplier.

326. Mr Crickmore stated that A4W first approached M&M through Autotrade Mail, and that his main contact there was Ian Harrison who he had met once. Giving evidence, Mr Crickmore suggested this may have been when Mr Harrison was dropping a car off to him.

Autostyle Hong Kong

327. M&M had the following for Autostyle Cars Ltd, the UK company which was associated with the Popats and Autostyle, ie the Hong Kong customer:

(1) utility bill addressed to Auto Style Cars Ltd;

(2) Mr Patel's driving licence;

(3) certificate of registration for VAT with an effective date of 1 July 2007 and trade classification of "new cars & light motor vehicles"; and

(4) email from HMRC in relation to the verification of the VAT number - request sent on 26 January 2015 (HMRC confirmed VAT registration)

328. There was no evidence of any due diligence information having been obtained in respect of Autostyle in Hong Kong.

Autovillage Sales & Maintenance Limited

329. Mr Crickmore could not recall what due diligence M&M had in respect of this customer, describing it as "necessary due diligence, albeit slightly minimal". M&M's papers contained:

(1) summary company information from companiesireland.com;

(2) Mr Sherlock's passport;

(3) certificate of insurance issued by Aviva;

(4) company letterhead;

(5) letter from the Irish Revenue showing the company's name and address and PAYE and VAT numbers; and

(6) VIES VAT number validation checked on 11 November 2013.

330. Mr Crickmore said he did not meet with anyone and each time they supplied cars he dealt with a different person. He did not consider this to be an issue at the time because when M&M supplied a vehicle they paid on time and were loyal customers.

B&W Direct Trading

331. The information collated by M&M consisted of:

(1) certificate of incorporation showing it was incorporated on 20 December 2010;

(2) company details from the Companies Registration Office;

(3) driving licence, several copies of which were included in the bundle (but which we were satisfied were copies of varying levels of poor quality of the same driving licence. In at least one of the poorer quality copies the individual's name appeared to be a Ms Lybie. However, a more legible version showed the name as Ms Byrne (which better matched our reading of the signature);

(4) advice of VAT registration with effect from 1 January 2011;

(5) VIES VAT number validation checks dated 18 September 2013, 8 October 2013, 13 December 2013, 17 December 2013, 21 January 2014 and 5 June 2014; and

(6) emails from HMRC in relation to the verification of the VAT number - a request was made on 20 December 2013 in respect of B&W Direct Trading, which HMRC were not able to confirm as a valid registration. In order to process the verification request HMRC asked that M&M resubmit up to date copies of the VAT certificate, letter of introduction and certificate of incorporation. Similar responses were received in relation to requests sent on 2 and 7 January 2014. There was no evidence that HMRC had ever confirmed a valid registration number for B&W.

332. B&W had contacted M&M through Autotrade Mail.

Colin O'Kelly

333. The file maintained by M&M consisted of:

(1) local property tax confirmation in respect of Mr O'Kelly;

(2) certificate of registration of business name of Pyramid Auto;

(3) Mr O'Kelly's passport;

(4) letter from the Irish Revenue in relation to the Economic Operators' Registration and Identification System;

(5) VIES VAT number validation checks from 20 December 2013, 5 June 2014; and

(6) emails from HMRC in relation to verification of the VAT number - requests sent on 13 January 2014 (response noted that HMRC await further verification and asking M&M to re-submit after 31 January 2014) and 18 February 2014 (HMRC confirmed VAT registration).

334. The Checklist was sent to Mr O'Kelly on 4 September 2014.

335. Mr Crickmore said that he had never met Mr O'Kelly, and Mr O'Kelly had contacted M&M through Autotrade Mail in 2013/2014.

Connected Cars

336. M&M's file consisted of:

(1) summary details from Companies House showing the company had been incorporated on 17 October 2009;

(2) DueDil report requested by Ms Roberts;

(3) invoice issued to Connected Cars;

(4) Mr Dass's passport and driving licence;

(5) certificate of registration for VAT with an effective date of 1 March 2010 and trade classification "used cars & light motor vehicles"; and

(6) VIES VAT number validation check from 26 September 2013.

337. M&M and Connected Cars began trading through Autotrade Mail. Mr Crickmore could not recall who first contacted whom.

Ikonic Solutions

338. For Ikonic, the material collated by M&M consisted of:

(1) copy of its certificate of incorporation showing it was incorporated on 17 November 2011, together with its application to register as a company;

(2) a "Company Check" and the results of a search at Companies House on 4 November 2016;

(3) Mr Capper's passport;

(4) VAT certificate which described its business activity as "sale of new cars and light motor vehicles" and states the effective date of registration was 14 March 2012;

(5) letter from HMRC to Ikonic in relation to its request to change company information;

(6) VIES VAT number validation checks on 13 November 2013 and 5 June 2014; and

(7) Emails from HMRC in relation to verification of the VAT number - requests sent on 2 January 2014 (response noted that HMRC still await further verification and asking M&M to re-submit after 10 working days), 7 January 2014 (response noted that HMRC still await further verification and asking M&M to re-submit after 21 January 2014), 21 January 2014 (HMRC confirmed VAT registration), 31 January 2014 (HMRC confirmed VAT registration), 28 February 2014 (HMRC confirmed VAT registration) and 11 March 2014 (HMRC confirmed VAT registration).

339. Mr Crickmore had met Mr Capper once in early 2014 at the Belfry Hotel. Whilst the notes of the meeting with Officer Palmer on 28 August 2014 record that Mr Popat had put Mr Crickmore in touch with Ikonic at the start of the business relationship, Mr Crickmore corrected this and said that he already knew Ikonic.

James Quinn

340. M&M's file consisted of:

(1) letter of introduction dated 20 December 2013 which appears to be from Mr Quinn in respect of himself;

(2) Mr Quinn's passport;

(3) utility bills;

(4) advice of VAT registration with an effective date of 1 May 2013;

(5) VIES VAT number validation checks dated 11 December 2013 and 5 June 2014 (the latter of which stated that this was an invalid VAT number); and

(6) emails from HMRC in relation to the verification of the VAT number - requests sent on 2 January 2014 (response noted that HMRC await further verification and asking M&M to resubmit after 10 working days) and 20 January 2014 (HMRC confirmed VAT registration).

341. Mr Crickmore stated that he had never met Mr Quinn.

JMC Automobiles Limited

342. For JMC, M&M had the following:

(1) summary company details from Companies House showing that the company was incorporated on 11 August 2005, together with a statement of first directors and the intended situation of registered office and a statutory declaration accompanying the application for registration;

(2) blank JMC invoice;

(3) email from Mr McNally providing bank details;

(4) DueDil report on JMC which had been requested by Ms Roberts. That report is undated but refers to the latest annual returns at 11 August 2013 and latest annual returns at 30 April 2013. The report states that the company's net assets were -£36,272;

(5) abbreviated accounts to 30 April 2015 and annual return dated 11 August 2015;

(6) driving licence of Mr McNally;

(7) copy of its VAT certificate with an effective date of 5 April 2006 and trade classification of "wholesale and retail of used motor vehic";

(8) VIES VAT number validation checks on 27 November 2013 and 5 June 2014; and

(9) Emails from HMRC in respect of verification of the VAT number - requests sent on 20 January 2014 (HMRC confirmed VAT registration), 13 February 2014 (HMRC confirmed VAT registration), 27 February 2014 (HMRC confirmed VAT registration), 3 April 2014 (HMRC confirmed VAT registration), 22 May 2014 (HMRC confirmed VAT registration) and 29 May 2014 (HMRC confirmed VAT registration).

343. On 27 November 2013, Ms Roberts sent an email to Mr McNally of JMC asking for full company name and address, VAT number and copy of VAT certificate and copy of director's passport.

344. On 4 September 2014 Mr Crickmore the Checklist to JMC. One copy of it in the bundle has the following handwritten note on it "Sent via email & hard copy 4th Sept 2014 Received Back 8/9/14". Mr Crickmore stated that JMC had "refused to complete it".

345. JMC had contacted Mr Crickmore through one of the adverts M&M placed on Autotrade Mail, around 2013. He said Mr McNally was "a car trader that I knew personally as I had met him on various occasions".

John Burns

346. M&M's file consisted of:

(1) utility bill;

(2) driving licence of Mr Burns;

(3) advice of VAT registration with effect from 1 March 2014;

(4) VIES VAT number validation checks on 27 March 2014 and 5 June 2014, showing the address was "Flat 69 Buckingham Village";

(5) emails from HMRC verifying the VAT number - requests sent on 27 March 2014 (response noted that HMRC await further verification and asking M&M to re-submit after 10 working days), 15 April 2014 (HMRC confirmed VAT registration) and 28 April 2014 (HMRC confirmed VAT registration); and

(6) Checklist sent to John Burns on 5 September 2014.

347. Mr Crickmore did not meet Mr Burns.

JRS Commercials and Cars Limited

348. The file maintained by M&M consisted of:

(1) certificate of incorporation (showing it had been incorporated on 19 March 2013 as Ballyardle Limited) and memorandum and articles of association;

(2) "Company Check", which was dated 4 November 2016;

(3) annual return dated 19 March 2016 and received for filing in electronic format o 20 May 2016 and financial statements for year ended 31 March 2015 dated 24 December 2015;

(4) Mr Stinson's passport;

(5) consumer credit licence issued by the Office of Fair Trading, licence commencing on 2 December 2013, for JRS Commercials and Cars;

(6) certificate of registration for VAT issued on 1 November 2012 with an effective date of 22 January 2003, trade classification "used cars & light motor vehicles";

(7) copy of an acknowledgement from HMRC that Mr Stinson had submitted a VAT return;

(8) VIES VAT number validation checks on 21 January 2014, 5 June 2014 and 21 August 2014; and

(9) emails from HMRC in relation to verification of the VAT number – requests sent on 24 January 2014 (HMRC not able to confirm as a valid registration, stating that the failure was related to the information, and asked that M&M resubmit up to date copies of the VAT certificate, letter of introduction and certificate of incorporation) and on 3 February 2014 (HMRC confirmed VAT registration).

349. The Checklist had been set to Mr Stinson on 4 September 2014.

350. Mr Crickmore stated that Mr Stinson was well-known, and he was aware of him from his previous experience although he had never met him previously.

Lakeview

351. M&M's file consisted of copies of:

(1) undated instructions from HMRC in respect of VAT EC Sales List for the period 12/13;

(2) Mr McNulty's passport;

(3) VIES VAT number validation with the EC on 11 April 2014 and 5 June 2014; and

(4) emails from HMRC verifying the VAT number - requests sent on 15 April 2014 (HMRC confirmed VAT registration) and 28 April 2014 (HMRC confirmed VAT registration).

352. The Checklist was sent to Mr McNulty of Lakeview Motors on 4 September 2014.

353. Mr Crickmore stated that he had initially been contacted by Mr McNulty through Autotrade Mail but had never met him.

OSD Limited

354. The file consisted of:

(1) Passport of Ms Jane Davis;

(2) Mr Davis' driving licence (Oliver Scott Davis);

(3) utility bill for the company;

(4) certificate of registration of a charge securing "all monies due or to become due from the company to Scott Davis and Bernard Davies";

(5) certificate of VAT registration dated 20 November 2012;

(6) emails from HMRC verifying the VAT number - request sent on 17 June 2014 (HMRC confirmed VAT registration); and

(7) partially completed Checklist - The Checklist had been sent to Mr Davis of OSD on 5 September 2014. It was partially completed and returned, marking various documents as enclosed, and signed and dated on behalf of OSD on 8 September 2014.

355. Mr Crickmore said he knew Oliver Davis personally for a number of years, and used to do business with his father, Scott Davis, in the car industry.

Supply a Car

356. M&M's file consists of:

(1) certificate of incorporation dated 26 October 2011;

(2) WebCheck report from Companies House on Supply a Car;

(3) CompanyCheck on the director Mr Moir;

(4) Mr Moir's driving licence;

(5) utility bill for the company;

(6) certificate of VAT registration with an effective date of 28 October 2011, and trade classification of "new cars & light motor vehicles"; and

(7) VIES VAT number validation with the EC on 18 September 2013.

357. SACL had approached M&M.

Swift Assets Limited

358. The file consists of:

(1) letter from Companies House in relation to the incorporation of the company using the Companies House Web Incorporation Service;

(2) certificate of incorporation dated 12 June 2013 and accompanying incorporation form;

(3) summary details from Companies House;

(4) largely illegible copy of what appears to be a bank giro credit; and

(5) letter from HMRC (largely illegible) with introductory information about what to do when the company starts a business activity.

359. Mr Crickmore had met the director, Mr Shields, on one occasion. They had made contact over the internet over a car that was for sale in early 2013.

General evidence as to M&M's approach

360. Mr Crickmore gave additional evidence in relation to the due diligence as follows:

(1) commercial due diligence has always been important. M&M would not conduct trade with a counterparty if it could not obtain satisfactory commercial due diligence on them as a potential trading partner;

(2) he denied (having been taken to the record of the visit from Officers Palmer and Danson on 4 November 2014) that all he was concerned with is getting paid – he said this note in the visit report was in the wrong context. When the statement from that visit report that his main concern was taking litigation to retrieve outstanding monies (in the context of due diligence in respect of customers in the Republic of Ireland), he said he didn't understand the paragraph;

(3) it was not market practice for traders to meet each other;

(4) unlike with retail, there was no need for traders to have large business premises. He stated that cars were usually sent direct from the suppliers to the customers so there was no need to have space to store vehicles. Addressing Ikonic (whose address was residential) he stated that many traders are able to work from home. Dealers are not always expected to be in actual possession of the vehicle; However, he also said that he saw (and was thus able to inspect) 80-90% of the vehicles he bought and sold;

(5) on trade classes, with reference to John Burns, it was common for traders to use alternative entities to source vehicles, to prevent themselves from being blacklisted by main dealers. Similarly, in the context of A4W, the education trade class was irrelevant as he sometimes used other businesses in transactions and he "never thought" to question the classification of a company;

(6) on trade references, it was not commercially viable or realistic in circumstances where M&M had dealt with parties on previous occasions;

(7) M&M were not taking risk on funds so negative net assets did not impact on the trading relationship;

(8) M&M carried out a Companies House search each time it intended to engage in another transaction with a company; and

(9) the Checklist was produced by Cartwright King. The purpose was to ensure that M&M received appropriate and comprehensive documentation and information from the supplier and/or customer to satisfy M&M's due diligence obligations.

Discussion on due diligence

361. HMRC submit that the due diligence conducted by M&M:

(1) goes little further than establishing the existence of the business;

(2) was inconsistent with the guidance given by M&M's own adviser;

(3) often indicated negative information or points that should have been of concern but were not investigated further; and

362. They also submit that further reasonable due diligence would have included credit reports, internet searches on key individuals, obtaining trade references, making visits to premises and independent checks to ensure that the goods existed and were of the specification and condition suggested.

363. It is in the context of due diligence that we consider that the absence of witnesses other than Mr Crickmore for M&M is potentially most relevant. We thus consider first the possibility of adverse inferences, address the adequacy of the due diligence which was actually conducted, assess the argument by HMRC as to additional due diligence that they say was reasonable and could have been conducted, and then consider the submissions made on behalf of M&M as to the relevance of the trust that was placed by M&M in its counterparties and what they term the approval of the Club Billionaire template by HMRC.

Adverse inference – absence of additional witnesses for M&M

364. HMRC submit that an adverse inference should be drawn from the failure to call Sharon Roberts, given the role she played and her presence at meetings on which weight is placed by M&M. We have already set out the relevant principles in considering whether to make an adverse inference.

365. Ms Roberts' attendance at various meetings with HMRC can be seen from the Chronology. The papers before us also evidenced that she had requested various due diligence material from counterparties and liaised with Officer Bond (separately from her attendance at meetings with him), particularly in relation to the checks of VAT registration numbers.

366. Mr Crickmore has described her role differently at various times:

(1) In the 2016 Interview he stated that, when it comes to moving money around, she was just doing what Mr Crickmore told her to do, acting as "a gopher". The only person who had the day trading, the buying and selling of cars and anything that happened was Mr Crickmore. Ms Roberts only did what he told her.

(2) His first witness statement said that Ms Roberts would take responsibility to check the due diligence and chase the supplier/customer if this was insufficient. She arranged payments and carried out these tasks at Mr Crickmore's instruction. That same statement also stated he trusted his employees to carry out the roles that they were employed to do with full competency, albeit with some guidance, but that he, as partner, made the most significant decisions on behalf of M&M, including whether to enter into a professional relationship with new clients. Any one decision never rests solely with one individual, whether that be to initiate a new commercial relationship with a client or authorise a payment. There are always procedures and approvals required that must be sought and followed before any decision is made.

(3) In his second witness statement he clarified that "the decision rested with me".

(4) Mr Crickmore's evidence at the hearing was that she would make a provisional decision, on the guidance he had given, and ask him if it was OK to carry on the transaction.

367. Giving evidence there were occasions where Mr Crickmore was not able to assist, and referred back to Ms Roberts (eg as regards checks on Mr Curtis), and he stated that he had not read the due diligence documents but that Ms Roberts would have done so.

368. At the hearing Mr Crickmore referred to a meeting with Officer Bond in which Officer Bond brought up that the due diligence was not up to scratch. He said "Sharon was there. And she got an earful because I basically said, "This needs to be right up to scratch"." There was then the following exchange:

MR FOULKES	"And now we're dealing with Mr Bond and, as far as your checks upon Mr Curtis and his companies are concerned, tell us what did you do?
MR CRICKMORE	I'm not sure I can think back that long to exactly what I did do or request Sharon to do.
MR FOULKES	This is you developing your understanding of MTIC fraud and how to avoid it. Did you write it down so that Sharon would understand what to do?
MR CRICKMORE	I'm not sure, ma'am."

369. As to whether he read the documents:

MR FOULKES	"Did you read the documents you got or did you just collect them?
MR CRICKMORE	No, I read that documents that I got and I also would have or Sharon would have read the documents, because she was in contact with Mr Bond as well…
MR FOULKES	Did you read these documents?
MR CRICKMORE	No.
MR FOULKES	But Sharon would have done so?
MR CRICKMORE	Yes.
MR FOULKES	And what were your instructions to her? Your procedures as to how to assess the documents that she collected.
MR CRICKMORE	My instructions would have been per the same that Mr Bond gave Sharon Roberts because he'd steered her in that direction of some of the documents that we can collate to make sure that these are reputable companies to deal with.
MR FOULKES	What were your instructions to her?
MR CRICKMORE	Carry out the procedures that Mr Bond steered us towards to make sure that we can deal with this company so we won't have no issue at a later date, ie carry out the due diligence what she carried out.
MR FOULKES	And did Mr Bond's steer include reading the documents and assessing what they meant?
	…
MR CRICKMORE	No, that would be common sense to look at the documents."

370. Whilst we accept Mr Crickmore's statement that he was the final decision-maker as to whether to transact with a particular counterparty, evidence from Ms Roberts could have addressed what Mr Crickmore asked her to do in terms of obtaining information and what she was asked to do and did do when information was received. This is particularly important given that the visit report prepared by HMRC of the meeting with Officer Palmer on 4 November 2014 recorded that she had said she doesn't do any checks on the documentation provided or check the details on invoices.

371. We find that Ms Roberts was asked to (and did in fact) compile the due diligence information which was exhibited before us, conduct VIES checks and VAT registration checks with HMRC in Wigan, and in September 2014 this was extended to sending out the Checklist to counterparties. In the absence of hearing any evidence from her to the contrary, we find that

she was not instructed, and did not do, anything further than this – the only information that she read was the responses from HMRC to the VAT registration checks (we infer this on the basis that she re-submitted these requests if the initial response failed to confirm the registration) – and put this information before Mr Crickmore. In particular, we find that she did not seek to make any qualitative assessment of a counterparty in the light of the information which she collated.

Adequacy

372. We accept that M&M's approach to due diligence evolved. There was no or minimal due diligence in 2011, and there was little sign of improvement even by the end of 2012, as can be seen Officer Bond's email of 29 November 2012 and Mr Doggett's response the following day.

373. Mr Sherratt submitted that, from July 2013, M&M was routinely following the Club Billionaire template (which had involved obtaining the certificate of incorporation, photographic ID of director, VAT certificate, VIES VAT check and VAT check with HMRC in Wigan). Whilst there are variations as detailed above, we accept that in the majority of instances M&M did obtain this level of information about its counterparties from the third quarter of 2013 – partial exceptions include Autovillage, where no VAT check appears to have been conducted, and B&W, where HMRC twice failed to verify the VAT registration number and two sales were made by M&M to B&W (deals 766 and 767) even though there is no evidence of HMRC having ever verified the registration number. Autostyle in Hong Kong is also a notable exception to this, with no evidence of any due diligence having been conducted.

374. We would make the following preliminary comments on the evidence of approach which was before us:

(1) We consider it very telling that, giving evidence, Mr Crickmore stated that in response to the visit from HMRC on 19 December 2011 he "continued to do exactly what I was doing before". He explained that he only "glanced" at Notice 726, explaining that at the time he wouldn't have taken it with much seriousness because he was buying from manufacturers and main dealers.

(2) Having been advised to do VAT validation checks at this meeting the evidence shows that he did not undertake the VAT validation checks until the second half of 2013 – the first VIES check we saw was dated 8 July 2013. Ms Roberts registered the various email addresses used by M&M in December 2013 which then enabled them to use HMRC's email validation service to perform the recommended up-to-date checks with HMRC in Wigan, the first of which was then made on 20 December 2013. There is then a pattern of repeating these VAT validation checks, but this was not uniform and, as noted above, transactions did proceed even where HMRC replied that they were unable to verify the VAT number.

(3) We do not accept Mr Crickmore's evidence that M&M carried out a Companies House search each time it intended to engage in another transaction. This is not supported by the evidence in the bundles, whereas we could, eg, see that M&M had repeated verification requests with Wigan for each transaction and had sometimes repeated VIES checks. We do not consider it likely that M&M would have chosen to keep some but not all of the due diligence checks it repeated. Given the absence of evidence from Ms Roberts who was the individual he said was responsible for carrying out due diligence checks (albeit that he did not name her when stating that Companies

House checks were repeated) the only evidence in favour of this being the case is the witness statement of Mr Crickmore and our concerns as to his credibility mean that this is not sufficient.

(4) We note that the Checklist was used from September 2014, having been prepared by Cartwright King. Mr Crickmore stated that M&M had stopped actively trading in July 2014 as M&M had not been paid out on a previous input tax reclaim. Nevertheless, we consider that the Checklist is important – whilst we do not make any finding that it alone would be sufficient, it would, if used properly, give M&M some good information as to the standing of its counterparties. However, only one was returned (from OSD, and that had only been partially completed). That sent to A4W on 5 September 2014 was addressed to someone who had ceased to be a director almost a year previously, on 1 November 2013 (and was not the person whom Mr Crickmore identified as his main contact). The papers before us did not include any evidence that M&M had taken any steps to chase up responses. We did see evidence that JMC returned the Checklist to M&M without completing it. Mr Crickmore has said that Ms Roberts did chase JRS on more than one occasion, but we did not have any emails or letters supporting this. This is one of the areas where it would have been helpful to hear from Ms Roberts as to what she was instructed to do, and what she actually did do, in respect of this list. Given the evidence which is available before us, we conclude that once the Checklist was sent out, no steps were taken to chase up responses.

375. HMRC drew attention to the information obtained by M&M indicating:

(1) an absence of suitable premises, - Lakeview's premises are farm buildings and a cottage, Ikonic was on residential premises with limited parking, Mr O'Kelly's address was his home address on a housing estate;

(2) poor credit rating or significant liabilities - JMC had net liabilities of £36,272, leading to a question as to how it was able to pay for vehicles in advance;

(3) recent incorporation – A4W was incorporated in January 2013, JRS in March 2013; and

(4) trade classes inconsistent with car trading – A4W was "adult and other education".

376. There is no evidence that Mr Crickmore considered the fact that he was dealing with relatively new companies in many instances. Notice 726 lists as examples of indicators that could alert a trader to the risk that VAT would go unpaid the customer's/supplier's history in the trade, whether high value deals are offered by a newly established supplier with minimal trading history, low credit rating etc and whether a brand new business can obtain specified goods cheaper than a long established one. Whilst there were instances where Mr Crickmore said that he had known a key individual for a number of years since working with his father (eg Mr Jafferali and Mr Cockram), there were many instances where he was contacted through Autotrade Mail by new suppliers. No questions were prompted.

377. Mr Crickmore has explained above why he considered that factors (1), (2) and (4) above were essentially irrelevant in any event. We do accept that there may be valid explanations for an absence of suitable premises (eg suppliers did not hold stock themselves or stored elsewhere) or different trade classes (eg trade had changed over time or multiple trades were conducted) and that this would not in every instance indicate a risk of fraud. However, they

may, when taken with other information, indicate that further questions should have been asked.

378. We do note that the information provided to HMRC in respect of Club Billionaire included a VAT certificate showing a trade classification of "Buying and selling of own real estate" and there is no evidence that Officer Bond made any comment on this or questioned it in any way. We find this surprising, particularly given the small amount of information which was sent to him at that time, as we would rather have expected this to stand out. Mr Foulkes did not address this absence of comment from Officer Bond. Whilst it is the knowledge and means of knowledge of M&M that is under appeal and not that of HMRC, this does illustrate that that there may, in the course of business dealing, be areas where some aspects of the due diligence information do not look "perfect" and this may not be noticed at the time. It would be inappropriate for us to focus overly on any individual matter that may be identified from the due diligence material which was put before us. But we do consider that the cumulative effect of such matters is important, particularly in the light of the absence of any follow-up of such matters.

379. More significantly, our conclusion, based on the evidence of Mr Crickmore and the absence of any evidence from Ms Roberts, is that the due diligence information which was collated was not reviewed critically by M&M to assess the information received, potential risks and whether any follow-up was appropriate. We find that Mr Crickmore did not read the information received, and the evidence also indicates (even without considering any adverse inference from her absence) that Ms Roberts did not do so either. The material obtained did include some information which ought to have prompted further questions, but no thought appears to have been given to this.

Additional due diligence that could have been obtained

380. Mr Doggett advised M&M on 16 August 2013 as to due diligence, advising Mr Crickmore to do a VIES check, obtain a copy of the certificate of VAT registration, obtain confirmation that the trader is up to date with VAT (although this was more relevant to suppliers), confirm he met the trader and he matched his passport details, and obtain trade references.

381. The above advice is, we consider, somewhat generic. The criticism by HMRC is that M&M did not follow this advice – Mr Crickmore did not ensure he met traders or obtain trade references, nor did the checks on the VAT position usually involve confirmation that the trader was up to date with their VAT affairs (although we do note Mr Doggett's suggestion that this is more relevant to suppliers rather than customers).

382. We accept that there may be instances where it is not practical to meet traders (this would, eg, be particularly relevant to Simal Popat and Autostyle). We note that Mr Crickmore says it is not market practice for traders to meet each other – we accept it is not necessary for the purpose of negotiating the sale of a car for the traders to do this in person; however, this does not mean it is never reasonable or proportionate to make an effort to visit a trader at their premises. Mr Crickmore acknowledged that he travelled to Ireland every couple of months or so socially. Given his own emphasis on always being busy looking for opportunities, the absence of any attempt to meet business contacts (in an industry he says is heavily dependant on contacts, knowing good traders that aren't known of by others) or explanation as to why he had not done this (other than that his visits to Ireland were social) is indicative of a cavalier approach to knowing and understanding his counterparties.

383. Mr Sherratt is correct to observe that meeting counterparties does not of itself prevent a trader becoming embroiled in a tax loss chain – Mr Crickmore had met Mr Capper. We accept this, but it is part of a bigger picture of the due diligence undertaken.

384. HMRC suggest that visiting premises would have revealed:

(1) A4W – the defaulting trader was not a car trader but allowed another individual to use its VAT number;

(2) James Quinn – the trading address was his grandmother's house and he had never lived there; and

(3) John Burns – a false identity.

385. We are not convinced, on the balance of probabilities, that visiting the premises would necessarily have revealed this information. Other (reasonable) explanations could have been forthcoming, eg, a person is away at that time.

386. More relevant, we consider, is the failure to undertake online searches, particularly given that this could be done without leaving the office or risking causing embarrassment or offence in respect of counterparties with whom there was an existing trading relationship. This would be a very useful, simple and appropriate step to take. HMRC point out the following information available online:

(1) Autostyle – Officer Palmer had found an article published on 30 July 2009 from "MYT" which reported that Simal Khetsi Popat was found guilty of 21 charges, including evasion of import duties on six luxury cars and was fined and jailed for 26 days. The offences were said to have been committed in 2003, and it was reported that he was a first offender; and

(2) Ikonic – Mr Capper had been convicted of VAT fraud shortly before the relevant transactions. Officer Danson's witness statement says that when a search is conducted on John Brian Capper the first hit is the article from Wales Online.

387. In both instances the search term would need to be the name of the director, not the company name. This does not affect our conclusion that this information would have been incredibly relevant and easy to obtain. We consider it is particularly important in respect of Autostyle as he had not met or traded with Simal Popat - this customer represented 90% of his business, had introduced him to one supplier (Club Billionaire) and recommended he deal with another (Ikonic, albeit that Mr Crickmore said he already knew them).

388. Mr Crickmore stated that M&M were not advised to conduct internet searches on individuals. This does not address the fact that the responsibility as to considering which checks to carry out was that of M&M.

389. Commenting on this information, Mr Crickmore has said that this "would likely not have changed my mind in choosing to deal with Autostyle because as a customer, they made up a significant proportion of our sales, always ensured payment was made on time and overall, were reliable" and, in relation to Ikonic, "I cannot judge a supplier by its past mistakes and actions. I was not aware of this when we started trading." We revert to this in the context of trust, but this refusal to accept the potential risk and significance of trading with such counterparties even knowing this information is startling.

Trust placed by M&M in its counterparties

390. M&M placed significant reliance on trust:

(1) Mr Crickmore stated that he was "not of the mindset to be suspicious on a day-to-day basis that traders may be related to fraud", emphasising that companies trading in the car industry rely on their reputation.

(2) Referring to Officer Bond's letter of 27 December 2012 in which Officer Bond had referred to the two brokers used by Mr Crickmore, the warnings in Notice 726 and the responsibility to conduct due diligence on M&M's suppliers, Mr Crickmore stated in his witness statement that the brokers had not changed; he had been trading for a significant period of time. M&M considered them reliable and did not perceive it necessary to conduct due diligence, particularly where brokers were family companies.

(3) Addressing the absence of due diligence on Autostyle, Mr Crickmore stated that there was little due diligence as he thought it was not necessary as the vehicles were leaving the UK. The relationship was based on trust, and Officers Essex and Bond had never raised any concerns about due diligence on this customer (to whom he had been selling cars during 2012 and 2013).

(4) Commenting on Officer Bond's letter of 23 January 2013 (in which he said there were issues with due diligence that need to be addressed), Mr Crickmore said he had no concern. M&M knew who they were trading with, and were able to continue to trade with healthy levels of profitability.

391. In *Aria Technology Limited v HMRC* [2018] UKUT 363 (TCC) the Upper Tribunal observed:

> "66. There is no force in the argument that the FTT ignored Aria's case that there were benign reasons for its approach to due diligence on suppliers. It clearly recognised that part of Aria's case was that it did not need to do extensive due diligence because it knew and trusted its suppliers. The FTT referred to this argument at [155] and, at [149], the FTT quoted an extract from Mr Taheri's cross-examination on the basis of his trust in Ashtec. The fact that the Judgment does not refer to the evidence of Aria rejecting transactions with suppliers with whom it did not have a 12-month trading history does not mean that evidence was "ignored". The FTT clearly focused on the nature and extent of the prior contact and relationship between Aria and the two suppliers (Supreme and Ashtec) in the 11 disputed transactions. We consider that the FTT was fully entitled to regard that aspect as much more relevant to its assessment than evidence of rejected deals: there is nothing unreasonable or irrational about its approach.
>
> 67. The FTT was also entitled to look behind Aria's assertion that it trusted its suppliers and consider the basis of that trust. The FTT had found, and was entitled to find, that Aria had a good understanding of MTIC fraud (see para 56 above). The passage of cross-examination quoted at [149] clearly suggested to the FTT that the reassurance that Aria received from Ashtec that VAT had been paid on earlier supplies of goods that were particularly susceptible to MTIC fraud amounted at most to a mere assertion by Mr Afzalnia in a conversation that may not have even mentioned VAT at all. When that is placed alongside the fact that Ashtec had been dormant between 2000 and mid- 2006 (i.e. virtually until the time Aria made these purchases

from it), the FTT was entitled to conclude that the foundation of any trust in Ashtec in particular was flimsy.

68. Standing back and reading paragraphs [340], [341] and [344] in the context of the Judgment as a whole, the FTT's reasoning on supplier due diligence is clear. As the FTT noted at [344], Aria was operating in an industry sector that was "rife with fraud". The FTT had concluded that Aria had a good awareness of that fraud. There can be no sensible criticism of the FTT's statement at [344] that a reasonable businessman would see due diligence as a "commercial necessity". Yet Aria performed "woefully inadequate" due diligence and the FTT asked itself why it did so. Taking into account the nature of the goods, the nature of Aria's business, its awareness of MTIC fraud and the scale and circumstances of the disputed transactions, the FTT rejected Aria's explanation that trust in its suppliers explained the inadequate due diligence on them Having rejected the proffered explanation, the FTT was entitled to conclude that Aria's failure to perform adequate due diligence pointed towards a conclusion that it knew its transactions were connected with fraud. Other inferences might have been possible (for example that Aria's business procedures were simply slipshod, or that it was so busy trying to make money that it cut corners with due diligence), but the negative inference that the FTT drew was, in our judgement, available to it and sufficiently explained. In stating the basis of its conclusion, the FTT was not bound to set out and explain why it rejected each alternative hypothesis. Hence Mr Firth's submission that a trader who knew its transactions were connected to fraud would have an incentive to "paper" its transactions with apparently plausible due diligence is nothing more than speculation as to how people might be supposed to act; it was not evidence and the absence of discussion of such a speculative submission is not an error of law."

392. HMRC submitted that trust may play a part in due diligence, but this cannot be at the expense of undertaking basic checks when M&M had been expressly warned long before the transactions under appeal that the industry was "rife with fraud". It cannot excuse the failure to complete any meaningful due diligence – this was either wilfully blind (ie evidence of actual knowledge) or naïve but something the reasonable business would have been alive to (ie should have known).

393. We also agree that trust may play a part in due diligence – and how significant a part will vary depending on the circumstances of the trader, the length of the relationship with the counterparty and whether there are any warning signs or red flags that such trust may be misplaced.

394. Mr Crickmore said that traders in the vehicle industry rely on their reputation. However, he also stated that the information from Google searches would not have caused him to refuse to deal with the relevant traders:

(1) On Autostyle, his evidence in his witness statement was that this would likely not have changed his mind in choosing to deal with them; and

(2) On Ikonic he had said that whilst he was not aware of Mr Capper's conviction when they started trading, he "cannot judge a supplier by its past mistakes and action".

395. Similarly, another of M&M's suppliers was OSD. Its director, Oliver Davis, was the son of Scott Davis, with whom Mr Crickmore had previously traded and in the 2009 Interview he had been informed that transactions undertaken with Scott Davis had been linked to VAT

losses. Irrespective of whether such allegation was correct (and we have no evidence that it was), no additional scrutiny was undertaken – and at the hearing Mr Crickmore was dismissive of the suggestion that he should have been more careful when trading with Scott Davis's son. Mr Crickmore focused on the fact that the Oliver Davis had his own business, but the due diligence he had obtained showed that a charge had been registered securing monies owed by OSD to Scott Davis, thus reaffirming the links between father and son.

396. We accept HMRC's submission that relying on a relationship of trust cannot be at the expense of undertaking basic checks, particularly against the background of M&M's awareness of fraud in the vehicle industry. Furthermore, on the evidence we are not convinced, on the balance of probabilities, that M&M was relying on trust in its counterparties - its own evidence was that it would have traded with them even if it had known of the facts which demonstrated that its trust was misplaced.

Approval of processes and templates by HMRC

397. Mr Sherratt submitted that it was relevant that HMRC (in particular Officer Bond) had given M&M a "steer" as to the due diligence both by their guidance and instructions and the implied acceptance of the approach to take as this informed M&M's approach in determining what due diligence steps were reasonable, proportionate and appropriate. He further referred to the fact that HMRC had made repayments to M&M in respect of transactions with the same counterparties in the periods leading up to the challenged transactions.

398. HMRC submit this must be viewed in the context of warnings about tax losses, the clear guidance from Notice 726 that M&M cannot rely on HMRC telling Mr Crickmore what due diligence he should and should not do, guidance that he should review and repeat his due diligence regularly, warnings that there were issues with his due diligence, warnings that he was not doing checks that had been suggested to him and guidance from his adviser as to further due diligence checks that he should undertake.

399. It is important for us to draw out at the outset of our discussion of the evidence on this issue that this argument was not advanced by M&M as a claim that M&M is entitled to rely on guidance from HMRC. It was instead identified as a factor which helped to inform M&M as to what steps to take as regards due diligence and, although not put to us in quite these terms by Mr Sherratt, as an explanation or excuse for any deficiencies which we may find in M&M's approach to due diligence.

400. We consider that the visit reports and correspondence we have seen reflect an accurate picture of the level of engagement and the substance of the communications between M&M and HMRC. We can see from that evidence the advice, guidance and instructions given by HMRC, both in general terms in the form of Notice 726 and the specific statements made by various HMRC officers. Mr Sherratt submitted that, as a matter of evidence, when Mr Crickmore asserts that he was given a steer by various officers, in particular Officer Bond, by being advised as to what M&M needed to do to bring its due diligence up to a standard that is reasonable, proportionate and sufficient for its circumstances, there is no direct evidence to contradict that assertion. We do not agree. There is evidence in the form of the visit reports and communications in the papers before us. We are not required to accept Mr Crickmore's evidence just because HMRC have not adduced witness evidence from its own officers who had such communications with Mr Crickmore.

401. Various of M&M's returns had been subjected to extended verification, which Officer Danson explained involved checks on all UK businesses involved in transaction chains, and

enquiries of tax authorities in other EU member states to confirm the integrity of the supply chain and identify tax losses in the UK or EU. Officer Danson confirmed that the returns for 11/11, 02/12 and 05/12 had been subject to extended verification. We infer that the returns from 08/12 to 11/13 were verified rather than subject to extended verification (on the basis that they were dealt with by Officer Bond, a local compliance officer, and in some instances were confirmed by him on a very short time frame). (We do note that the returns for 02/14 and 05/14 were subject to extended verification but given that these are amongst the periods under appeal we regard this as irrelevant to this submission.)

402. At the hearing Mr Crickmore, having been asked about due diligence steps, Notice 726 and as to what he was doing at this stage to familiarise himself with the issue of MTIC fraud said "I can't quite honestly tell you exactly what I did, but whatever I was doing must have been correct because the repayment [for 11/11] was made under extended verification, so I understand".

403. We do accept that the evidence of essentially "passing" the extended verification process may give a level of comfort. We do not regard this in isolation – the wider pattern of communications needs to be addressed.

404. On 27 December 2012 Officer Bond wrote to M&M noting that he had discussed at a visit on 18 December 2012 the due diligence and noted a problem, namely that M&M did not carry out any checks on two individuals that were being used as brokers. He referred Mr Crickmore back to Notice 726 and stated that it was M&M's responsibility to check its suppliers, and referred to the fact that it had been previously advised to validate VAT numbers.

405. Mr Crickmore stated that this letter set out the steps M&M should follow. Following this M&M established a much more comprehensive due diligence strategy and Ms Roberts was well versed on the due diligence that needed to be conducted. They also engaged Anderson & Co to provide further support and assistance. He stated that he developed an excellent professional working relationship with Officer Bond, and often liaised with him in respect of due diligence, and in his witness statement adds "At no time was it ever raised, at the time, by Officer Bond or any other officer...that there was a serious concern with M&M's due diligence".

406. We do not consider that this statement is an accurate reflection of the communications by the end of 2012/beginning 2013. We have already addressed the role of Ms Roberts, and whilst we accept that M&M was liaising with Officer Bond regularly, Mr Crickmore was told in December 2012 it was M&M's responsibility to check its suppliers, and in January 2013 Officer Bond said there were concerns about the due diligence that need to be addressed. Against the background that Notice 726 makes it clear (at paragraph 4.6) that HMRC cannot tell him exactly what checks he should undertake, it was not reasonable to conclude either that Officer Bond was telling him exactly what to do or that what he was doing was sufficient.

407. Officer Bond's letter of 11 July 2013 is important, as this forms the basis for what M&M term the Club Billionaire template. It is also significant as this is just before the periods under appeal. Mr Sherratt submitted that it was clear that Officer Bond was telling Mr Crickmore, having seen the Club Billionaire information, that the only additional step he needed to do was to contact HMRC in Wigan to validate the VAT number before each transaction. He stated that this was influencing M&M throughout - that there was nothing else he needed to do and if they conducted this check then this will stop you running into defaulting traders.

408. This exaggerates the comfort that can reasonably be taken from that letter. We note that the same letter states that tax losses have occurred in some instances where suppliers have failed to render VAT returns and pay the VAT due, and that the language used by Officer Bond is that the VAT validation check with Wigan "helps to ensure that you do not trader with people who are not paying their VAT". It does not say that this is all Mr Crickmore needs to do.

409. What can reasonably be taken from this letter has to be considered in the light of other information available to Mr Crickmore at that time – just over one month later, on 16 August 2013, Mr Doggett provided him with additional advice on due diligence and, as noted above, M&M did not follow that advice. Mr Crickmore has explained the reasons for this (some but not all of which we accept). Mr Sherratt submitted that the letter from Officer Bond was influencing M&M throughout – yet there is no evidence that Mr Crickmore queried with Mr Doggett why he was recommending additional steps on the basis that this had not been within the "steer" from Officer Bond.

410. We do not have evidence of M&M conducting VAT validation checks with HMRC in Wigan until the end of 2013. Once M&M did start conducting these checks they were regularly repeated at different times. Where HMRC confirmed a VAT registration as valid, the letters always stated:

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

411. We consider that the language in this standard form letter is reminding taxpayers that HMRC are not instructing or authorising them as to who to do business with. This remains a question for the relevant trader to consider.

412. Mr Crickmore agreed in his second witness statement that HMRC never stated "outright" that the due diligence was sufficient. He assumed this because HMRC had paid out input tax reclaims.

413. Having carefully considered the communications between M&M and HMRC, we agree with this observation of Mr Crickmore that there is no statement from HMRC to M&M that the level of due diligence was sufficient. He had been told to do more at various stages by different HMRC officers (as well as his own adviser) but never that the Club Billionaire template represented all he needed to do.

Conclusions on due diligence

414. We have concluded that M&M were simply going through the motions of obtaining a narrow range of information and were not applying any critical thought to the information that was then received:

(1) Mr Crickmore did not read the information that was obtained and nor, we find, did Ms Roberts other than in respect of the VAT verification checks with HMRC.

(2) Of the information obtained, the only evidence of any follow-up was in relation to VAT verification checks where, although not uniformly the case, they did appear to be repeated ahead of each transaction and re-submitted if HMRC were not able to verify the VAT number. Indeed, at the hearing, the only factor that Mr Crickmore accepted would stop him from proceeding with a transaction (other than payment) was if the VAT number wasn't validated.

(3) Mr Crickmore stated that he did not give independent thought as to what would be appropriate for a reasonable trader to do, and referred to what he had been steered to do by Officer Bond in respect of Club Billionaire.

(4) He confirmed he did not give any thought as to other checks that he might wish to do.

415. The factors which M&M submit support this level of due diligence (namely trust in its counterparties and approval from HMRC) do not in fact do so.

Contrivance

416. HMRC submit that there was contrivance in M&M's transaction chains that are relevant to considering actual knowledge of connection to fraudulent evasion or should have been regarded as indicators of the risk that VAT would go unpaid.

Relationship with Autostyle

417. Sales to Autostyle became about 90% of M&M's business. HMRC submit that the Popats (Simal being the owner of Autostyle in Hong Kong, and Sarju being in the UK) were directing Mr Crickmore as to who to purchase from. Notice 726 gave clear guidance that being approached, and told to buy from/sell to, would be an indicator of connection with fraudulent default.

418. Furthermore HMRC submit that the answers provided by Mr Crickmore about how this could have happened are designed to obfuscate the fact that M&M knew that these transactions were connected with a fraud, or should have known of that fact. No proper reason was advanced as to why Mr Popat could effectively have become a player within M&M to such an extent that his name was included in commercial documentation and correspondence that was sent to M&M.

419. We consider first the contemporaneous evidence from the papers before us in respect of various transactions and then assess the explanations of the relationship which have been provided at various times by Mr Crickmore.

420. The transactions where the involvement of the Popats is argued to extend beyond that of a regular customer are described below:

(1) Transaction 752 was the sale of a Rolls Royce Phantom by M&M to Autostyle, which was transported by Kangaroo World Cargo (which invoiced M&M). However, the email chain suggests that the transport was arranged by Sarju Popat, with an employee of Kangaroo asking Sarju Popat to deliver the car to him the following day.

(2) For transactions 833 to 848 M&M had the set of deal documentation in similar form to that which it had for all deals, namely invoices from Ikonic to M&M with registration and chassis number, invoices from M&M to Autostyle, an invoice from Jenkar Shipping to M&M, export declaration, bill of lading for and on behalf of Jenkar stating that the consignor was M&M and a VAT check dated 28 February 2014. These sales did not proceed and a credit note was issued in a later period.

(3) There is a series of emails from "Pop" at Autostyle with a subject of "Invoice no 0795 reg no YK63 WZB is wrong" as follows:

(a) On 1 February 2014 at 11.57, stating:

"Jimmy this invoice is wrong. Price should be 75,183.33.

> The price I invoiced Rashidi is 79,000. And your net without shipping is 70,833.33."

(b) On 4 February 2014 "Pop" chased "Sharon" for feedback.

(c) On 6 February 2014, on that same email exchange, copying Sarju Popat, there is a further email from info@autostylecars.com (not signed off by any named individual) stating:

> "Are you free to send the revised invoice with correct price yet?
>
> Also please take out this car from our statement of account. Sarju told me it will be no longer with M&M"

(4) In transaction 862a Rolls-Royce Motor Cars Manchester invoiced M&M for a Rolls Royce Ghost. That invoice (the date of which is not known) is for delivery on 1 August 2013 of a Rolls Royce with registration number HK13 XFP, value of £140,000 plus VAT of £28,000, total £168,000. That invoice is expressed to be addressed to "Mr S Popat M&M Cambridge LLP" and the delivery address is stated as the same. The Vehicle Order Form issued by Rolls-Royce Motor Cars Manchester has the Customer Details as Supply T and Financed By/Invoice To "Mr Sarju Popat MM Cambridge LLP". There are then specified mobile and work telephone numbers, a home phone number labelled as James and Mr Crickmore's email address. That Vehicle Order Form appears to have been signed by Mr Crickmore (in that the signature reads J. Crickmore). This vehicle was sold by M&M to John Burns.

421. The paperwork for the transactions thus shows Sarju Popat arranging the shipping of a vehicle from M&M to Autostyle on M&M's account, a full set of sale, export and shipping documents for sales which did not proceed (which is addressed further below), the price of a car being corrected by explaining what appears to be the onward sale price (partially identifying the onward customer) and a purchase invoice addressed to Sarju Popat at M&M.

422. At the visit of 3 April 2014 by Officer Witziers, Mr Crickmore explained that most cars were originally ordered by an associate (the context showing he was referring to Autostyle) who once ordered would inform M&M to complete the purchase and arrange for the onward export. Mr Crickmore said he acted as a "banker" in this arrangement.

423. The visit report from Officer Palmer and Danson's visit to M&M on 28 August 2014 includes the following:

> "JC also stated that some customers – in particular Autostyle – sourced their own supplier and then asked JC to purchase on their behalf. DP asked what the advantage of this was and JC said that often there were waiting lists for cars and that certain main dealers would not deal with him."

424. HMRC identified that M&M had claimed input tax in 02/14 in respect of invoices 43 to 58 issued by Ikonic to M&M (deals 833 to 848). The vehicles were not purchased by M&M and a credit note was issued. This was also addressed with Officer Palmer at the visit on 28 August 2014. Officer Palmer stated that he had evidence of shipment, and recorded the following explanation:

> "JC advised that under the settlement agreement the goods were shipped. Mr Popat had asked JC to purchase vehicles from Ikonic…The cars in question were purchased over a period of time, some to export to Malaysia and some for other purposes. According to JC there were 9 or 16 cars that the Malaysian

> customer asked for JC to purchase from Ikonic. JC requested money from Popat but it was not forthcoming therefore JC never paid Ikonic despite being invoiced in February 2014. The vehicles were not shipped to Malaysia but JC said he did not ship them himself. JC did not know what had happened with the vehicles.

425. The penultimate sentence quoted above is accurately quoted from the visit report, but from the context it appears to us that the word "not" should be removed. The remainder of the paragraph seeks to explain that the goods were shipped and how this happened in circumstances where M&M had not bought the vehicles from Ikonic as planned. Mr Crickmore stated that although the shipping documents were in the name of M&M "this was no done by either him or M&M".

426. At the visit on 4 November 2014 the following is then recorded:

> "Addressing supplies to Autostyle in 02/14 and 05/14 the payments could not be reconciled to the amounts invoiced, noting that Officer Palmer had not included Ikonic invoices 43-58 in his calculations as Mr Crickmore had said these deals did not take place. Mr Crickmore said that Autostyle had purchased the vehicles but that he didn't know who from. However, they had been shipped under the name of M&M who had paid the shipping costs which had subsequently been refunded. It was Mr Popat [Sarju] who advised which cars had been purchased and shipped. The vehicles referred to on Ikonic invoices 43-58 had not been purchased by M&M but they had been shipped by Sarju Popat using M&M's account."

427. On 30 June 2015 (ie after HMRC had issued the decision to deny input tax reclaims) Cartwright King wrote to HMRC setting out some additional information and representations to be put before the reviewing officer. That letter provided the following statements in relation to Autostyle:

> "Mr [Sarju] Popat was in a position to identify suitable cars to fulfil the requirements of his overseas customers. Mr James Crickmore agreed that [M&M] would purchase the cars in the United Kingdom and then ship them to the Far East… It had the working capital to permit it to do so. Mr Popat and his businesses in the UK did not have the necessary exports and reclaims. By working together both were able to undertake more business and make more profits than they would otherwise have been able to do. For this reason the name "Sarju Popat" or some variation thereof will often be found on the invoice for the supply of any given vehicle to M&M. Mr Popat will have been the person who negotiated the terms of such deal, with the intention that M&M would then make an export sale to Autostyle and ship the car to the Far East. Many of the suppliers were Mr Popat's contacts known to him prior to their being introduced to [M&M]. Once they had been so introduced a number then sold other vehicles to Mr James Crickmore which were not necessarily intended for onward sale to Autostyle of Hong Kong."

428. In the 2016 Interview Mr Crickmore gave the following explanation in response to various questions:

(1) When he was exporting he would have to wait six to eight weeks for the money, as that is the time it takes for the vehicle to get there. He was "basically acting as a bank" to fund and source the vehicles.

(2) He had predominantly exported to "Auto Star", which was Simal and Sarju Popat.

(3) When asked about the margins on cars, he said:

CRICKMORE	"With car, what happened was with Sarju and Simal Popat when I, in the early days they used to just buy and pay me for them yeah through a company called Auto Style or whatever company he told me to invoice in the UK. But then it got to a stage that I exported them and had to wait for the VAT reclaim. So I had an agreement with him on whatever I invoiced them for it was 6% on top with a 4 to 6 week payment turnaround.
BAXTER	So that was your profit the 6%...
CRICKMORE	…That was my profit the 6%."

(4) When asked about the freight forwarders (Jenkar Shipping and Kangaroo flights) the exchange included:

CRICKMORE	"…but who arranged all that mostly was Sarju Popat.
BAXTER	Right.
CRICKMORE	Because he, what, what predominantly used to happen was is that Sarju as I said earlier on in the tape I'd really be, I wasn't really a car dealer I was used as a bank for 6 weeks. Because Sarju would say go out and order that car, that car, that car, that car yeah or he'd ring up and say oh that car's on Auto Trader buy that car yeah and I'd basically, I'd pay for it, ship it or fly it and in 6 weeks' time get me money.
BAXTER	Right so why didn't Sarju just buy it himself?
CRICKMORE	It's cash flow.
	…
BAXTER	Why would you, wouldn't you sort out the shipping, why is he sorting out, send me this, send me this whenever?
CRICKMORE	No because even though the shipping agent I have to pay for it all.
BAXTER	Yeah
CRICKMORE	Yeah but he's yeah if he's, see what, what happened with Sarju Popat I, I was one in a cog of people yeah. I've only got, I only got, only had so much money at any one time to invest into it. If I'd have had 5, 10, £15m yeah I could have bought 5, 10, £15m worth or cars and sent them there. Cos it was Thailand, it was Malaysia, it was Singapore. Like when you're talking about a 250, £300,000 car it don't take long for money to go. So, so basically there was other companies that he was using as well to get cars, get cars as well. So he'd know all the contacts, he'd get the best rates because he, he wasn't just using them for me it was a combined.
BAXTER	Right so when you sent them out to Popat…
CRICKMORE	Yeah.
BAXTER	…actually I think you touched on before is that, there were some incidences where you sent it abroad but it's not been paid for until after its got there?
CRICKMORE	Correct. I built up trust with him."

(5) Classic Cars was another company that was probably a cog in the wheel with Sarju Popat. M&M used to sell cars to Classic Cars and they had sold to Popat and Mr Crickmore added "In the early days that' s how I come close to Popat because he was,

what was happening is the guy was buying them off of me and shipping them to Popat and Popat basically cut him out."

(6) HMRC asked questions in relation to various specific transactions. One concerned a sale to City Group who had then sold to Autostyle. Given Mr Crickmore had sold to Autostyle directly on other occasions, why had he not sold directly to Autostyle. The explanation given (not necessarily specifically in relation to this vehicle) was that to be exported to Malaysia a car had to be 12 months old. So he would acquire the vehicle, then "sell it to somebody that Sarju Popat told me to sell it to, they might be a rental company, which I think City Group are a rental company, they would hold it for twelve months, yeah, rent it out and then ship it on to Autostyle after the twelve months. That's quite possibly what could happen".

429. In his witness statement Mr Crickmore stated that sales to Autostyle constituted about 90% of M&M's business and that "Mr Popat would often source cars and I would then arrange shipment to Autostyle." Some purchase invoices were addressed to Mr Crickmore, others to Sarju Popat. He did not accept that the involvement of the Popats meant the transactions were contrived – this was a reflection of nothing other than the fact that he sometimes acted in the capacity of a banker.

430. Explaining some of what had happened in respect of the cancelled transactions at the hearing, Mr Crickmore initially said:

> "…I would have raised – because I had a relationship with Auto Style, they would have basically said to me, "There's a batch of vehicles there can you buy them?" I would raise the – I go the invoices from Ikonic. I raised the invoices to Auto Style, pre-empting to be paid for these. The payment did not come. So they bypassed me and they bought them from somebody else…"

431. Later his evidence was:

MR FOULKES	"Right. And is Sajan the person who runs Auto Style and makes purchases from M&M or is Sajan the brother who tells you who to buy from?
MR CRICKMORE	Sarju is the person that tells me who to buy from and is based here. And Simal is the brother that is in Malaysia.
	…
MR FOULKES	… Was it not your understanding that you were told who to purchase from by Auto Style in the transactions, the subject of this appeal?
MR CRICKMORE	Not all the time; no.
MR FOULKES	All right. Well, some of the time?
MR CRICKMORE	Some of the time.
MR FOULKES	Yes. When did that start, roughly?
MR CRICKMORE	2011/2012
MR FOULKES	So early on -
MR CRICKMORE	Oh yes.
MR FOULKES	Auto Style were saying, "You go and purchase from this supplier"?
MR CRICKMORE	Yes.
MR FOULKES	Was that always Ikonic?
MR CRICKMORE	No.
MR FOULKES	Right. Other entities? Can you remember?

MR CRICKMORE Yes. Yes.
MR FOULKES Can you remember who?
MR CRICKMORE Club Billionaire springs to mind.
MR FOULKES Anyone else?
MR CRICKMORE Auto Trade Mail (?)
…

MR FOULKES All right, next line, "According to JC Mr Popat had put JC in touch with Iconic at the start of their business relationship".
MR CRICKMORE That's not correct.
MR FOULKES Because your evidence is that you knew Iconic already, isn't it?
MR CRICKMORE That's correct.
MR FOULKES So that when they referred to ... did Mr Popat mention Iconic to you? I think that was your evidence, not that you didn't know them already but that he did say, "Go and buy this from Iconic".
MR CRICKMORE What? In the very instance of the beginning of my transactions with Iconic. Is that your question or this batch of cars?
MR FOULKES Yes, the transactions with Iconic when you're sending to Asia, when you got into the relationship where you were
--
MR CRICKMORE No, that's not correct. I did not meet Iconic through Mr Popat.
MR FOULKES No, I've highlighted that your evidence is to the contrary on that already. The question was, when you first started doing business with Mr Popat did he refer you to Iconic, whether you knew them already?
MR CRICKMORE No.
MR FOULKES Right, so he didn't ever instruct you to buy from Iconic?
MR CRICKMORE No.
MR FOULKES I thought, and your account was, and forgive me if I've misunderstood it, that the Popat broadly told you where to go and buy cars from and you bought them and shipped them to South East Asia.
MR CRICKMORE Popat would see, so we're going to get this picture very, very clear. Popat would see a car advertised on Auto Trade Mail which is a national website and he would say, "James, see if you can ring up, negotiate. You're very good at negotiating, see if you can purchase that car. That is a car that I would buy off of you". That was not just on an isolated basis with Iconic. It was in the whole. But Popat did not put me directly in contact with anybody basically. I think on one instance maybe his contact or he knew and I knew of them as well was Club Billionaire and main dealers that we crossed over with but they was all my contacts and Popat did not organise anything whatsoever for me to like. He did orchestrate any deals that I didn't know. I don't know if I've been clear on that, ma'am.
MR FOULKES Right so on your example if he'd said, "Go and buy that model in the advert", was that an advert from Iconic for example? Or was he just saying, "Get me that type of car".
MR CRICKMORE It could have been either or. Auto Trade Mail, I don't know. Auto Trade Mail is a website that you have to subscribe to so it is a national or worldwide website. So if a certain car that you was looking for that was allocated that you was looking for it

	would pop up on the screen or on your phone to say, "Look, this certain is advertising this car".
MR FOULKES	Can we finally go please on this topic to 2549. This is now in November of 2014 so well after the periods that we're concerned with in terms of trading. It's another visit at 4 November Mr Fowler and Mr Wong and Ms Roberts, yourself, Mrs Danson and Mr Palmer, and I think you were in a meeting with Mr Symes and then when that finished you joined. And you're asking again about supplies to Auto Style. And then you were asked about the paperwork, forgive me while I find it. (Pause) Just dealing with one paragraph from the bottom on 2549 on this topic of Mr Popat shipping the goods under M&M's name, how was he able to do that.
MR CRICKMORE	As I previously explained, are we talking about the 15 vehicles here Mr Foulkes?
MR FOULKES	Yes
MR CRICKMORE	Because he found out direct either where Iconic was buying them from and he shipped them direct. He cut me out and he cut Iconic out.
MR FOULKES	That wasn't the question, how was he able to do it on your account?
MR CRICKMORE	That's the relationship I had, he could ship on my account.
MR FOULKES	So he would ring the shipping agent or contact the shipping agent and say, "Please ship these vehicles using M&M's account"?
MR CRICKMORE	Yes.
MR FOULKES	And as far as the shipping agent was concerned he was authorised or part of M&M for those purposes?
MR CRICKMORE	He could ship, he could be able to do that, yes.
MR FOULKES	Right, in ordinary transactions when you were selling the car yourself would you be organising the shipping or would Mr Popat. This is Simou isn't it?
MR CRICKMORE	Saju
MR FOULKES	This is Saju, forgive me, wrong one. Would Saju do it or would you do it?
MR CRICKMORE	Saju would say that "There's a vessel going, James, I've purchased three or four cars off of you", or he would actually talk to Sharon. "There's a vessel going on Friday, can you please make sure that the cars are there for Wednesday and everything else was done".”

432. There can be no doubt that Mr Crickmore’s explanation of how he sourced the cars which were sold to Autostyle has changed over time. In 2014 the language was that Autostyle would source the supplier and M&M would buy on their behalf, or Autostyle would order the car and M&M would complete the purchase. This was broadly repeated in the 2016 Interview, and is also reflected in the very short explanation which Mr Crickmore gave at the hearing in the context of the transactions. However, when challenged at the hearing as to whether he was being directed to buy a particular car from a particular supplier, his explanation was that Autostyle would indicate a car that was for sale (advertised on Autotrade Mail) that they were interested in buying and ask M&M to buy that kind of car (ie without directing to a particular supplier).

433. We find that the original explanation was correct. It was contemporaneous, straightforward and explains the involvement of the Popats which we have identified in several of the transactions. We consider that the later embellishments were added to seek to distinguish the situation from that which would have been a clear indicator of the risk of fraud, namely being directed by a customer as to what to buy and who to buy from.

434. The significance of this in terms of considering whether M&M knew or should have known of the risk of the transactions being connected to fraudulent evasion is exacerbated by the circumstances of Mr Crickmore's introduction to Autostyle (where he was being invited to sell direct and cut out Mr Cockram), Sarju Popat having a business in the UK and it is not clear why he could not sell to his brother himself, and what we find to be a lack of any legitimate reason for M&M's involvement in the chain. Mr Sherratt did, on this last point, refer to demand for vehicles (but Autostyle knew who M&M was buying from), use of capital (but no evidence was given as to why such capital needed to be provided from a fellow trader rather than other financing arrangements) and M&M assisted with shipping (but the Popats could and did organise the shipping themselves on some occasions). The warning signs were obvious and plentiful.

Evidence from SCAC reports as to actions of (non-Autostyle) customers

435. HMRC point to further evidence that the disputed transaction chains into which M&M entered were contrived and orchestrated:

> (1) B&W was set up to import soft drinks but instead imported cars from the UK, retained them for about a month before selling them to UK companies (including Ikonic and M&M) for export to the Far East;
>
> (2) James Quinn was believed to live in Northern Ireland (not the Republic of Ireland) and in explaining the payment reference for deal 862a Mr Crickmore said he considered Mr Quinn and Mr Burns were the same business;
>
> (3) Colin O'Kelly had allowed his VAT number to be used by others for the purchase of vehicles from the UK, which were then sold to Ikonic and Mr Griffiths;
>
> (4) Vehicles shipped to Autovillage only reached Dublin port before being on-sold to Mark Wright, and were shipped straight back to the UK (deals 805, 805, 823 and 850); and
>
> (5) Lakeview paid over £13m to James Quinn between January 2013 and June 2014, during which time it received payments of £8.6m from JRS and £7.6m from JMC, linking sales to M&M from JRS and JMC to James Quinn (one of M&M's customers) (eg deals 806 and 850).

436. These submissions are based on evidence from the SCAC reports, and we have made findings in relation thereto in considering whether the evasion of VAT was fraudulent. Based on those findings, we do accept that the transaction chains were orchestrated.

437. However, whereas we have found that, on the balance of probabilities, where M&M was selling to Autostyle, Autostyle directed M&M as to the cars to buy and the suppliers to buy from, we do not consider that the evidence supports a similar finding in relation to sales to B&W, Mr Quinn, Mr Burns, Mr O'Kelly or Autovillage.

438. Whilst therefore the SCAC reports do provide evidence of contrivance, and are particularly relevant to our consideration of whether M&M knew that the transactions were

connected with fraudulent evasion, this is less evidently the case when assessing whether M&M should have known. The evidence is based on reports from non-UK tax authorities and bank statements which HMRC have been able to access. This is not information which would be available to M&M.

Number of fraudulent transactions

439. Against the background that in the periods 11/13 to 08/14 M&M undertook 210 sales, HMRC point out that input VAT is denied in 66 acquisitions and zero rating denied in 54 sales (with 15 transactions involving a denial of both input tax and zero rating). 105 of the 210 sales by M&M are thus connected to fraudulent evasion.

440. Mr Sherratt submitted that:

> (1) we should also take account of M&M's trading prior to 11/13, where HMRC have not denied input tax or zero rating,
>
> (2) the high level of trade with Ikonic and (mainly via JMC and JRS) Lakeview means that the defaults of those two suppliers has a distortive effect on the numbers, and
>
> (3) the limited number of occasions on which HMRC have challenged both suppliers and customers within the same transaction chain argues against contrivance and circularity.

441. M&M was trading (largely as M&M Trading) for two years before the first period under appeal. We do not regard this as a lengthy period of trading. M&M was not a long-established business. We do have regard to this trading, but do not over-emphasise it.

442. As to the high level of trade with a small group of suppliers meaning that once those suppliers default then a high percentage of M&M's transactions are bound to be linked to tax losses, it is also the case that this raises a question as to how it is that M&M is buying so many vehicles from such a small number of suppliers. This factor would also weigh in favour of M&M conducting a much greater depth of due diligence on these suppliers.

443. The fact that 15 out of 105 transaction chains include two defaulting traders whereas 90 include just one defaulting trader is, we consider, irrelevant. There need only be one defaulter – and such a chain can be just as contrived one in which there were more.

Indirect connection to defaulting traders

444. M&M contend that it is relevant that it conducted limited direct trading with the defaulting suppliers identified – there were no direct trades with Swift or Mr Griffiths, and only one direct trade with Lakeview. On many occasions M&M dealt with a supplier which is not itself alleged to have defaulted (Connected Cars, JMC, JRS and Club Billionaire). It would not know or have the ability to compel information about the suppliers' supplier. This is commercially sensitive information. If there are genuine, legitimate traders in a chain, the chain can hardly be said to be contrived in that each member is working towards an orchestrated and pre-arranged agenda.

445. We agree that this is of some significance when considering contrivance in the context of whether M&M should have known of the connection to fraudulent evasion.

446. The question of non-defaulting direct suppliers can be illustrated by HMRC's own investigations in this regard. We have set out at [2] the amounts originally denied by HMRC

and the reductions of these amounts following reviews. Officer Danson's witness statement confirms:

> (1) in respect of the Tax Loss Letter issued on 19 August 2014 identifying 19 transactions where JRS was the supplier, the later review established that not all transactions through JRS were linked to tax losses; and
>
> (2) in respect of the Tax Loss Letter issued on 25 September 2014 identifying a transaction where the supplier was Club Billionaire, this was later removed and it was confirmed that transactions through Club Billionaire were not linked to tax losses.

447. Both JRS and Club Billionaire are non-defaulting suppliers and HMRC, with their resources, have had cause to re-consider their earlier conclusions as to whether the transactions were linked to tax losses.

448. We are, however, mindful that there is evidence that the identity of the supplier's supplier (or customer's customer) was sometimes known, notwithstanding that this was commercially sensitive information. In particular:

> (1) Mr Jafferali and Mr Popat initially approached Mr Crickmore in respect of cars he had supplied to Ian Cockram which were being sold to traders in the Far East;
>
> (2) we have found that Autostyle was directing M&M as to who to buy from, and thus would have known the identity of its supplier's supplier;
>
> (3) Mr Crickmore had first been contacted by Mr McNulty of Lakeview through Autotrade Mail, and in his witness statement said Mr McNulty contacted him "probably because they realised that M&M was dealing with JRS and John McNally who were supplying Lakeview's cars". He confirmed at the hearing that he had only realised this after the event, but even if this is the case then it still indicates that Lakeview had known who their customers were supplying to; and
>
> (4) in deal 795, the email from "Pop" of Autostyle discloses that Autostyle is invoicing "Rashidi" for £79,000, thus disclosing M&M's customer's customer.

449. Some of the traders feature as customers and suppliers in different transaction chains. M&M sold four vehicles to Mr O'Kelly, and he was an indirect supplier to M&M in one chain. Mr Quinn was an indirect supplier to M&M in 13 chains, and M&M sold fourteen vehicles to him.

450. There were multiple transactions between a relatively small group of people and we do infer from the evidence before us and the relationships between these people that in many instances M&M would have known of the other participants in the chain.

Lack of contractual terms and lack of understanding of title

451. HMRC note that when M&M had purchased a vehicle from Bentley a significant contractual document was signed. Mr Crickmore accepted that when he was purchasing from manufacturers the agreement went "precisely" into the specifications, whereas his own documents, and those when he acquired from other traders, were considerably less specific. High value deals with no formal contractual arrangements are an example given in Notice 726 of an indicator that could alert a trader to the risk that VAT would go unpaid.

452. Mr Crickmore denied that this practice would leave M&M open to purchasing and supplying something that is not as described. His evidence was that in transactions between

traders they take the other's word on the condition of the vehicle and that traders can do chassis checks on the vehicle with main dealers to check the specification of the particular vehicle. When asked by Mr Foulkes as to whether he did do chassis checks, he stated that he would have checked the specifications with main dealers, but that he did not keep a record of these checks.

453. HMRC submit the absence of commercial documentation must have resulted in confusion as to who had what title at any point in the transaction chain. This should have given cause for concern, had it not known that the deal would always be transacted.

454. M&M point out that they adopted precisely the same practice between 2011 and November 2013. The absence of detail was not an issue raised by HMRC during those earlier periods.

455. The terms and conditions on which the vehicles in the transactions under appeal were bought and sold are very short. Mr Crickmore's evidence that he would check the specification of vehicles by performing a chassis check is not corroborated in any of the evidence before us. Given that the information for each transaction was routinely collated and yet we were not taken to any example of a chassis check we find that no such checks were done. We do, however, accept that genuine traders who misdescribed vehicles or their condition would suffer from a lack of repeat business. Whilst specification is obviously a different matter to the condition of a vehicle (and only the former could have been checked with the manufacturer, albeit that it wasn't here) we nevertheless accept that traders dealing regularly with each other would rely on goods being as described.

456. There are, however, two areas where the lack of detail does give us cause for concern – the fact that the vehicles were being exported, often to the Far East, does give rise to a realistic possibility of damage occurring, and we would expect in this instance that the parties would want to be able to be clear as to the exact condition of the vehicle before it was shipped. Furthermore, whilst one term that was always present was the retention of title clause on M&M's invoices, the lack of certainty as to when M&M itself acquired title from its own suppliers gives rise to the potential for dispute.

457. HMRC argue that the lack of detailed contractual documentation would have given cause for concern, had M&M not known that the deals would always be transacted. We are less convinced that this is the only plausible or indeed reasonable explanation. It could also be the result of a somewhat cavalier approach to legal documentation and needs to be viewed in the light of arrangements (addressed below) in respect of payment and insurance.

Payment

458. HMRC submit that vehicles were being released to customers prior to payments being made to M&M which was potentially disastrous commercially in circumstances where there was no insurance or detailed contractual documentation.

459. In the initial meetings with HMRC, the consistent message given by or on behalf of M&M was that vehicles were not released to customers until payment was received – this message was delivered by Mr Doggett to Officer Eaton in their call of 12 December 2011 and on 19 December 2011 Mr Crickmore confirmed to Officers Eaton and Essex that vehicles were "shipped on hold" – if payment was not received they were not released.

460. We find that the invoices issued by M&M to their customers all include the statement that "All goods remain the property of M and M (Cambridge) llp until paid in full" – ie a retention of title clause.

461. Given that the vehicles were exported, there remains a question as to how this was operated. The evidence in respect of particular vehicles included the following:

(1) on 12 December 2013 an email was sent by Ms Roberts to info@cat.ie (which we infer is for Costello Auto Trans Ltd based on invoices from them referring to the same vehicles) arranging for the collection of three vehicles from M&M to be delivered to Dublin Port. That email states "These Vehicles must NOT be released until we have given Authorisation for them to be released." Similar language was included in an email dated 13 December 2013 to that same address in respect of one vehicle and an email dated 31 January 2014 in respect of three vehicles;

(2) this was not universal - an email from Ms Roberts to info@cat.ie dated 16 January 2014 in respect of a Range Rover Sport GJ63 JFZ being delivered to Annafarcan, Broomfield, Co Monaghan did not contain any requirement as to the release of vehicles. The same was the case with an email dated 20 January 2014 in respect of delivery of a different vehicle to that same address;

(3) some vehicles were transported using P&O Ferries. The confirmations of booking details sent by email from their Liverpool Customer Services to the email address for Crickmore Parks confirm registration numbers of the vehicles, delivery window and total costs. The confirmation does not contain any statements about the release of vehicles; and

(4) in the visit of 4 November 2014 Officer Palmer noted that there was a deficit in respect of transactions with Colin O'Kelly, and Mr Crickmore had said that Mr O'Kelly owed M&M £100,000.

462. At the visit on 3 April 2014 by Officer Witziers, the report notes that vehicles for export to the Far East were transported by Jenka Shipping, and vehicles going to the Republic of Ireland were sent by CIA (or CTA) or P&O Ferries. The report notes that "According to JC, he had to issue a "release notice" to the shipper before the car could be passed to the customer in Eire (no such "release notice" was required for exports to the Far East)."

463. In the 2016 Interview, Mr Crickmore stated that vehicles would be released before payment "a lot of times" – this was just trust.

464. As to whether he has been inconsistent in his explanations to HMRC, Mr Crickmore stated in his witness statement that M&M had this slightly more relaxed attitude (to releasing before payment) only with Autostyle as a direct result of Mr Crickmore's relationship with the Popats, based on established trust. This was the exception to the norm. With Autostyle, payments were received in lump sums, which were recorded in a spreadsheet. For the Republic of Ireland, generally M&M were paid before export, so there was no need for release notes. Commenting on Mr O'Kelly, he stated that in that instance the vehicle had been released before payment, but this had been an exception to the rule. Whereas with Asia there were no release notes because of trust. M&M did not routinely issue release notes. This was in limited circumstances, eg new customers where no developed relationship.

465. At the hearing Mr Crickmore confirmed that he did ship cars to the Far East before receiving payment from the Popats - there was a rolling account with them which could be

anything from £300,000 to £3,000,000 and he accepted that no release notes were required for export to the Far East. At the beginning of the relationship he was conscious of not releasing before payment, but there was a good commercial business relationship and over time he would release vehicles before specific payment had been made. He later said that when vehicles were shipped to the Far East he communicated release by calling Jenkar Shipping – or he wouldn't have to call them, they would call him – and he would confirm to them that the vehicle could be released upon arrival.

466. There is no evidence in the deal packs of a release note ever having been issued in respect of any vehicle and we find that they were not issued. Our conclusions as to Mr Crickmore's credibility, coupled with how his explanation has adapted to deal with the exceptions presented to him, mean that we do infer from the absence of any release notes in the papers that there were none. Similarly, we doubt his explanation as to authorising release to Jenkar Shipping over the phone – this explanation had not been given on previous occasions, and contradicts his previous explanation as to release notes not being required for the Far East.

467. As HMRC suggest, this presents a commercial risk to M&M which we would have expected that a reasonable trader would seek to guard against. However, that is not to say that we regard this as an indicator of fraud in its own right. Taking commercial risk in transactions can be argued as relevant either way in that respect, dependant upon the surrounding circumstances.

Insurance

468. At the meeting with Officers Eaton and Essex on 19 December 2011 the visit report noted that it was not known who insured the vehicles in transit (but that whilst they were in the UK they were covered by M&M's motor trader insurance). At the meeting on 28 August 2014 Officer Palmer "requested clarity" on the goods being shipped to the Far East, apparently without insurance, and it was in this context that Mr Crickmore stated that he had an oral agreement with the Popats.

469. Mr Crickmore's witness statement reiterates that he relied on Mr Popat's reassurance. He refers to Officer Danson's witness statement where she said that he told Officer Palmer that there was no need to insure the cars in transit. Mr Crickmore disputes this in his witness statement, saying "I was never asked by HMRC about insurance, neither did I provide this information. This is the first time in the evidence that this has been raised." In his second witness statement he accepted that he had been asked about insurance in 2011 and 2014, but stated he was not asked during extended verification.

470. At the hearing, when taken to the visit report of 28 August 2014, on being asked if he remembered this meeting, Mr Crickmore said "I don't wish to comment on that. These are just notes that were made by Mrs Danson." When Mr Foulkes pointed out that Officer Palmer had said this arrangement (ie relying on a gentleman's agreement) might not be appropriate and the visit report indicated that Mr Crickmore had suggested he would reconsider or revisit this issue of insurance, Mr Crickmore's evidence was not to explain that reconsideration but to point out that Officer Palmer was the fifth HMRC officer he'd been dealing with and this was another opinion of Officer Palmer of "due diligence and certain aspects that I should be carrying out".

471. HMRC submit that the lack of insurance and inability to answer the question is indicative that the transactions were contrived. The absence of insurance and the existence of a "gentleman's agreement" were not indicative of a commercial relationship. Mr Sherratt submitted that the question of insurance was irrelevant - the only relevance would be if it was

alleged that the vehicles did not exist. There is no evidence of market practice, and there had been a high level of trade with the Far East in 2011 to 2013 and this had never been an issue.

472. We do not accept Mr Sherratt's submission that the question of insurance is irrelevant. We do agree that absence of insurance may raise a question as to whether there were any goods to be insured. However, it might also indicate a careless disregard for the potential commercial risks associated with transporting uninsured goods, or that a trader was unconcerned by the possibility of damage as they knew they would be paid anyway. Both of these are plausible.

Sequential invoice numbers

473. Not only must VAT-registered traders issue invoices specifying an invoice number, but Regulation 14 of the Value Added Tax Regulations 1995 requires that invoice numbers are sequential.

474. Ikonic's invoice numbers were very nearly sequential in its transactions with M&M – eg invoice numbers 2, 4, 5, 6, 7, 13 were issued to M&M; this can also be seen with the cancelled transactions. HMRC submit that this is indicative of M&M having been the key customer of Ikonic, which ought to have led M&M to consider why it was able to nearly exclusively trade with Ikonic if the market was indeed "booming" as Mr Crickmore claimed.

475. Giving evidence Mr Crickmore stated that he wouldn't have paid that close attention to invoice numbers. We accept this statement, and also find that Ms Roberts would not have noticed.

476. HMRC suggest that this is something that would have caused a trader who was alert to the possibility of fraud to consider the point, whereas it had not been on Mr Crickmore's radar.

477. We do agree that, once this point is noticed, it should put a trader on alert to consider why it is that they are a particular supplier's main customer. However, we would not overstate the significance of this point.

Increase in net price without value being added

478. HMRC submit that there was an absence of material benefit provided by M&M in the transaction chain - Mr Crickmore had described himself as a "cog" in the chain. They submitted that, against the background that the overwhelming inference was that the Popats were finding the suppliers/cars themselves, and that M&M would then simply be the funder or banker for the transaction, and Autostyle also had a UK presence, there was no proper explanation about why M&M was necessary in the chain at all.

479. Mr Sherratt submitted that Mr Crickmore was skilled at buying a car at the right price. M&M added value – they absorbed increased risk in exporting vehicles, tie up their working capital and absorb the costs associated with the deals". He also submitted that this factor falls away with HMRC's concession on profitability.

480. We consider it remains relevant, and have dealt with our concerns as to the role of M&M in the context of HMRC's arguments on contrivance (which overlapped).

Failure to submit export documentation to DVLA

481. HMRC drew attention to Mr Crickmore deliberately failing to submit the required export documentation to the DVLA when he exported cars. They did accept that Mr Crickmore had been open about this failure and the reasons therefor, but noted that he had little choice but to be open with HMRC, and that this is still evidence of Mr Crickmore ignoring legal requirements.

482. Whilst M&M did fail to comply with this legal requirement, and this is an illustration of Mr Crickmore seeking to choose which commercial or legal requirements he complied with (as with his use of buffer companies when purchasing from main dealers) and potentially seeking to hide his activity from the authorities for as long as possible, we do not overstate its potential relevance to the question of whether he knew or should have known of the connection to the fraudulent evasion of VAT.

Absence of certain factors which are indicators of contrivance or risk of fraud

483. HMRC did not argue that the transactions bore no resemblance to commercial transactions, involved third party payments or challenge the price which was negotiated for the purchase or sale of vehicles in any particular transaction or challenge the margins which were realised by M&M.

484. Mr Sherratt emphasised that the deals were not uniform – the profits were varied with no fixed mark-up, and M&M did not always make a profit on individual transactions (as can be seen in deals 776, 800, 882 and 884). M&M was not always able to sell quickly, and on occasion needed to hold onto stock for longer periods (eg deals 884 to 887). He submitted that these factors mean that there was no "red flag" about any particular sale or purchase, suggesting that it was "too good to be true".

485. We do agree with Mr Sherratt that it is significant that HMRC did not make any argument challenging the pricing of the deals, nor the profitability thereof. We had a significant amount of evidence before us which set out for each transaction not only the due diligence material (which is clearly relevant and important in the context of this appeal) but also the invoices and shipping documents for each transaction. It was notable that HMRC did not seek to focus on these, save where they drew our attention to the involvement of the Popats in M&M's business. This does not, however, mean that we took HMRC to accept that each transaction, viewed in isolation (ie without regard to arguments as to contrivance) resembled a typical transaction between experienced traders – their challenge to the contractual documentation, payment arrangements and insurance position made it clear that this was not the case.

486. However, it is clear that in the present instance several of the factors that are said in Notice 726 to be indicators of the risk of fraud were not argued to be present. We take this into account when assessing the totality of the evidence before us.

Discussion and conclusions whether knew or should have known

487. HMRC submitted that the evidence, allied with the fact that so many of M&M's transactions were connected with fraudulent default, supports the inference that many transactions entered into by M&M were part of contrived, organised chains in which the deals were pre-arranged and the participants knew from whom to purchase and to whom to sell. It follows that M&M, as one such participant, must have known that it was being directed in this way, the only conclusion being that it knew that its transactions were connected with fraud. Alternatively, it should have known that its transactions were connected with fraud and failed to take all reasonable steps to prevent its participation in that fraud.

488. Taking into account the relevant case law and the principles derived from it we have considered, stepping back to look at all the facts and circumstances, whether M&M knew or should have known that the sales were connected to fraud and failed to take every reasonable step within its power to prevent its participation in that fraud.

489. M&M's position is that it was dealing with traders with whom it had traded prior to the periods under appeal, in full visibility of HMRC and in respect of which repayments had been made. It was following the guidance given by HMRC as to the level of due diligence it should conduct (based on the Club Billionaire template) and had no way of knowing that the traders in the Republic of Ireland were fraudulent or that there was any circularity in the transactions. Many of the factors relied upon by HMRC are market practice in the vehicle industry (eg the lack of detailed documentation, not meeting face-to-face or visiting premises) and are not a basis upon which knowledge can or should be imputed.

490. We consider there is some support for M&M's position in that the pricing of its transactions was not such as to alert a trader that the deal was too good to be true and the events in the Republic of Ireland upon which HMRC rely are based on SCAC reports which would not have been available to M&M.

491. We have not given any weight to M&M's failure to notify the DVLA of the export of vehicles or the nearly sequential numbering of invoices from Ikonic.

492. However, our conclusions on these matters are significantly outweighed by the findings we have made and conclusions reached in assessing the picture as a whole. We have concluded, on the balance of probabilities, that M&M should have known that its transactions were connected to fraud and that it failed to take every reasonable step in its power to prevent its participation in that fraud.

493. We have reached this conclusion based on all of the evidence before us and the submissions put to us, but place particular weight on M&M's awareness of VAT fraud in the vehicle industry and that transactions it had been involved in had been linked to tax losses, our assessment of Mr Crickmore's credibility, the basic level of due diligence that was undertaken (yet not read), the failure to ask questions in relation to the information received or conduct further checks (in particular internet searches), the contrivance in the chains where Autostyle was directing M&M as to what to buy in circumstances where Mr Crickmore was already aware that another supplier had been cut out of the chain and his customer did know who its supplier's suppliers were, and the absence of a legitimate reason for M&M's participation in these chains. At the very least, M&M chose not to ask questions of the position in which it found itself and Mr Crickmore buried his head in the sand.

494. This conclusion is sufficient to dismiss M&M's appeal. However, HMRC also submitted that M&M not only should have known but actually knew that the transactions were connected to fraud. We have considered this very carefully. We note in particular:

(1) Mr Crickmore was aware of the risk of fraud in the vehicle industry from early on in M&M's business;

(2) he failed to tell the truth when giving evidence about his knowledge of the risk of fraud;

(3) M&M did not take all steps which we would regard as reasonable to protect itself from commercial risks, namely insure vehicles in transit or ensure vehicles could not be released before payment was received;

(4) Mr Crickmore was unconcerned with the results of the due diligence that was undertaken, and did not seem to care what was actually revealed by that information or consider if there were additional steps which he might reasonably take. Indeed, the

only due diligence matter pursued with any degree of vigour was checking that counterparties were using valid VAT numbers;

(5) Mr Crickmore's own evidence was that he would not have ceased doing business with Mr Capper or Mr Popat even if he had known of their convictions, and was dismissive of the suggestion that he should have been more cautious about the prospect of dealing with Scott Davis' son;

(6) whilst Mr Crickmore had worked with his father in the car industry several years previously he had been out of the market for several years and yet was approached by Mr Jafferali and Mr Popat with an opportunity to sell vehicles to a customer in Hong Kong that he had not met, a customer that would soon be purchasing 90% of the cars he sold. Having cut out Mr Cockram from this supply chain, thus illustrating that Mr Jafferali and Mr Popat were keen to ensure the supply chain was as lean as possible, Mr Crickmore was able to trade profitably notwithstanding that Mr Popat had a presence in the UK, they had their own contacts with suppliers and were able to arrange the shipping. Mr Crickmore said he acted as a banker in these transactions, yet there was no evidence as to why other sources of finance were not available to them;

(7) our findings demonstrate clear evidence of the transactions being part of an orchestrated fraud; and

(8) we do not consider Mr Crickmore to have been a credible witness generally. His explanations of events to HMRC have varied at different times, and we found him to have been untruthful when giving evidence.

495. Looked at in this light, we have asked ourselves, how can Mr Crickmore not have known. Our findings as to his knowledge of the risk of fraud and having been untruthful are particularly damaging in this respect, as are those as to his disinterest in the outcome of any due diligence.

496. We have focused carefully on all of the evidence before us, and scrutinised the transaction chains in Annex 1. We are particularly mindful of the fact that whilst we have concluded that all of the chains were contrived and part of an orchestrated fraud, the indicators of such contrivance differ between sales to the Far East and those to the Republic of Ireland. In particular, whilst Mr Crickmore must have known that he was being directed in respect of transactions with Autostyle and gave the Popats access to his business such that they were able to arrange transport of vehicles in the name of M&M, there was no evidence that customers in the Republic of Ireland were directing him in this way.

497. Nevertheless, the factors identified at [494] above are sufficient to demonstrate that Mr Crickmore knew that he was not operating in a genuine commercial market in respect of all of the transactions under appeal. We note in particular that the approach actually taken by M&M to customer relationships and due diligence in respect of customers in the Republic of Ireland is in marked contrast to the emphasis sought to be placed by Mr Crickmore on trust and building relationships with those with whom he dealt – he did not meet anyone from Autovillage or B&W, and did not meet any of Mr O'Kelly, Mr Quinn or Mr Burns. He commented that he dealt with a different person from Autovillage each time he dealt with them. The due diligence material obtained (for these customers as for his other customers and suppliers) cannot have been sufficient to provide reassurance that he was dealing with reputable businesses and he failed to take steps to protect himself from commercial risks in his dealings with these counterparties.

498. Having regard to all of the evidence before us, and for the reasons explained above, we have concluded that HMRC have established, on the balance of probabilities, that M&M knew that the transactions under appeal were connected with the fraudulent evasion of VAT.

CONCLUSION

499. M&M should have known that the transactions under appeal were connected to the fraudulent evasion of VAT and it failed to take every reasonable step to prevent its participation in that fraud. Furthermore, M&M knew that the transactions were connected to the fraudulent evasion of VAT.

500. The seven decisions of HMRC are upheld and M&M's appeal is dismissed.

COSTS

501. Whilst the six appeals were consolidated they were not all within the same costs regime, as explained below. On 9 April 2019 M&M made what had been treated by the Tribunal as an application for permission to make a late application for opt-out from potential liability for costs in respect of the Sixth Appeal (which is against HMRC's decision dated 5 September 2016).

502. On 16 November 2016 (amended on 30 November 2016), the Tribunal directed that the Fifth Appeal be consolidated with the First to Fourth Appeals (which had previously been consolidated). These consolidated appeals were categorised as Complex under rule 23 of the Tribunal Rules and M&M was directed that if it wished to opt out of the costs regime it should do so within 28 days. On 14 December 2016, M&M opted out of the costs shifting regime (for the purposes of rule 10(1)(c)) in respect of the First to Fifth Appeals.

503. The Sixth Appeal (which was initially categorised as a Standard appeal) was consolidated with the First to Fifth Appeals on 7 August 2017 and was also re-categorised as Complex at that time. M&M did not opt out of potential liability for costs in respect of the Sixth Appeal.

504. M&M then applied on 9 April 2019 for the Sixth Appeal to be opted out of the costs shifting regime, on the grounds that it is confusing, inconsistent and unhelpful to both parties for the consolidated appeal to proceed on the basis of a mixed costs regime, and that it creates an unnecessary level of ambiguity for the Tribunal when faced with the question of costs.

505. HMRC took a neutral position in respect of this application, whilst indicating that it had some reservations as to the potential difficulties which might be caused by the costs regime applicable to the Sixth Appeal changing part way through the appeals process.

506. The parties discussed further, and by the time of the hearing had agreed that:

(1) the First to Fifth Appeals would remain opted out;

(2) the Sixth Appeal would remain opted in (ie M&M was effectively withdrawing its application of 9 April 2019); and

(3) for the purpose of considering the allocation of costs for such a mixed appeal, the pragmatic approach was to have regard to the relative amounts which were the subject-matter of the First to Fifth Appeals on the one hand and the Sixth Appeal on the other, such that 6.88% of this appeal would be treated as opted in to the costs shifting regime (for the purposes of rule 10(1)(c)).

507. The parties acknowledged that further refinement may need to be agreed (or directed by the Tribunal in the absence of agreement) if the Sixth Appeal was not dismissed or allowed in its entirety but rather was allowed in part.

508. We had regard to the overriding objective in rule 2 and concluded that we should agree this pragmatic approach. Accordingly, the Tribunal has power to award costs in respect of 6.88% of the amount under appeal, either on an application or of its own motion. Any application for costs must be made in writing within 56 days after the date of release of this decision. As any order in respect of costs will, if not agreed, be for a detailed assessment, the party making an application for such an order need not provide a detailed schedule of costs claimed with the application as required by rule 10(3)(b) of the Tribunal Rules.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

JEANETTE ZAMAN
TRIBUNAL JUDGE

RELEASE DATE: 20 FEBRUARY 2020

Annex 1
Transaction chains

Key:

1. **The defaulter(s) in each chain is/are shown in italics**
2. **The transaction number for each deal chain is the number of the invoice issued by M&M, but is repeated separately for ease of reference**

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
748	*Ikonic Solutions*	6	19/11/2013	Range Rover TDV6	80,000	64,000	16,000
	M&M	748	04/12/2013		85,500	71,250	14,250
	GC Motors						
750	*Lakeview Motors*	318	28/11/2013	Mercedes CLS63	43,750	35,000	8,750[1]
	JMC Automobiles	1813	27/11/2013		45,000	37,500	7,500
	M&M	750	06/12/2013		43,500	43,500	
	Autostyle Cars						
751	*Ikonic Solutions*	2	14/11/2013	BMW 7 Series	41,000	34,166.67	6,833.33
	M&M	751	06/12/2013		43,500	43,500	
	Autostyle Cars						
752	Rolls Royce (Manchester)	1001309	16/07/2013	Rolls Royce Drophead	290,986.67	290,986.67	
	B&W Direct Trading						
	Swift Assets	64	12/08/2013		292,500	243,750	48,750
	OSD Ltd t/a O Davis Cars	244	28/08/2013		292,500	243,750	48,750
	Leisure Park Estates	MK63VYS	15/11/2013		325,000	270,833.33	54,166.67
	M&M	752	06/12/2013		269,500	269,500	
	Autostyle Cars						

[1] VAT charged by Lakeview does not equal 20%

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
757	Lookers	60134613	26/11/2013	Range Rover Spt	63,217	52,769.17	10,447.83
	Sines Park Homes		11/12/2013		63,217	52,769.17	10,447.83
	M&M	757	11/12/2013		59,500	59,500	
	James Quinn						
758	*Ikonic Solutions*	7	19/11/2013	Range Rover Vogue	80,000	66,666.67	13,333.33
	M&M	758	11/12/2013		75,000	75,000	
	James Quinn						
759	Porsche	17009719	19/11/2013	Porsche 911 Special	112,145	93,764.85	18,380.15
	DMD Vehicle Solutions	20	03/10/2013		116,000	96,666.67	19,333.33[2]
	M&M	759	11/12/2013		105,000	105,000	
	James Quinn						
760	*Lakeview Motors*		02/12/2013	Toyota Landcruiser	56,000		9,333.33[3]
	JMC Automobiles	1817	27/11/2013		57,500	47,916.67	9,583.33
	M&M	760	11/12/2013		51,500	51,500	
	James Quinn						
761	Westover	66204	25/10/2013	Range Rover Sport	69,839	58,287.50	11,551.50
	Gregory Groundworks		12/12/2013		72,345	60,287.50	12,057.75
	M&M	761	12/12/2013		63,500	63,500	
	James Quinn						
762	*James Quinn*		13/12/2013	Toyota Landcruiser	56,750		
	Lakeview Motors		13/12/2013		57,000		9,500[4]
	JRS Sales & Service	3048	12/12/2013		57,500	47,916.67	9,583.34

[2] Tax loss denied on this deal is £953.18

[3] No invoice. Information obtained from bank statement, with tax loss calculated as £56,000 divided by 6

[4] Details regarding Lakeview and Quinn taken from bank statements of Lakeview. Tax loss calculated as £57,000 divided by 6.

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	M&M	762	13/12/2013		57,500	47,916.67	9,583.33
	Swancraft						
763	*Ikonic Solutions*	2	09/12/2013	Range Rover Sport	62,000	51,666.67	10,333.33
	M&M	763	13/12/2013		66,000	55,000	11,000
	Swancraft						
764	*Supply A Car*	3101	11/10/2013	Range Rover Sport	60,774	50,645	10,129
	M&M	764	13/12/2013		60,500	60,500	
	James Quinn						
766	British Car Auctions Limited	MM/494766	08/10/2013	Toyota Prius	11,461	9,550.83	1,910.17
	Stable Car Sales	8336	29/10/2013		11,461	9,550.83	1,910.17
	M&M	766	13/12/2013		9,940.83	9,940.83	
	B&W Direct Trading						
767	The Car People Ltd	787866	19/11/2013	VW Tiguan	19,937.51	16,614.59	3,322.92
	M&M	767	13/12/2013		18,500		
	B&W Direct Trading						
769	*Ikonic Solutions*	13	18/12/2013	Range Rover Sport	65,450	54,541.67	10,908.33
	M&M	769	18/12/2013		66,000	55,000	11,000
	GC Motors						
773	*James Quinn*		18/12/2013	Toyota Amazon V8	56,750		
	Lakeview Motors		18/12/2013		57,000		9,500[5]
	JRS	3053	17/12/2013		57,500	47,916.66	9,583.34
	M&M	773	19/12/2013		57,500	47,916.66	9,583.34

[5] Information obtained from bank statement, with tax loss calculated as £57,000 divided by 6

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	Swancraft						
774	Lookers	60134927	19/12/2013	Range Rover Sport	62,845	52,459.18	10,385.82
	Anglian Caravan Parks		19/12/2013		62,845	52,459.18	10,385.82
	M&M	774	27/12/2013		54,000	54,000	
	Colin O'Kelly	774	27/12/2013		54,000	54,000	
	Ikonic Solutions						
775	Lookers	60134928	19/12/2013	Range Rover Sport	60,345	50,375.84	9,969.16
	Anglian Caravan Parks		19/12/2013		60,345	50,375.84	9,969.16
	M&M	775	27/12/2013		52,000	52,000	
	Colin O'Kelly	775	27/12/2013		52,000	52,000	
	Ikonic Solutions						
776	*Ikonic Solutions*	16	20/12/2013	Range Rover Sport	78,500	65,416.67	13,083.33
	M&M	776	07/01/2014		77,355	64,462.50	12,892.50
	GC Motors						
777	*James Quinn*		18/12/2013	Toyota Amazon			
	Lakeview Motors		18/12/2013		57,000		9,500[6]
	JRS Sales and Service	3054	17/12/2013		57,500	47,916.66	9,583.34
	M&M	777	13/01/2014		49,250	49,250	
	Autostyle Cars						
779	*Ikonic Solutions*	28	13/01/2014	Toyota Landcruiser	57,500	47,916.67	9,583.33
	M&M	779	14/01/2014		49,250	49,250	
	Autostyle Cars						

[6] Information obtained from bank statement, with tax loss calculated as £57,000 divided by 6

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
781	*Ikonic Solutions*	27	13/01/2014	Toyota Landcruiser	57,500	47,916.67	9,583.33
	M&M	781	14/01/2014		49,250	49,250	
	Autostyle Cars						
782	*James Quinn*			Range Rover Sport	86,750		
	Lakeview Motors		12/12/2013		87,000		14,500[7]
	JMC Automobiles	1826	11/12/2013		90,510	75,425	15,085
	Connected Cars	CC2000	06/12/2013		89,760	73,867	14,774
	M&M	782	14/01/2014		79,500	79,500	
	Autostyle Cars						
784	*Ikonic Solutions*	19	06/01/2014	Range Rover	100,000	83,333.33	16,666.67
	M&M	784	14/01/2014		93,250	93,250	
	Autostyle Cars						
788	*Ikonic Solutions*	24	09/01/2014	Range Rover Sport	68,580	57,150	11,430
	M&M	788	16/01/2014		59,000	59,000	
	James Quinn						
789	Marshall Motor Group	82834	31/10/2013	Range Rover Sport	60,345	50,375.84	9,969.16
	Paul Clarke Car & Commercial Sales		10/01/2014		61,095	51,000.84	10,094.16
	M&M	789	16/01/2014		54,000	54,000	
	Colin O'Kelly	774	16/01/2014		54,000	54,000	
	Ikonic Solutions						
790	*Ikonic Solutions*	16	06/01/2014	Range Rover Sport	78,000	65,000	13,000
	M&M	790	20/01/2014		68,000	68,000	

[7] Information obtained from bank statement, with tax loss calculated as £87,000 divided by 6

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	James Quinn						
791	JRS Sales & Service	3048	12/12/2013	Toyota Landcruiser V8	57,500	47,916.67	9,583.33
	M&M	762	13/12/2013		57,500	47,916.67	9,583.33
	Swancraft		27/01/2014		57,500	47,916.67	9,583.33
	M&M	791	22/01/2014		49,500	49,500	
	James Quinn						
792	*Ikonic Solutions*	26	13/01/2014	Toyota Landcruiser	57,500	47,916.67	9,583.33
	M&M	792	23/01/2014		57,500	47,916.67	9,583.33
	Castle Motors (Trebrown) Ltd						
794	*Ikonic Solutions*	69	05/02/2014	Range Rover Sport	61,500	51,250	10,250
	M&M	794	24/01/2014		64,000	53,333.33	10,666.67
	GC Motors						
795	*James Quinn*			Range Rover Sport		83,750	
	Lakeview Motors	340	27/01/2014		84,000	67,200	16,800
	JMC Automobiles	1844	21/01/2014		85,000	70,833.33	14,166.67
	M&M	795	28/01/2014		75,183.33	75,183.33	
	Autostyle Cars						
797	Swancraft Ltd		30/01/2014	Range Rover V6	64,905	54,087.50	10,817.50
	M&M	797	24/01/2014		56,000	56,000	
	James Quinn						
798	Swancraft Ltd		27/01/2014	Range Rover V6	66,000	55,000	11,000
	M&M	798	24/01/2014		56,000	56,000	
	James Quinn						

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
799	*Ikonic Solutions*	35	31/01/2014	Land Cruiser V8	57,500	47,916.67	9,583.33
	M&M	799	20/01/2014		51,600	51,600	
	James Quinn						
800	*Ikonic Solutions*	17	06/01/2014	Range Rover Sport	77,000	64,167	12,833
	M&M	800	04/02/2014		75,500	62,916.67	12,583.33
	City Group Inter Rent Plc	936	17/02/2014		58,333.33	58,333.33	
	Autostyle Cars						
801	*Ikonic Solutions*	18	06/01/2014	Range Rover Autobiography	102,000	85,000	17,000
	M&M	801	04/02/2014		104,000	86,666.67	17,333.33
	City Group Inter Rent Plc	936	17/02/2014		79,166.66	79,166.66	
	Autostyle Cars						
802	*Ikonic Solutions*	32	17/01/2014	Range Rover Autobiography	90,825	75,687.50	15,137.50
	M&M	802	04/02/2014		105,000	87,500	17,500
	City Group Inter Rent Plc	936	17/02/2014		79,166.66	79,166.66	
	Autostyle Cars						
803	*Lakeview Motors*	343	29/01/2014	Range Rover Autobiography	104,500	83,600	20,900
	JMC Automobiles	1842	21/01/2014		105,915	88,262.50	17,652.50
	M&M	803	22/01/2014		99,300	99,300	
	James Quinn						
804	*Lakeview Motors*	339	27/01/2014	Range Rover Autobiography	104,000	83,200	20,800

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	JMC Automobiles	1843	21/01/2014		105,220	87,683.33	17,536.67
	M&M	804	22/01/2014		99,300	99,300	
	James Quinn						
805	*James Quinn*			Range Rover	110,750		
	Lakeview Motors	348	05/02/2014		111,000	88,800	22,200
	JMC Automobiles	1860	31/01/2014		112,500	93,750	18,750
	M&M	805	07/02/2014		104,500	104,500	
	Autovillage	100846	26/02/2014		€126,480	€126,480	
	Mark Wright Motors						
806	*James Quinn*		29/01/2014	Range Rover	94,250		
	Lakeview Motors	344	29/01/2014		94,500	75,600	18,900
	JMC Automobiles	1846	21/01/2014		95,750	79,791.67	15,958.33
	M&M	806	07/02/2014		85,000	85,000	
	Autovillage	100844	26/02/2014		€115,200	€115,200	
	Mark Wright Motors						
808	*Ikonic Solutions*	37	27/01/2014	Range Rover Evoque	41,000	34,166.67	6,833.33
	M&M	808	11/02/2014		35,600	35,600	
	Autostyle Cars						
809	*James Quinn*			Landcruiser V8	42,450		
	Lakeview Motors				42,600		7,100[8]
	JRS Sales and Service	3105	27/01/2014		42,850	35,708.33	7,141.67
	M&M	809	11/02/2014		38,320	38,320	
	Autostyle Cars						
810	*James Quinn*		05/02/2014	Bentley Flying Spur	61,250		

[8] Information obtained from bank statement, with tax loss calculated as £42,600 divided by six

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	Lakeview Motors		05/02/2014		61,600		10,266.66[9]
	JRS Sales	3107	27/01/2014		61,850	51,541.66	10,308.34
	M&M	810	11/02/2014		55,100	55,100	
	Autostyle Cars						
815	*Lakeview Motors*	350	19/02/2014	Range Rover	109,500	87,600	21,900[10]
	JMC Automobiles	1862	05/02/2014		110,500	92,083.33	18,416.67
	M&M	815	13/02/2014		101,860	101,860	
	Autovillage						
816	*Lakeview Motors*	378	11/02/2014	Audi A5 S-Line	16,237.20	13,531	2,706.20
	JRS Sales and Service	3126	12/02/2014		16,487.20	13,739.33	2,747.87
	M&M	816	14/02/2014		15,033	15,033	
	Autostyle Cars						
817	*Lakeview Motors*	379	11/02/2014	Audi TT S-Line	17,954	14,961.66	2,992.34
	JRS Sales and Service	3127	12/02/2014		18,204	15,170	3,034
	M&M	817	14/02/2014		16,550	16,550	
	Autostyle Cars						
818	*Lakeview Motors*	380	11/02/2014	Audi A5	20,196.80	16,830.67	3,366.13
	JRS Sales and Service	3130	12/02/2014		20,446.80	17,039	3,407.80
	M&M	818	14/02/2014		18,531	18,531	
	Autostyle Cars						
819	*Lakeview Motors*	381	11/02/2014	Audi TT	15,816.40	13,180.33	2,636.07
	JRS Sales and Service	3131	12/02/2014		16,066.40	13,388.66	2,677.74
	M&M	819	14/02/2014		14,661	14,661	
	Autostyle Cars						

[9] Information obtained from bank statement, with tax loss calculated as £61,600 divided by six

[10] Noted that calculation of VAT is wrong but this is as recorded on the invoice.

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
820	*Lakeview Motors*	382	11/02/2014	Audi TT	19,167	15,972.50	3,194.50
	JRS Sales and Service	3132	12/02/2014		19,417	16,180.83	3,237
	M&M	820	14/02/2014		17,620	17,620	
	Autostyle Cars						
823	*Ikonic Solutions*	20	06/01/2014	Range Rover Sport	65,000	54,166.67	10,833.33
	M&M	823	14/02/2014		55,000	55,000	
	Autovillage	100847	26/02/2014		€67,200	€67,200	
	Mark Wright Motors						
824	*Lakeview Motors*	385	14/02/2014	320i M Sports	12,181	10,150.83	2,030.17
	JRS Sales and Service	3140	17/02/2014		12,431	10,359.16	2,071.84
	M&M	824	14/02/2014		13,646.86	13,646.86	
	Autostyle Cars						
825	*Lakeview Motors*	384	14/02/2014	A5 Sport TFS Quattro	13,217	11,014.17	2,202.83
	JRS Sales and Service	3139	17/02/2014		13,467	11,222.50	2,244.50
	M&M	825	14/02/2014		14,745	14,745	
	Autostyle Cars						
826	*Lakeview Motors*	383	14/02/2014	A4 SE Quattro	11,546	9,621.67	1,924.33
	JRS Sales and Service	3138	17/02/2014		11,796	9,830	1,966
	M&M	826	14/02/2014		12,963.70	12,963.70	
	Autostyle Cars						
827	Sytner Group	1001419	18/12/2013	Rolls Royce Wraith	218,010	218,010	
	James Quinn				209,750	209,750	
	Lakeview Motors				248,500		
	JRS Sales and Service	3056	18/12/2013		250,000	208,333.33	41,666.67
	M&M	827	18/02/2014		228,960	228,960	

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	Colin O'Kelly						
828	*Ikonic Solutions*	60	19/02/2014	Bentley GT	96,075	80,062.50	16,012.50
	M&M	828	20/02/2014		86,220	86,220	
	Autostyle Cars						
829	*Ikonic Solutions*	59	19/02/2014	Audi Q7	49,875	41,562.50	8,312.50
	M&M	829	20/02/2014		44,970	44,970	
	Autostyle Cars						
830	*Ikonic Solutions*	61	19/02/2014	Range Rover 5.0	103,950	86,625	17,325
	M&M	830	20/02/2014		93,470	93,470	
	Autostyle Cars						
831	*Ikonic Solutions*	62	19/02/2014	Range Rover 5.0	103,950	86,625	17,325
	M&M	831	20/02/2014		93,470	93,470	
	Autostyle Cars						
832	*Ikonic Solutions*	63	19/02/2014	Range Rover 3.0	78,750	65,625	13,125
	M&M	832	20/02/2014		70,720	70,720	
	Autostyle Cars						
850	*Lakeview Motors*	357	28/02/2014	Range Rover Autobiography	110,000	88,000	22,000
	JMC Automobiles	1872	26/02/2014		111,000	92,500	18,500
	M&M	850	27/02/2014		100,350	100,350	
	Autovillage	100702	23/01/2014		€121,620	€121,620	
	Mark Wright Motors						
851	*James Quinn*			Range Rover Autobiography	108,300		

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	Lakeview Motors	356	27/02/2014		109,050	87,240	21,810
	JMC Automobiles	1872	26/02/2014		110,050	91,708.33	18,341.67
	M&M	851	27/02/2014		99,500	99,500	
	Autovillage	100703	23/01/2014		€120,400	€120,400	
	Mark Wright Motors						
856	Landrover Lancaster	10123143	19/11/2013	Range Rover Vogue	90,098.55	75,231.30	14,867.25
	Leisure Park Estates LLP	LL63 E8M	19/11/2013		90,098.55	75,231.30	14,867.25
	M&M	856	28/03/2014		80,000	80,000	
	John Burns						
857	Bentley Cambridge	25200262	24/02/2014	Bentley Continental GT	113,997.60	94,998	18,999.60
	M&M	857	28/03/2014		100,000	100,000	
	John Burns						
858	Lancaster Land Rover	10128625	15/03/2014	Range Rover Sport	79,456.60	66,302.17	13,154.43
	Leisure Park Estates LLP	RK14 XX0	28/03/2014		79,456.60	66,302.17	13,154.43
	M&M	858	28/03/2014		73,500	73,500	
	John Burns						
859	Dennis Jean Cars	U1197	24/03/2014	Range Rover Sport	68,500	57,083.33	11,416.67
	M&M	859	03/04/2014		63,500	63,500	
	John Burns						
860	*Ikonic Solutions*	71	11/03/2014	Range Rover Supercharger	96,500	80,416.67	16,083.33
	M&M	860	10/04/2014		96,500	96,500	
	John Burns						

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
862a	Rolls-Royce Motor Cars Manchester	2002985	01/08/2013	Rolls Royce Ghost[11]	168,000	140,000	28,000
	M&M	862a	30/04/2014		164,000	164,000	
	John Burns						
863	Murray Motor Company	192999	19/02/2014	Rolls Royce Wraith	218,000	218,000	
	Colin O'Kelly						
	Lakeview Motors	367	10/04/2014		224,000	186,666.67	37,333.34
	M&M	863	16/05/2014		213,690	213,690	
	Autostyle Cars						
864	Jack Barclay Ltd	504028	27/03/2014	Bentley Flying Spur	130,416.67	130,416.67	
	Autovillage						
	James Quinn		04/04/2014		133,750		
	Lakeview Motors	404	04/04/2014		134,000	111,666.66	22,333.34
	JMC Automobiles	1884	02/04/2014		135,000	112,500	22,500
	M&M	864	16/05/2014		134,000	134,000	
	Autostyle Cars						
868	*Adapt 4 Work t/a Flexible*	79	20/05/2014	Audi Q7	35,000	29,166.67	5,833.33
	M&M	868	21/05/2014		33,000	33,000	
	Autostyle Cars						
870	*Adapt 4 Work t/a Flexible*	80	26/05/2014	Porsche Cayenne	69,500	57,916.67	11,583.33
	M&M	870	10/06/2014		67,500	67,500	
	Autostyle Cars						

[11] This vehicle subsequently appears in the bank statements of Ruairi McNulty as sold to JRS in three payments (£100,000, £13,000 and £49,250) on 22 and 23/05/2014. JRS sell the vehicle to Kardi Vehicles in Luton on 22/05/2014 for £163,000. EMCC Solutions export the vehicle to Autostyle Cars in Hong Kong on 25/04/2014 for £137,000.

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
875	*Supply A Car*	3067	16/09/2013	Rolls Royce Ghost	143,000	119,166.67	23,833.33
	Leisure Park Estates	1Rroyce	23/09/2013		143,000	119,166.67	23,833.33
	M&M	875	20/06/2014		161,642.40	134,702	26,940.40
	British Car Auctions	BE/334888	05/06/2014		162,000	135,000	27,000
	Colin O'Kelly						
877	*Adapt 4 Work t/a Flexible*	94	11/06/2014	Toyota Landcruiser	56,000	46,666.67	9,333.33
	M&M	877	09/06/2014		56,564	47,136.67	9,427.33
	British Car Auction	BE334100	29/05/2014		56,900	47,416.67	9,483.33
	John Burns						
879	*Christopher Griffiths*	249512	06/06/2014	Toyota Landcruiser	49,000	40,833.33	8,166.67
	OSD Ltd t/a O Davis Cars	515	13/06/2014		49,500	41,250	8,250
	M&M	879	26/06/2014		51,164	42,636.67	8,527.33
	British Car Auctions						
880	*Adapt 4 Work Ltd t/a Flexible*	99	07/07/2014	Toyota Landcruiser	47,500	38,583.33	7,916.66
	M&M	880	15/07/2014		51,000	42,500	8,500
	Classic Cars (UK) Ltd						
881	*Supply A Car*	3098	10/10/2013	Porsche Cayenne V6	51,712	43,093.33	8,618.67
	M&M	881	17/07/2014		56,500	47,083.33	9,416.67
	Classic Cars (UK) Ltd						
882	*Lakeview Motors*	427	04/06/2014	Porsche Panamera	65,000	54,166.66	10,833.34
	JMC Automobiles	1914	06/06/2014		66,100	55,083.33	11,016.67
	M&M	882	18/07/2014		65,164	54,303.33	10,860.67

Transaction number	Trader	Invoice number	Invoice date	Description	Price (£)	Net value (£)	VAT (£)
	British Car Auctions						
884	*James Quinn*			Land Rover Range Rover	82,750		
	Lakeview Motors		17/12/2013		83,000		13,833.33[12]
	JMC Automobiles	1829	12/12/2013		85,000	70,833.33	14,166.67
	M&M	884	04/08/2014		83,500	69,583.33	13,916.67
	Mannheim Auctions	Lot 9899/1801	24/07/2014		83,500	69,583.33	13,916.67
	John Burns						
885	*Lakeview Motors*		12/12/2013	Land Rover Range Rover	83,500		13,916.67
	JMC Automobiles	1828	12/12/2013		85,000	70,833.33	14,166.67
	M&M	885	04/08/2014		85,500	71,250	14,250
	Mannheim Auctions	Lot 9899/1802	24/07/2014		85,500	71,250	14,250
	John Burns						
886	*Lakeview Motors*	422	29/05/2014	Ferrari 458 Convertible	190,000	158,333.33	31,666.67
	JMC Automobiles	1907	21/05/2014		192,000	160,000	32,000
	M&M	886	16/08/2014		200,000	166,666.67	33,333.33
	Mr A Kearns						
887	*Ikonic Solutions*	70	11/03/2014	Land Rover Range Rover	100,400	83,666.67	16,733.33
	M&M	887	28/08/2014		106,260	88,550	17,710
	Mannheim Auctions	Lot 9978/1226	19/08/2014		106,500	88,750	17,750
	John Burns						

[12] Information obtained from bank statement, with tax loss calculated as £83,000 divided by six