[2021] UKFTT 0450 (TC)

TC 08334V

VALUE ADDED TAX – input tax deductibility – restriction of right to deduct under principles in Kittel *– appellant's purchases of electronic goods were connected with fraudulent VAT evasion – did the appellant know the purchases were so connected? – held: the sole director did not know – but the shadowy organisation that effected the transactions did know – was the appellant fixed with that organisation's knowledge? –* Sandham *applied – yes, it was - should the appellant have known? – held: yes: no other explanation for circumstance in which transactions took place – appeal dismissed*

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/01591

BETWEEN

TURQUOISE 2 LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE ZACHARY CITRON
DR CAROLINE SMALL

The hearing took place on 4-7 October 2021. The hearing was held on the Tribunal's video hearing platform. A face to face hearing was not held because of public health issues arising from the coronavirus pandemic. The documents to which the Tribunal was referred are described in the decision below.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Symon Blomfield, director of the Appellant, for the Appellant

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

DECISION

1. This appeal was principally about whether the appellant ("**T2**") knew, or should have known, that certain of its purchases and immediate onward sales of electronic goods between May and August 2016 were connected with the fraudulent evasion of VAT.

2. In this decision, "input tax" and "output tax" have the meanings they have in the Value Added Tax Act 1994.

BACKGROUND TO THE APPEAL

3. HMRC notified T2 on 10 October 2017 that they were denying it the right to deduct input tax of £1,496,854.70 in VAT quarterly period 07/16 (in respect of 20 purchases of electrical goods) and £564,878.82 in VAT quarterly period 10/16 (in respect of 9 purchases of electrical goods). The denial of the right to deduct led to HMRC assessing T2 for £2,061,732 on the same date.

4. HMRC issued a review conclusion letter, upholding their earlier decision, on 26 January 2018.

5. T2 appealed by way of a notice of appeal dated 24 February 2018.

EVIDENCE

6. We had several pdf bundles (amounting to 2,649 pages) containing Tribunal documents, correspondence between the parties and also (and in the following sub-paragraphs, words in italics are defined later in this decision):

(1) witness statements of five HMRC officers each concerning HMRC's investigations into one of five UK companies: T2, *BJWP*, *Manhattan*, *CPX* and CD (Europe) Ltd;

(2) from Mr Blomfield:

(a) a 5-page statement (undated);

(b) a 3-page "response to statement of case" with an 8-page "statement of events" dated 9 March 2020 and appendices;

(c) a 5-page "appendix to statement of events" dated 23 October 2020;

(3) "deal packs" for the *Purchases* and related onward sales including

(a) invoices issued by T2 to *Pacon;*

(b) invoices issued by BJWP to T2;

(c) delivery notes issued by BJWP to T2;

(d) goods received notes issued by T2 to BJWP;

(e) purchase orders issued by T2 to BJWP;

(4) HMRC's notes of meetings with T2 (Mr Blomfield) on 14 December 2015 and 17 October 2016;

(5) a contract between T2 and *Alingas* dated 20 May 2016 with Mr Blomfield's signature on behalf of T2;

(6) a contract between T2 and *CPX* dated 27 May 2016 with Mr Blomfield's signature on behalf of T2;

(7) summaries of T2's transactions in the 07/16 and 10/16 VAT quarterly periods, and of the Purchases and immediate onward sales, prepared by HMRC.

7. Mr Blomfield gave oral evidence at the hearing.

8. In response to draft "*Fairford* directions" circulated by HMRC in January 2021, Mr Blomfield, representing T2, said he had no knowledge of the activities of companies other than T2 as described in the HMRC officers' witness statements, or of the "transaction chains" (other than T2's supplier and customers); but he did not dispute the accuracy of the HMRC officers' witness statements in those areas. Accordingly, he said he did not require the HMRC officers to attend the hearing for cross examination.

9. We found Mr Blomfield's factual testimony to be, on the whole, reliable – and our findings of fact as to what Mr Blomfield knew, when it knew it, and how the Purchases and onward sales were actually effected, are based heavily on his evidence (as well as two contemporaneous emails he wrote, in February and June 2016). On matters of opinion and questions of law, however – such as, crucially in this case, whether T2 *should have known* of the connection of the Purchases with fraudulent VAT evasion – we have formed our own judgement and not given any particular evidential significance to the non-expert opinion of Mr Blomfield as a witness (whilst of course paying due attention to his submissions in his capacity as T2's representative at the hearing). The same may be said of how we have dealt with non-expert opinion evidence in the witness statements of the HMRC officers.

FINDINGS OF FACT

10. We make the following findings of fact, based on the evidence before the Tribunal, on the balance of probabilities.

Facts about the transactions in question

11. The transactions giving rise to the disallowed input tax were 29 supplies (the "**Purchases**") of electronic goods (such as headphones) (the "**Goods**") to T2 by BJWP Ltd ("**BJWP**") (a UK company) on the following dates in 2016:

(1) 6, 10, 12, 18 and 26 May,

(2) 28 June,

(3) 22, 25, 27, 28 and 29 July, and

(4) 2, 4, 10, 12, 19, 23, 24 and 26 August.

12. The Purchases and on-sales of the same Goods by and from T2 were "back to back", on the same day; the Goods were not physically received by T2 (which did not have a warehouse to receive them). T2's mark up on the Goods (difference between price paid for them and price received for them) was small: between 0.35% and 1%.

13. Goods acquired in 15 of the Purchases were on-sold by T2 to Pacon MBC SRO ("**Pacon**"), a Czech company. Goods acquired in 14 of the Purchases were on-sold by T2 to Manhattan Systems Ltd ("**Manhattan**"), a UK company, which in turn on-sold (on the same day) to Techklinika UAB (a Lithuanian company).

14. T2 did not pay for Goods acquired in the Purchases until it had been paid by customers on the onward sale. Therefore there was no risk of not being paid by its customer or of holding surplus stock.

15. In respect of each Purchase in May, June and July 2016, BJWP had acquired the Goods (on the same day) from Mamos Services Group Ltd (a UK company), which in turn had

acquired them (on the same day) from Polimax Sp Zoo (a Polish company) or from Global IT Sia (a Latvian company).

Facts about T2's transactions generally in the 7/16 and 10/16 quarters

16. In addition to the Purchases, T2 made other purchases and immediate onward supplies in the 7/16 and 10/16 VAT quarterly periods: it made 16 purchases from Alingas SP Zoo ("**Alingas**") (Polish company) and on-sold the goods to CPX Gateway Ltd ("**CPX**"), Product Placement Sales and Marketing Consultants Ltd and CD (Europe) Ltd (all UK companies).

17. T2's total turnover in the 7/16 VAT quarterly period was £8.8 million; in the 10/16 VAT quarterly period it was £5.7 million. In prior VAT quarterly periods it had been less than £7,000.

18. T2's output tax in the 7/16 VAT quarterly period was £1,503,225; its input tax was £1,497,216; the VAT due was therefore the difference, £6,008.

19. T2's output tax in the 10/16 VAT quarterly period was £572,010; its input tax was £566,464; the VAT due was therefore the difference, £5,545.

Facts about the fraudulent evasion of VAT connected with the Purchases

20. BJWP fraudulently evaded accounting for output tax on the Purchases.

21. HMRC VAT-deregistered BJWP on 11 January 2017. BJWP went into compulsory liquidation in January 2018, owing about £2.5 million in VAT to HMRC.

22. BJWP's bank account for the Purchases was at the same Latvian bank as was used by T2. According to some of the invoices for the transactions in question, payments to both T2 and BJWP at their accounts at that Latvian bank were directed to the same third party nominee, "UWM Commercial Ltd".

23. HMRC VAT-deregistered Manhattan on 18 May 2017 on the basis that it was using its registration solely or principally for fraudulent purposes.

24. Enquiries made after the transactions in question with the Czech authorities revealed that Pacon had become a "missing trader".

25. Enquiries made after the transactions in question with the Polish authorities revealed that Alingas had become a "missing trader".

Background to T2 (prior to 2016)

26. T2 was incorporated in May 2013 with Mr Blomfield as sole director and shareholder (and this remained the position at all relevant times). T2 was registered for VAT from 1 August 2014. T2 was initially used for Mr Blomfield's consultancy work and had modest turnover (its "outputs", as reflected in its VAT returns, did not exceed £7,000 – and it had nil "inputs" - in the seven VAT quarterly periods prior to the first of the VAT quarterly periods in question, 07/16). It had no employees at all relevant times.

27. Mr Blomfield was in his late 50s at the time of the Purchases. His early career had been in advertising and copy writing, eventually working for large clients like BT and the MoD. Around the turn of the millennium, he started working in related areas of communications technology (such as "VOIP" - voice over internet protocol). He did this through a company he owned and controlled called Presence Networks Ltd. He had some large clients like the NHS. However, the funding for his technology venture ran out and, in 2012, he sold Presence Networks Limited for a nominal sum to Graham Hendry.

28. Mr Hendry was both a friend (they lived in the same area) and an occasional business associate of Mr Blomfield. They travelled to Hong Kong at one point seeking to try to raise funds for Mr Blomfield's technology venture – this did not however come to anything. Prior to his buying Presence Networks Ltd 2012, Mr Hendry had introduced Mr Blomfield to a "pension unlocking" expert as a means of raising capital – it turned out, however, in Mr Blomfield's words, that this expert was a fraud.

29. From around 2014 Mr Blomfield was not employed and was claiming jobseekers allowance.

30. In the second half of 2015 Mr Blomfield was considering a business idea suggested to him by Mr Hendry that would have T2 start trading in "VOIP minutes" (a technology Mr Blomfield knew about). This led Mr Blomfield to write to HMRC on T2's behalf on 27 October 2015 asking them to add three "SIC codes" to T2's VAT registration "in line with a change in the company's business to add telephony services": "wireless telecommunications activities", "wholesale of electronic and telecommunications equipment and parts", and "non-specialised whole sale trade"

31. At a 1½ hour meeting with HMRC on 14 December 2015 regarding T2, HMRC told Mr Blomfield the purpose of the meeting was mainly educational, in light of the new line of business T2 was going into. HMRC said the new trade classes set out in Mr Blomfield's letter of 27 October 2015 were high risk areas from HMRC's perspective. When asked about suppliers for the proposed VOIP-minute trading business, Mr Blomfield told HMRC he had been in contact with an American company called Network Operations Solutions with a view to that company providing host services, switch capability and technical support. HMRC explained "MTIC" (missing trader intra community) fraud risks to Mr Blomfield and gave him a copy of public notice 726 and the leaflet *How to Spot Missing Trader Fraud*. HMRC told Mr Blomfield that it was important to do thorough checks on suppliers and customers (and keep records of such checks). HMRC told Mr Blomfield that where suppliers recommended other companies to their customers they can trade with, this may be an indication of MTIC fraud.

32. Notice 726 was a 19-page document issued by HMRC, entitled *Joint and several liability for unpaid VAT*. The introduction said that the notice explained how you could be made jointly and severally liable for the unpaid VAT of another VAT-registered business when you buy and/or sell specified goods. The goods specified included electronic equipment made or adapted for use by individuals for the purposes of leisure, amusement or entertainment and any other equipment made or adapted for use in connection with any such electronic equipment. It explained that the rules it described were introduced to tackle VAT fraud, a "virulent" form of which was MTIC fraud. It then said:

> "MTIC fraud is a systematic criminal attack on the VAT system detected in many EU member States. In its simplest form, the fraud involves a fraudster obtaining a VAT registration number in the UK for the purposes of purchasing goods free from VAT in another EU member State, selling them at a VAT inclusive purchase price in the UK and then not paying the output tax due to HMRC. The goods are then sold through a number of UK businesses and finally sold outside the UK free from VAT. The final UK business claims a VAT repayment from HMRC that, if paid, crystallises the loss at the start of the UK supply chain.
>
> This type of fraud relies heavily on the ability of fraudulent businesses to sell goods or services to other businesses that are complicit in the fraud, prepared to turn a blind eye, or not sufficiently circumspect about their trading

> connections. Such action fuels the growth of the fraud. These rules remove the attraction of financial gain."

33. In section 4, the notice said it contained examples of reasonable steps you can take to establish the integrity of your customers, suppliers and supplies, to help you avoid being unwittingly caught up in a supply chain where VAT goes unpaid. It then said:

> "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.
>
> Such checks will also assist you to avoid being involved in supply chains linked to the theft of VAT and the possibility of becoming jointly and severally liable for VAT unpaid elsewhere in your supply chain.
>
> 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.
>
> Factors you may wish to consider include:
>
> • The type and level of checks you carry out to establish the integrity of the supply chain and the action you take as a consequence of those checks;
>
> • The nature of the supply;
>
> • Payment arrangements and conditions; and
>
> • Details of the movement of goods involved.
>
> You can find examples of checks at section 6."

34. Extracts from section 6 of the notice are set out in the appendix to this decision.

35. As a result of the meeting with HMRC on 14 December 2015, Mr Blomfield decided that T2 would not proceed with the VOIP-minute trading venture.

Facts about T2 in January – October 2016: the lead-up to the Purchases, the period in which the Purchases took place, and immediate aftermath

36. In early 2016, Mr Blomfield was considering another business idea suggested to him by Mr Hendry: that T2 take up trading in electronic goods. Mr Blomfield had no background in trading electronic goods; however, he understood from Mr Hendry that a US company would train him in this trading and would be prepared to fund it (by putting money into T2). As well as making money from such trading, Mr Blomfield thought that such activity could have helpful other spin off effects, such as familiarising him with new gadgets at an early state of their entering the market. He visited Mr Hendry's home office and was shown Mr Hendry's research into the electronic goods to be traded and documents relating to sales and shipping receipts. As a result, Mr Blomfield felt that the venture was "above board".

37. Mr Blomfield had no direct contact with the "US company" Mr Hendry referred him to; on a handful of occasions, Mr Blomfield spoke with, and emailed, someone he knew as "Adam" representing the "US company"; he did not know Adam's surname but he did have his email address: gordongekko69@yandex.com. Mr Hendry was, in Mr Blomfield's words, the "go between" between himself and Adam/the "US company". In what follows we shall refer to this "US company" as "Adam's organisation", as we are not sure what legal form it took or where it was based.

38. Mr Blomfield's understanding of the arrangement with Adam's organisation included that

(1) T2 would be buying electronic goods at preferential rates in other EU countries and therefore needed a European-based bank account;

(2) Adam's organisation required control of any moneys it made available to T2 (to fund the trading in electronic goods) and, therefore, control of the bank account of T2 into which it paid those moneys;

(3) Mr Blomfield's role would include finding business opportunities and visiting counterparties' premises to perform "KYC" (know your customer) and validate that the electronic goods were bought and received by T2 in the UK.

39. In order to progress the venture with Adam's organisation, Mr Blomfield sent an email to Adam on 15 February 2016, using his symon@turquoise2.com email account, setting out two alternatives as his regards his relationship with Adam's organisation:

(1) either Adam wanted to "continue the relationship", in which case Mr Blomfield would remain a director of T2 (and would, as T2's director, respond to HMRC regarding "registration") but also become an "employee" of Adam's organisation, in which case written terms would have to be agreed; or

(2) Adam did not want to "continue the relationship", in which case Mr Blomfield would resign as a director of T2 in favour of, and transfer his shares in it to, someone else as nominated by Adam (and take other consequential actions, such as notifying T2's bank, Barclays).

40. Following sending this email, Mr Blomfield was told by Mr Hendry that Adam's organisation wanted him to remain as director of T2; but neither Mr Blomfield nor T2 entered into written terms with Adam's organisation of the kind described in that email under the option that Adam wanted to "continue the relationship".

41. Mr Blomfield sent an email to HMRC on 26 March 2016, using his symon@turquoise2.com email account, saying that

(1) he was enclosing the current trading for February-March to date "as requested";

(2) he was researching and making contacts in consumer electronics;

(3) he had a potential order from "a UK-based company called Askos Wolt LLP" (he gave its VAT number); he said he was "in the process completing and documenting due diligence" and "seeking to source the products they require". He said if the sale happened, it would be likely to fall into the current VAT quarter;

(4) he had not proceeded further with reselling VOIP minutes.

42. Between 15 February 2016 (the date of his email to Adam, which refers to Barclays, but not to any other bank account of T2) and 6 May 2016 (when the first of the Purchases occurred), Mr Blomfield

(1) took the steps necessary, as sole director of T2, to set up a Euro bank account for T2 at AS Latvijas Pasta Banka, a Latvian bank (in addition to T2's longstanding Sterling account with Barclays in the UK); and

(2) passed control over that account to Adam's organisation (by giving Mr Hendry the "remote access device" which provided access to and control over the account, for him to give to Adam's organisation).

43. As part of furthering the venture between T2 and Adam's organisation, Mr Blomfield also:

(1) signed a generic "introduction" letter from T2 to be given to counterparties regarding the electronic goods trading and gave it to Mr Hendry; and

(2) opened an email account with an organisation called "one to one", through which Adam's organisation communicated with him. (No emails from that account were adduced in evidence by T2, because Mr Blomfield was later denied access to the "one to one" account).

44. In early June 2016, Adam's organisation sent Mr Blomfield, via the "one to one" email account, information about T2's purchases from Alingas and immediate on-sales to CPX during May 2016 (these took place on 24, 27 and 31 May 2016 – the sales amounted to over €1.2 million). This was the first Mr Blomfield learned of these transactions.

45. Mr Blomfield, again using his symon@turquoise2.com email address, then sent an email to Adam on 3 June 2016, saying that he was "extremely unhappy" about a number of "factors"– and if they were not "resolved quickly", then "you can find yourself another director". The factors were:

(1) trades totalling over a million Euros were going through T2's Latvian account to which he had no access and he was not being kept informed these were happening;

(2) it seemed a considerable VAT liability was being accrued – running into the hundreds of thousands of pounds – but the cash to cover this was not in T2's UK bank account (Mr Blomfield guessed it was being paid into T2's Latvian bank account);

(3) the trading went back two weeks (as Mr Blomfield noted when he downloaded invoices and orders); Mr Blomfield said he was "responsible"; yet Adam told him that "payment /employment" started this week (1 June). Mr Blomfield wanted to know why.

46. The email went on to say that, "most worryingly", Mr Blomfield had "no idea who the parties involved with controlling this business are and what their agenda is". It then said:

> "it may well be that everything is kosher in which case your modus operandi is neither reassuring nor does it currently provide me with sufficient understanding to be able to properly fulfil my duties as a director. I need to FULLY understand what is going on with this business, who is making decisions and how the VAT position works. I am NOT going to be in the frame for carousel trading or anything else like it.
>
> **The above needs to be URGENTLY AND FULLY ADDRESSED**"

47. In response to his 3 June 2016 email, Mr Blomfield was told in conversations with Mr Hendry and Adam that

(1) T2's May transactions were just to get things 'primed in the industry and facilitate cash flow through the bank account'; there were no large profits being made;

(2) the VAT due would be paid;

(3) Adam's organisation would soon train and support Mr Blomfield, so he could "take control of the process";

(4) Mr Blomfield should set up a meeting with CPX (this never happened, although Mr Blomfield tried to make appointments);

(5) T2 would not be doing further transactions for the time being, as its Latvian bank account had been hacked and was inoperative.

48. Mr Blomfield was supposed to meet a director of BJWP in early July 2016; however the meeting was cancelled on the day of the meeting (Mr Blomfield was told that the director had had a heart attack), and never rescheduled.

49. Mr Blomfield had a meeting with a director of Manhattan on 20 July 2016.

50. Mr Blomfield's wife became seriously ill with cancer in mid-August 2016, from which time Mr Blomfield was heavily involved in caring for her; she unfortunately died in early January 2017.

51. Mr Blomfield was informed about the details of the Purchases and onward sales of the Goods only after they had been effected by Adam's organisation, by receiving financial information from Adam's organisation. Mr Blomfield used the information from Adam's organisation to file T2's VAT returns. He filed T2's 07/16 VAT return on 9 September 2016, indicating that, by this date, he knew about all the Purchases and onward sales of the Goods that took place in May, June and July 2016.

52. In late August and September 2016 Mr Blomfield took the steps necessary to open a bank account for T2 in Montenegro (to replace the Latvian bank account) and gave control of that account to Adam's organisation.

53. At a two-hour meeting with HMRC regarding T2 on 17 October 2016, Mr Blomfield answered questions about T2's trading in electronic goods, telling them about, amongst other things, its largest customer (Manhattan) and supplier (Alingas), the fact that trades were back to back, the hacking of the Latvian bank account and opening of a new bank account in Montenegro, the small margins, T2's estimated annual turnover (£10-12 million; maybe over £20 million) and "due diligence" checks it performed. Mr Blomfield did not mention the role of Adam's organisation in T2's electronic goods trading.

54. The documents collected in T2's "due diligence" of BJWP were:

(1) certificate of incorporation

(2) VAT number and VAT registration certificate

(3) copy director passports

(4) generic letter of introduction from BJWP

55. The documents collected in T2's "due diligence" of Manhattan were:

(1) recent utility bill

(2) certificates of incorporation

(3) generic letter of introduction signed by a director of Manhattan

(4) document listing Manhattan's trading & invoice address, registered address, company registration number, VAT registration number, director's email address, and bank details

(5) copy of director's passport;

(6) copy of the certificate of VAT registration.

56. Two documents in Czech were collected in T2's "due diligence" of Pacon (one of which was a VAT registration certificate), as well as a copy of a director's passport

57. T2 did not insure the Goods.

58. Based on the facts above, we find that, during the period when the Purchases took place, the arrangement between Mr Blomfield, T2 and Adam's organisation, was as follows:

(1) the essence of the arrangement was that Adam's organisation would arrange trading activity by T2 in electronic goods;

(2) given that Adam's organisation knew all about trading in electronic goods, and Mr Bromfield knew little or nothing about it, it was inevitable (and therefore understood, implicitly if not explicitly) that, at least to begin with, Adam's organisation would take all the necessary actions to enable T2 to carry out this trading activity, such as: finding counterparties for purchase and sale; deciding pricing and mark up; producing transactional documentation such as invoices, purchase orders and contracts; ensuring T2 was funded to carry out the Purchases and on-sales of Goods;

(3) Adam's organisation led Mr Blomfield to believe that, at some point in the future, he would be trained in the sort of trading that Adam's organisation specialised in, such that he could play a more active role in T2's trading; but, to begin with, his role would be:

(a) to do those things that required the company director's direct involvement – this included setting up the new Euro bank account for T2 at the Latvian bank and signing the generic letter of introduction (see [42-43] above);

(b) filing T2's VAT returns and communicating with HMRC as required (which in turn required Adam's organisation to send financial records of T2's activities to Mr Blomfield); there was implicit agreement that, in carrying out this role, T2 would not mention Adam's organisation's role in arranging the transactions (hence, there was no mention of Adam's organisation in Mr Blomfield's email to HMRC of 26 March 2016, or at his meeting with HMRC on 17 October 2016);

(4) Mr Blomfield was paid £1,500 per month by Adam's organisation for his services;

(5) there was a lack of agreement as to the degree of prior knowledge Mr Blomfield would have as to the transactions arranged by Adam's organisation to be undertaken by T2 (this was reflected in Mr Blomfield's 3 June 2016 email). Adam's organisation did not consider it necessary to give Mr Blomfield any such information in advance of the deals being done. Mr Blomfield wanted information in advance, so that he could comply with his duties as a company director and also assure himself that T2 could and would satisfy its VAT liabilities. Related to this lack of mutual agreement, Adam's organisation used or copied Mr Blomfield's signature to sign letters and documents on T2's behalf – this was done without Mr Blomfield's consent;

(6) Mr Blomfield treated T2 as a vehicle of Adam's organisation: hence, in his emails to Adam, the consequence he envisaged of non-agreement between himself and Adam's organisation was that he would resign his T2 directorship and sell his T2 shares, in favour of someone else appointed by Adam's organisation.

RELEVANT LAW

EU VAT directive

59. Council Directive 2006/112/EC of 28th November 2006 on the common system of VAT provided 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;
>
> …

Value Added Tax Act 1994

60. Section 24 (Input tax and output tax) provides:

> (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…

61. Section 26 (Input tax allowable under section 25) provides:

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

Case law

Kittel

62. The European Court of Justice (the "CJEU"), in its judgment dated 6 July 2006 in *Axel Kittel v Belgium State, Belgium State v Recolta Recycling SPRL* C- 439/04 & C-440/04, held 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 input tax. In particular, at [51] and [56], the CJEU, whilst reiterating that "traders who take every precaution which could reasonably be required of them to ensure

that their transactions are not connected with fraud, be it fraudulent evasion of VAT or other fraud" should not lose their right to a credit for the input tax in relation to supplies associated with fraud, stated that *"*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 [directive which has now been replaced by the 2006 Directive], be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods."

63. The rationale for the above approach was set out as follows:

> [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."

64. At [59] the CJEU concluded that *"*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'."

65. At [61] the CJEU reiterated that, *"*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."

Mobilx

66. The issues to which *Kittel* gave rise were addressed in the UK context by the Court of Appeal in *Mobilx Limited (in Liquidation) v HMRC* [2010] EWCA Civ 517. At [52], Moses LJ said this in relation to the "should have known" part of the *Kittel* test:

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

67. At [53] to [60] Moses LJ addressed the extent of knowledge required. He observed that it would offend the principle of legal certainty to deny input tax credit on the grounds that the relevant taxpayer knew or should have known that it was *more likely than not* that the supplies in question were connected with fraud. Instead, such denial could be made only if the relevant taxpayer knew or should have known that the supplies in question *were* connected with fraud. At [59-60] Moses LJ observed that:

> "[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."

68. At [61] Moses LJ said the following about legal certainty:

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

69. At [64] Moses LJ reiterated that, "[if] it is established that a trader should have known that by his purchase there was no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud then such a trader was directly and knowingly involved in fraudulent evasion of VAT*"*

70. At [74-75] Moses LJ referred to a tribunal's "undue focus" on whether a company director had "exercised due diligence or done 'enough to protect himself'". Moses LJ then stated: "That is not the only question. The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT."

71. At [81] and [82] Moses LJ noted that the burden of proof in such cases is on HMRC but made it clear that that "is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant …tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was."

72. At [72] Moses LJ cited "important" questions posed by the First-tier Tribunal in *Mobilx*:

> "(1) Why was [the taxpayer], a relatively small company with comparatively little history of dealing in mobile phones, approached with offers to buy and sell very substantial quantities of such phones?
>
> (2) How likely in ordinary commercial circumstances would it be for a company in [the taxpayer's] position to be requested to supply large quantities

> of particular types of mobile phone and to be able to find without difficulty a supplier able to provide exactly that type and quantity of phone.
>
> (3) Was [the taxpayer's supplier] already making supplies direct to other EC countries? If so, he could have asked why [the taxpayer's supplier] was not making supplies direct, rather than selling to UK traders who in turn would sell to such other countries.
>
> (4) Why are various people encouraging [the taxpayer] to become involved in these transactions? What benefit might they be deriving by persuading [the taxpayer] to do so? Why should they be inviting [the taxpayer] to join in when they could do so instead and take the profit for themselves?"

73. At [83] Moses LJ said that the above "were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge" and added that he could "do no better" than repeat the words of Christopher Clarke J in *Red 12 Trading Limited v HMRC* [2010] STC 589:

> "[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."

74. At [84], Moses LJ observed that circumstantial evidence of the sort described by Christopher Clarke J in *Red 12* will often indicate that "a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time."

Other authorities

Attribution of agent's knowledge to principal in Kittel *cases*

75. In *Sandham t/a Premier Metals Leeds v HMRC* [2020] STC 1682 – another *Kittel* case - the taxpayer's transactions were all entered into by an agent ('F') who was authorised to purchase and sell goods on the taxpayer's behalf. There was no written document setting out the scope of F's authority to act as agent. He was not authorised or instructed by the taxpayer to commit fraud. F knew that the transactions he was effecting on behalf of the taxpayer were connected with fraudulent evasion of VAT. The transactions of the taxpayer in questions were arranged, structured, conducted and controlled by F (and not be the taxpayer). The taxpayer, by claiming credit for input tax associated with the transactions in question, acknowledged that F had bound it into those transactions.

76. The Upper Tribunal found that the fact that F clearly breached duties owed to the taxpayer when acting on its behalf did not of itself prevent F's knowledge being attributed to it. There were three key aspects of the legal context of *Kittel* which explained why the knowledge of the agent should be attributed to the taxpayer:

> (1) The *Kittel* test involved a consideration of an issue lying between HMRC and the taxpayer, namely whether the taxpayer should obtain credit for input tax said to have been incurred in connection with particular transactions. Since that issue lay between HMRC and the taxpayer, there was no obvious reason why the taxpayer should not be attributed with the knowledge of the agent who entered into those very transactions.
>
> (2) That conclusion was only reinforced once it was appreciated that the taxpayer's claim for input tax depended on the assertion that F entered into the transactions on the taxpayer's behalf. If the taxpayer was not attributed with F's knowledge, they would simultaneously be relying on F's acts as their agent to substantiate their claim for input tax credit yet denying that his knowledge should be attributed to them when considering whether the right to input tax credit could be restricted under the *Kittel* principle.
>
> (3) The *Kittel* principle was designed to protect member states from VAT fraud. The rationale for the principle was that a person who entered into transactions either knowing, or having means of knowledge, that they were connected with fraudulent evasion of VAT was not entitled to credit for input tax associated with those transactions on the basis that the taxpayer became, in effect, the fraudsters' accomplice. There was no reason why that should be treated as excluding the normal rule to the effect that a principal was fixed with the knowledge of an agent. Indeed, if the knowledge of the agent who entered into the very transactions which gave rise to input tax was not attributed to the principal, it might be possible for taxpayers to avoid the consequence of the *Kittel* rule by entering into transactions through agents while ensuring that they remained ignorant of the full circumstances of those transactions. There was no suggestion that the taxpayer here engaged in such conduct, but there was no reason why the *Kittel* principle, intended as it was to guard against fraud, should give it the option of doing so.

77. Hence, the First-tier Tribunal had correctly concluded that when applying the *Kittel* principle the taxpayer was to be attributed with F's knowledge that the transactions were connected with fraudulent evasion of VAT.

The tribunal's task in the "should have known" limb of Kittel

78. In *S&I Electronics plc v HMRC* [2015] STC 2076 (at [64]) the Upper Tribunal said this about the Tribunal's task in approaching the "should have known" limb of Kittel:

> "… the FTT's task was to apply the impersonal standard of the reasonable businessman to the facts which it found, on the basis of the evidence which it heard, as to the circumstances in which [the taxpayer] carried out the transactions in issue. Would the reasonable businessman have concluded that [the taxpayer] ought to have known that the only reasonable explanation for the transactions was that they were connected with fraud?"

79. In *HMRC v Beigebell Ltd* [2020] UKUT 176 (TCC) it was common ground that the question of 'means of knowledge' involved the application of an objective test namely whether, even if the taxpayer did not actually know that its transactions were connected with fraud, a reasonable businessperson with ordinary competence in its position would have known.

ISSUES BEFORE THE TRIBUNAL AND PARTIES' POSITIONS IN BRIEF

80. Based on the law as summarised above, the issues before the tribunal were:

(1) was there a tax loss?

(2) was it attributable to fraudulent evasion of VAT?

(3) were the Purchases connected with the fraudulent evasion of VAT? and

(4) did T2 know (at the time the Purchases took place) that the Purchases were connected with the fraudulent evasion of VAT (the **'knew' test**)?; or

(5) in the alternative, should T2 have known (at that time) the Purchases were connected with the fraudulent evasion of VAT (the **'should have known' test**)?

81. HMRC's position was that the answer to all five issues was "yes"; in particular, T2 either knew of the Purchases' connection with fraudulent VAT evasion or shut its eyes to the obvious; or, it should have known.

82. T2's position was that it neither knew, or should have known, of the Purchases' connection to fraudulent VAT evasion, at the time they were undertaken, because

(1) it had entered into arrangements with Mr Hendry and Adam's organisation in good faith, not suspecting they were involved in VAT fraud;

(2) it did not actually know the transactions were undertaken until it was informed of the details by Adam's organisation after the event;

(3) it did eventually become suspicious and break off relations with Mr Hendry and Adam's organisation but, by this time, the Purchases had been done.

DISCUSSION

The first three issues: tax loss, VAT fraud and connection to Purchases

83. Given our finding at [20] above, it is clear that there was a tax loss, that it was attributable to fraudulent VAT evasion, and that it was connected with the Purchases.

The fourth and fifth issues: T2's state of knowledge

The 'knew' test

Knowledge of T2 based on that of its sole director

84. We find that, at the times the Purchases were entered into, T2 did not know they were connected with fraudulent VAT evasion by reason of the knowledge of Mr Blomfield, its sole director, since, as we have found at [51] above, Mr Blomfield did not know of the details of the Purchases until after they had been effected by Adam's organisation.

Knowledge of T2 based on that of Adam's organisation

85. We have found that Adam's organisation effected the Purchases and onward sales of the Goods: by this we mean that Adam's organisation found, and communicated with, the supplier (BJWP) and customers (Manhattan and Pacon), collected "due diligence" documentation from them, agreed the prices (and so the mark-up for T2), produced the transactional documentation issued by T2, and moved moneys from T2's Latvian bank account to pay for the Purchases. We have found that T2 empowered Adam's organisation to effect the transactions (most remarkably, by opening the Latvian bank account and giving Adam's organisation control of it; and also by handing over a signed generic letter of introduction); Adam's organisation also used T2's signature in ways that T2 had not authorised; however, when T2 found out that the Purchases and onwards sales had been done, although not happy about the process, T2 did not allege that they were not T2's transaction (indeed, it reported the output tax and input tax arising from them in its VAT returns).

86. The facts here are not materially identical to those in *Sandham*, the difference being that, in *Sandham*, the taxpayer's agent was an identified individual that had been appointed as the taxpayer's agent. Here, Adam's organisation was a shadowy entity, a cipher for the unidentified individual or individuals responsible for effecting the Purchases and onward sales of Goods. However, given the Upper Tribunal's reasoning in the case, we do not consider that this factual difference means that the conclusions of *Sandham* should not apply here, too: in particular, the key piece of reasoning was that if a party relies on transactions effected by a third party agent to substantiate an input tax credit claim, then it should be fixed with the knowledge of that third party, for *Kittel* purposes – even if the agent acted outside what it was authorised to do.

87. Based on *Sandham*, therefore, we consider that knowledge on the part of Adam's organisation must be attributed to T2 (and this is not affected by the fact that Adam's organisation went beyond the authority delegated to them by T2 i.e. entered into transactions connected with VAT fraud (something T2 would not have wanted them to do)).

88. Although there was no information specifically about the state of knowledge of Adam's organisation in the evidence, it is possible to make the inference that Adam's organisation did know of the Purchases' connection with fraudulent VAT evasion (i.e. the fact that BJWP was fraudulently evading output tax on the Purchases), from the following facts:

(1) all the electronic goods purchases which Adam's organisation arranged for T2 in the two VAT quarterly periods in question were from two sellers: BJWP, which was evading VAT on the Purchases, and Alingas, which became a "missing trader"; this indicates knowledge of the connection of T2's trades to fraudulent VAT evasion, on the part of Adam's organisation;

(2) Adam's organisation was shadowy, secretive and evasive in its dealings with Mr Blomfield, the sole director of T2: it never entered into written terms with T2 or Mr Blomfield; Mr Blomfield's only direct contact with them was through someone he knew only by his first name, whom he communicated with, infrequently, only through telephone calls and an email address using an alias based on a film character's name; all this indicates that Adam's organisation was involved in illicit activity and, specifically, had knowledge of the connection of T2's trades with fraudulent VAT evasion;

(3) the "due diligence" checks performed on BJWP by Adam's organisation, on T2's behalf, were very thin:

(4) BJWP's bank account was at the same Latvian bank account with which Adam's organisation had insisted T2 set up a new bank account; and some of the payments to both accounts were directed to the same third party nominee (see [22] above); this indicates co-operation and complicity between Adam's organisation and BJWP;

(5) the one aspect of the Purchases and on-sales that Adam's organisation did not handle was T2's interactions with HMRC as regards VAT, which it left to Mr Blomfield; this indicates that Adam's organisation knew of the trades' connection with fraudulent VAT evasion.

89. We conclude that Adam's organisation knew that the Purchases were connected with fraudulent VAT evasion; and, based on the Upper Tribunal's decision in *Sandham*, T2 is "fixed" with that knowledge.

The 'should have known' test

90. One way the 'should have known' test is articulated in the authorities is to ask whether the only reasonable explanation for the circumstances in which the Purchases took place is that they were connected with fraudulent VAT evasion.

91. The circumstances in which all the Purchases took place can be summarised as follows:

(1) T2, through its sole director, had entered into an arrangement with Adam's organisation, a shadowy, secretive and evasive entity, under which Adam's organisation would facilitate T2's starting to trade in electronic goods; as neither T2 nor its sole director had any experience or contacts in this field, the arrangement involved Adam's organisation doing what was necessary for T2 to trade: see [58(2)] above; this included finding suppliers and customers;

(2) the arrangement between T2 and Adam's organisation had first been proposed by Mr Hendry, a casual friend and occasional business associate of Mr Blomfield's, whose suggestion, a few months earlier, of T2 trading in VOIP minutes had been turned down by T2 after a meeting with HMRC at which HMRC said this was a high risk area for MTIC fraud;

(3) Mr Hendry had also, some years earlier, referred Mr Blomfield to a "pensions unlocking" expert who turned out to be fraudulent;

(4) Adam's organisation had not complied with Mr Blomfield's request (in February 2016) that they enter into written terms with T2 or Mr Blomfield in respect of this arrangement;

(5) trading in electronic goods was a high-risk area for MTIC fraud, as explained in HMRC's public notice (of which T2 had been given a copy); according to that notice, careful due diligence of customers and suppliers was the recommended way of avoiding being caught up in a fraudulent supply chain; and yet T2's arrangement with Adam's organisation involved the latter identifying the supplier and customers for the Purchases;

(6) Adam's organisation required that T2 open a new T2 Euro bank account in Latvia and give control over it to them (on the grounds that they were funding T2's trading in electronic goods) – and T2 complied with this requirement;

(7) T2 provided Adam's organisation with a signed letter of introduction to be given to trading counterparties;

(8) Adam's organisation expected T2 to deal with the tax compliance of the trading in electronic goods – but not to mention the involvement of Adam's organisation; and T2 did exactly that.

92. These circumstances are, in our view, objectively strange and suspicious: in sum, Mr Blomfield, T2's sole director, was asked to give, and then gave, effective control over T2 to a shadowy organisation he barely understood, in order that T2 start trading in an area which, according to a notice provided by HMRC to Mr Blomfield a few months before, was rife with MTIC fraud. In in our view the only reasonable explanation for these circumstances was connection with fraudulent VAT evasion.

93. We note that the circumstances became even more suspicious from the beginning of June 2016, when T2 discovered that Adam's organisation had effected large trading transactions by T2 without informing T2 in advance. This additional circumstance, as of early June 2016, makes it even more strongly that case, in respect of the Purchases in June-August 2016, that the only reasonable explanation for the circumstances of the Purchases was connection with fraudulent VAT evasion.

94. *Mobilx* speaks of the 'should have known' test being satisfied where a taxpayer has chosen to ignore obvious inferences from the facts and circumstances in which he has been trading. In our view, that is exactly what T2 chose to do here in relation to the facts and circumstances at the time of the Purchases as we have just summarised them.

95. We conclude that T2 should have known of the Purchases' connection with fraudulent VAT evasion.

CONCLUSION

96. The Purchases were connected with fraudulent VAT evasion and this was something T2 both knew (through the knowledge of Adam's organisation, which effected the Purchases) and should have known.

97. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

98. 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.

ZACHARY CITRON
TRIBUNAL JUDGE

Release date: 03 DECEMEBER 2021

APPENDIX: SECTION 6 OF NOTICE 726

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 — e.g., no requirement to pay for goods until payment received from customer?
- do deals with your customer/supplier involve consistent or pre-determined 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. For example:

- Is there a market for this type of goods — such as superseded or outdated mobile phone models or non-UK specific models?

- What research have you done to test whether these goods are available as described and in the quantities being offered?

- Is it commercially viable for the price of the goods to increase within the short duration of the supply chain?

- Have normal commercial practices been adopted in negotiating prices?

- Is there a commercial reason for any third party payments?

- Are normal commercial arrangements in place for the financing of the goods?

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

For example:

- Do the goods exist?

- Have they been previously supplied to you?

- Are they in good condition and not damaged?

- Do the quantities of the goods concerned appear credible?

- Do the goods have UK specifications yet are to be exported?

- Is your supplier unwilling to provide IMEI or other serial numbers?

- What recourse is there if the goods are not as described?

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.